

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13101 of 2023

Applicant :- Virendra Prashad Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Shams Uz Zaman

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
2. This application for anticipatory bail has been filed by applicant - **Virendra Prashad Yadav** seeking anticipatory bail in Case Crime No. 928 of 2021, under Sections 420, 467, 468, 471, 406, 506, 504 IPC and 3 (2) (va) S.C./S.T. Act, Police Station Barout, District Baghpat.
3. The prosecution story, as unfolded in the F.I.R., is that on the false pretext of providing some employment the other co-accused persons grabbed a huge amount of Rs. 18,40,000/- from the informant and other persons but no job was provided to them and money was also not repaid and when the money was demanded from the main accused Krishna Kumar, he informed that the money is kept with the present applicant, who also abused the informant by his caste. F.I.R. was lodged on 6.9.2021 and investigation started, which is still going on in respect of the present applicant.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case is going on and the applicant is cooperating with the same. It is further submitted that the prosecution case is totally baseless and bogus. It is further submitted that as per the contents of F.I.R. no promise was made by the present applicant to provide any employment to the informant or any other person. It is also submitted that no money was given by the informant or any other person to the applicant in

cash or through any electronic transaction. It is also submitted that the role of the applicant has been assigned only for abusing the informant by his caste words and threatening for life. No money has been grabbed by the present applicant and no wrongful gain has been made by him in his favour. Applicant has no criminal history to his credit. It is further submitted that although F.I.R. in this case has been lodged under Section 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, but only on the basis that he is Chamar by caste, no offence under the provisions of S.C./S.T. Act is made out and the applicant is entitled for the protection provided by the Hon'ble Apex Court in **Prathvi Raj Chauhan vs. Union of India & Others, (2020) 4 SCC 727** and the present anticipatory bail application is maintainable in itself. It is further submitted that the applicant has no criminal antecedents to his credit.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently submitted that that the present anticipatory bail application moved under Sections 420, 467, 468, 471, 406, 506, 504 IPC and 3 (2) (va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not maintainable as Sections 18 & 18A (2) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 specifically provide that :

"18. Section 438 of the Code not to apply to persons committing an offence under the Act - Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act".

"18 A. (2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court".

It is submitted that in view of the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 above mentioned, the present anticipatory bail application is not maintainable. It is further submitted that the present applicant is completely involved in the criminal conspiracy of fraud alongwith other co-accused persons.

6. Contending to that the learned counsel for the applicant has vehemently submitted that from perusal of the entire record no where even any whisper is found that the applicant at any stage of the case was known to the fact that the informant belongs to SC/ST

community. It is further submitted that the alleged offence was not committed on account of the informant being a member of SC/ST community. Hence the barring provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not apply to this case.

7. In support of his contention learned counsel for the applicant has relied upon the judgement of the Hon'ble Apex Court passed in **Prathvi Raj Chauhan** (supra) case wherein the law propounded by the Hon'ble Apex Court is that if the complaint does not make out a prima facie case for applicability of the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the bar created by Sections 18 and 18 A of the said Act does not apply. Likewise, observations made in **Subhash Kashinath Mahajan V. State of Maharashtra (2018) 6 SCC 454** in almost similar background also expound the same principle.

8. Section 3(2)(v) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (as substituted by Act 1 of 2016) provides that:

"Section 3(2) whoever, not being a member of a Scheduled Caste and or a Scheduled Tribe",- "(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine."

9. In the present case although the F.I.R. was lodged under Sections 420, 467, 468, 471, 406, 506, 504 IPC and 3 (2) (va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, but prima facie there is no allegation to constitute any offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Whether the alleged offence was committed by the applicant knowing this fact that the informant belongs to SC/ST community, was the key question to bring the case under the cover of the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 but not even an iota of evidence is available on record in this regard. In such a situation in my view so far as the present anticipatory bail application is concerned, there is no bar to move such an application before this Court in view of the law laid down in the cases of **Prathvi Raj Chauhan** (supra) and **Subhash Kashinath Mahajan** (supra).

10. So far as the merits of the anticipatory bail application is concerned, the applicant has been cooperative during the course of investigation so far. He is having no criminal antecedents to his credit. Nothing incriminating material has been recovered from the possession or from the place under control of the applicant.

11. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

12. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

13. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till submission of police report under Section 173(2) CrPC before the competent Court.

14. The anticipatory bail application is **allowed** accordingly.

15. In the event of arrest of the applicant, he shall be released on

anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

16. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 29.11.2023

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