

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13401 of 2023

Applicant :- Ashutosh Dwivedi @ Bobby

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

Counsel for Applicant :- Lavkush Kumar Bhatt

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant - **Ashutosh Dwivedi @ Bobby** seeking anticipatory bail in Case Crime No. 357 of 2023, under Sections 147, 323, 506, 364A, 386, 341, 506, 120-B IPC, Police Station - Maudarwaja, District Farrukhabad.
3. The father of the informant was kidnapped by the five named accused and two unknown accused persons and by threatening him an affidavit was also obtained with his signature and they made pressure to file compromise in a pending Suit between the parties. F.I.R. was lodged on 20.7.2023. During investigation, which is still going on, the abducted person was recovered by the police.
4. It has been argued 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. Investigation is going on in the matter. It is also submitted that although the abducted person has alleged the role of kidnapping against the applicant in his statement given to I.O. u/s 161 Cr.P.C., but as a matter of fact, in his statement u/s 164 Cr.P.C. recorded before the Magistrate the aggrieved person has not named the applicant and not even a single word has been spoken by him in respect of participation of the applicant in the commission of the crime. It is also submitted that earlier an F.I.R. was lodged from the informant side as case crime no.69 of 2023 on 7.4.2023 regarding an incident, which took place about three years back and the applicant was named in this F.I.R., but he was granted anticipatory bail in that matter by the Sessions Court itself and

subsequently the present F.I.R. was again lodged with an ulterior motive. It is further submitted that the applicant has no criminal history to his credit. Applicant has been cooperative with the investigation so far and 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. opposed the prayer for anticipatory bail, but however could not dispute this factual aspect that in his statement recorded u/s 164 Cr.P.C., the abducted person has mentioned absolutely no role of the present applicant and he is not even named in the aforesaid statement.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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.

7. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

8. 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 filing of police report under Section 173(2) Cr.P.C. before the competent Court.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, he shall be released on anticipatory bail till filing of police report under Section 173(2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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.

11. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 12.12.2023

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