

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13129 of 2023

Applicant :- Sushant Vinayak @ Baba

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ram Prakash Dwivedi, Pranshu Dwivedi

Counsel for Opposite Party :- G.A., Lalit Kumar Srivastava

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicant, learned counsel for the informant and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Complaint Case No. 542 of 2017, under Section 406 IPC, P.S. Kotwali, District Agra, during the pendency of application/Trial.

3. Submission of learned counsel for the applicant is that applicant is innocent and has been falsely implicated. It is further submitted that the complaint itself shows it is a business transaction and the whole liability is alleged in the complaint against the father of the applicant, who has already died on 21.08.2016, therefore, it is submitted that no offence punishable under Section 406 IPC is made out against the applicant. It is further submitted that the dispute arising out of a contract or business transaction is purely a civil dispute and amount payable under a contract or business transaction cannot be recovered by resorting to criminal proceedings.

4. It is further submitted that earlier applicant approached this court by filing Application U/s 482 No. 27807 of 2018 in which this court had granted interim protection to the applicant vide its order dated 23.08.2018 but during passage of time, interim order was vacated in the light of decision of Apex Court rendered in Asian Resurfacing and thereafter applicant was summoned in the aforesaid section. The applicant is having definite apprehension that he may be arrested by the police any time.

5. Learned A.G.A. for the State has opposed the prayer for anticipatory bail of the applicant.

6. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1**. The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In view of the above, the anticipatory bail application of the applicant is allowed.

8. Let the accused-applicant Sushant Vinayak @ Baba be released forthwith in the aforesaid complaint case on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court.

2. The applicant shall surrender his passport, if any, to the concerned trial Court forthwith. His passport will remain in custody of the concerned trial Court.

3. That 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 them from disclosing such facts to the Court or to any police officer;

4. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.

5. In case, the applicant misuses the liberty of bail, the trial Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of Sushila

Aggarwal and others Vs State (NCT of Delhi) and another, (2020) 5 SCC 1.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against them in accordance with law."

9. With the aforesaid directions, this application stands disposed of finally.

Order Date :- 5.12.2023
RavindraKSingh