

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13203 of 2023

Applicant :- Mukesh Chauhan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Harish Chandra Mishra, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.
2. This application for anticipatory bail has been filed by applicant-**Mukesh Chauhan** in connection with Case Crime No. 39 of 2009, under sections 120-B, 420, 427, 459, 471, 264, 265 IPC and Sections 31, 32, 33, 38 (2) and 96 of U.P. Sugarcane Control (Regulation of Supply and Purchase) Rules, 1954, P.S. Phugana, District Muzaffarnagar.
3. It is alleged in the F.I.R. that with an ulterior motive to cause wrongful gain to the sugar mills owners and wrongful loss to the sugarcane farmers, discrepancy was shown in the weight of the sugar cane deliberately and fraudulently by the present applicant, who was working as Occupier in the sugarcane mills along with other co-accused persons. An F.I.R. was lodged on 16.02.2009 and after investigation, now charge sheet has been submitted in this matter.
4. It has been 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. Charge sheet in the matter has been submitted. It is further submitted that no evidence has been collected against the present applicant. It is next submitted that after lodging of the F.I.R., Criminal Misc. Writ Petition No.3539 of 2009 was preferred by the present applicant wherein an interim protection was granted to the applicant by this Court vide order dated 03.03.2009 and the same was continued till submission of the charge sheet. It is next submitted that after submission of the charge sheet, an Application U/s 482 Cr.P.C. No.30215 of 2009 was preferred by the present applicant along with other co-accused person, Mukesh Chauhan wherein the proceedings of this case was stayed by the coordinate

Bench of this Court vide order 09.12.2009 but subsequently following the dictum laid down by the Hon'ble Supreme Court in Asian Resurfacing case, the trial court proceeded with the matter on 07.05.2019. It is further submitted that by the trial court, no processes under Sections 82 & 83 Cr.P.C. has been issued against him and he has not been declared as proclaimed offender. It is further submitted that he has been cooperative with the I.O. of the case during the course of investigation and he has not misused the liberty of the protection order granted by the Court. It is further submitted that the investigation of this case was not performed according to law. It is also submitted that the applicant has no criminal antecedents to his credit. It is further submitted that co-accused A.K. Mehra has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 11794 of 2023 by order dated 8.11.2023. It is next submitted that after submission of charge sheet, now no custodial interrogation is required from the present applicant and as such, he is entitled for anticipatory bail. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail and it has been submitted that applicant being Occupier, was under obligation to check the whole proceedings and weight of the sugarcane.

6. In the present matter, the I.O. of the case did not require the arrest of the present applicant during investigation and after submission of charge sheet, no custodial interrogation is required.

7. Although the charge sheet has been submitted in this matter, but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding 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. 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 conclusion of trial in the matter.

9. The anticipatory bail application is **allowed**.

10. In the event of arrest of the applicant in the aforesaid case crime, 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 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 or tamper with the evidence.

(ii) The applicant shall not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(iv) The applicant shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

12. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 7.12.2023

Fhd