Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 13236 of 2023

Applicant :- Mannu Kumar @ Manu Kumar
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Pankaj Bharti
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Mannu Kumar @ Manu Kumar** seeking anticipatory bail in Case Crime No. 343 of 2022, under Sections 419, 420, 120-B IPC and Sections 4,5,6,23,29 of (Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, Police Station Shamli, District Shamli.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the present applicant has nothing to do with Dr. Safal Kumar or any sex determination offence committed by Dr. Safal Kumar. Present applicant is not the employee of Dr. Safal Kumar. He has absolutely no role in sex determination matter. The money amounting to Rs. 20,000/- was never deposited in his bank account rather he deposited Rs. 23,000/- in his bank account which was his own money. It is also submitted that there is no evidence on record as to Rs. 20,000/- were deposited by Dr. Safal Kumar in the bank account of the applicant. Applicant has no criminal history to his credit. After completion of investigation, charge sheet has been submitted into the matter and the applicant had been cooperative in the investigation. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. It reveals from the perusal of the record that a team of doctors was constituted to ascertain whether any sex determination is made by Dr. Safal Kumar and the settlement was made for Rs. 40,000/- out of which Rs. 20,000/- were paid to Dr. Safal Kumar but subsequently when Dr. Safal Kumar, the co-accused, had some doubts that he may be implicated in any matter, he transferred Rs. 20,000/- in the bank account of the present applicant on the instructions of the co-accused Vijay Lakshmi. F.I.R. was lodged on 29.7.2022 and after investigation charge sheet has been submitted. It also reveals that the applicant has been cooperative during investigation and now after submission of charge sheet no custodial interrogation is required. Applicant has no criminal history to his credit.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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.

8. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the

charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

9. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till the end of trial.

10. The application is **allowed** accordingly.

11. 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 the Court concerned with the following conditions:-

(i) The applicant shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(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.

12. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 1.12.2023

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Digitally signed by :-
MAHBOOB SAFI
High Court of Judicature at Allahabad