

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13080 of 2023

Applicant :- Farukh @ Umar Farook

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Belal

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Mohammad Belal, learned counsel for the applicant 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 Case Crime No.139 of 2017, under Sections 420, 506 I.P.C., P.S.- Ahar, District-Bulandshahar.

3. Brief facts of the case are that informant is owner of a J.C.B. Machine and has given it on rent to the applicant on Rs.90,000/- per month and for four months up to 3.4.2017 the rent to be paid was about Rs.3,60,000/- but no rent was paid by the applicant to the informant. It is alleged that two cheques having No.000001 of Rs.1,00,000/- and another Cheque No.000002 of Rs.1,35,000/- was given to the informant by the co-accused, namely, Monu but the cheques were dishonored by the Bank.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that earlier the applicant has approached this Court challenging the charge sheet dated 15.10.2018 as well as cognizance order dated 15.10.2018 in Application U/S 482 Cr.P.C. No.7138 of 2019 and the co-ordinate Bench of this Court vide order dated 22.2.2019 has stayed the arrest of the applicant till the next date of listing. Thereafter, during the pendency of the aforesaid case, court below concerned vide order dated 15.2.2023 summoned the applicant vacating the interim protection granted by this Court in light of the judgment of the Apex Court in the case of **Asian Resurfacing of Road Agency Private Ltd. and another Vs. Central Bureau of Investigation (2018) 16 SCC 299**. He further submitted that all the offences are punishable

below seven years. Learned counsel for the applicant has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar, reported in (2014) 8 SCC 273**. The applicant is ready to abide by all the terms and conditions that may be imposed by this Court while granting anticipatory bail. On these grounds, he prays for granting anticipatory bail to the applicant.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant but could not dispute the submissions raised by learned counsel for the applicant.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98**. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant- **Farukh @ Umar Farook**, involved in the aforesaid case crime be released on anticipatory bail on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(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 from disclosing such facts to the Court or to any police officer.

(iii) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iv) The applicant shall surrender his passport, if any, to the

concerned Court forthwith. His passport will remain in custody of the concerned Court.

(v) 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 applicant.

(vi) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98**.

(vii) 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 him in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

9. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 4.12.2023
Krishna*