

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13643 of 2023

Applicant :- Jamal Khan And 5 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Kumar Dwivedi, Ashish
Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicants and learned A.G.A as well as perused the material available on record.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.089A of 1993, under Sections 147, 148, 149, 307, 504 I.P.C., P.S.- Chandaus, District- Aligarh.
3. Learned counsel for the applicants submitted that the matter is of the year 1993 where incident took place on 16.10.1993 and FIR was lodged on 31.10.1993 and during investigation it was found that no offence was made out against the applicants, thereafter, final report was submitted before the court concerned in favour of the applicants, thereafter, the informant moved a protest petition on 27.5.1994 along with affidavits to the witness concerned. He submitted that earlier the applicants have approached this Court in Application U/S 482 No.5204 of 1994, where interim protection was granted in favour of the applicants vide order dated 19.12.1994. He submitted that the aforesaid Application U/S 482 Cr.P.C. was dismissed vide order dated 31.07.2008 in default in influx of time, thereafter, the court below issued summon against the applicants on 31.5.2023 and N.B.W. issued on 22.8.2023. Thereafter, the applicants moved anticipatory bail before the court below concerned and after rejection, the present application before this Court. 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.

4. 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.

5. 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.

6. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants- **Jamal Khan, Adil Khan, Avid Ali, Dilshad Khan, Aslam Khan and Habib Khan**, involved in the aforesaid 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:-

(1) 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.

(2) 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.

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

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

(5) 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.

(6) 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**.

(7) 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 his in accordance with law.

7. 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 applicants.

8. The trial court is directed to expedite the trial, expeditiously, in accordance with law, within a period of six months from the date of production of certified copy of this order.

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

Order Date :- 15.12.2023

Krishna*