

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13573 of 2023

Applicant :- Arshad

Opposite Party :- State Of U.P Through Prin.Sec.(Home),Lko
And And 2 Others

Counsel for Applicant :- Avnish Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Avnish Kumar Srivastava, learned counsel for the applicant and Sri Pankaj Kumar, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Criminal Case No.24098 of 2023, arising out of Case Crime No.164 of 2023, registered under Sections 147, 420, 467, 468, 471, 504, 506 I.P.C. at Police Station- Kharkhauda, District- Meerut with a prayer to enlarge him on anticipatory bail.
4. This is the second anticipatory bail application on behalf of the applicant. The first one was allowed by this Court till submission of report u/s 173(2) Cr.P.C. vide order dated 17.8.2023 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 7466 of 2023. Subsequent to it, the final report (charge-sheet) has been submitted.
5. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. The applicant has not misused the said opportunity granted till submission of report u/s 173(2) Cr.P.C.
6. In support of his submission, learned counsel has placed reliance upon the judgement of the Apex Court in ***Aman Preet Singh vs. C.B.I. through Director AIR 2021 SC 4154***, wherein the Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances

of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant has no criminal antecedents to his credit. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

8. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

9. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "*Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

10. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Arshad** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that 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;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court

concerned shall have the liberty to cancel the bail.

11. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 16.12.2023

Vikas

[Krishan Pahal, J.]