

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 13439 of 2023

Applicant :- Ram Khiladi And 5 Others

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

Counsel for Applicant :- Mukul Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Mukul Yadav, learned counsel for the applicants 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 No.841 of 2009, under Sections 147, 120B, 420, 468, 471, 506, 511 I.P.C., P.S.- Gangiri, District- ALigarh.

3. As per complaint, the complainant filed a complaint before the court below on 22.7.2008 with the allegation that one Pratap executed a sale deed of Khasra No. 284 V/3 area 0.196 hectare in favour of the applicant nos. 1, 2, 3 and 4 on 19.5.2007 through criminal conspiracy act by all the applicants. It is alleged that the complainant has 1/2 share in land bearing Khasra No. 284 V/1 area 0.392 hectare and the said share was cultivated by him. It is further alleged that the complainant has some tree and through the sale deed dated 19.5.2007 all the applicants are taking unfair advantage from the share of the complainant.

4. Learned counsel for the applicants submitted that the applicants are innocent; they have been falsely implicated in the present case. He submitted that earlier, the applicants have also lodged an FIR against the complainant and his three sons in which they were convicted for three years, thereafter, the present FIR has been lodged against the applicants just to harass them. Learned counsel for the applicants submitted that earlier the applicant no.1- Ram Khilada has approached this Court in Criminal Misc. Writ Petition No.407 of 2013 and the co-ordinate Bench of this Court vide order dated 22.1.2013 has granted interim protection to the applicant, thereafter, during the pendency of the aforesaid case, court below concerned vide its order dated 7.3.2022 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**, thereafter, the applicant moved anticipatory bail application before the court below concerned which was rejected by the court below vide its order dated 17.11.2023, hence the present anticipatory bail application. Learned counsel for the applicants further submitted that matter purely relates to the civil dispute and has given criminal colour just to harass the applicants and till date cancellation of sale deed in question as well as no case of encroachment has not been filed by the complainant before the court concerned. The applicants have no criminal history. Learned counsel for the applicants further submitted that applicants have apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicants. He has submitted that in view of the seriousness of the allegations made against the applicants, they are not entitled to grant of anticipatory bail. The apprehension of the applicants is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants, they are 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 applicants shall be released on anticipatory bail. Let the applicants- **Ram Khiladi, Ramphal, Rameshwar Dayal, Ram Saneshi @ Ramsani, Omkar Singh and Tilak Singh @ Jhanjhan Singh**, 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 applicants 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 applicants 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.

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

(iv) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(v) The applicants shall file an undertaking to the effect that they 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.

(vi) In case, the applicants 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 applicants 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 their 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 :- 5.12.2023 // Krishna*