

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 218 of 2022

Applicant :- Raghuveer Nishad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko And Another

Counsel for Applicant :- Mohsin Iqbal

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Case called out. Nobody is present on behalf of the applicant.
2. Sri Rakesh Kumar Singh, the learned AGA is present.
3. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No. 46 of 2019, under Section 60(2), 72 Excise Act and Section 272 IPC, Police Station Nawabganj, District Gonda.
4. It is alleged that 2 kilns and 240 litres of spurious liquor alongwith various implements used to manufacture illicit liquor were recovered from the possession of accused persons. Two accused persons, namely, Santosh Nishad and Amar Nishad are said to have been arrested and one Ram Chhabile is said to have escaped.
5. The applicant has been implicated subsequently on the basis of the statement of the arrested persons.
6. The applicant was granted interim anticipatory bail by means of the following order dated 22.02.2022:-

"Heard learned counsel for the applicant and learned counsel for first informant and learned A.G.A. for the State.

The present application has been moved seeking anticipatory bail in Case Crime no. 46 of 2019, under Section 60(2) and 72 Excise Act and Section 272 I.P.C., Police Station- Nawabganj, District-Gonda, with the prayer to enlarge him on anticipatory bail.

As per prosecution story, two kilns and 240 litres of spurious liquor alongwith various implements are said to have been recovered from the possession of two accused persons, namely, Santosh Nishad and Amar Nishad are said to have been arrested and the co-accused person, Ram Chhabile is said to have run away from the scene of occurrence.

Learned counsel for the applicant has submitted that the applicant is not named in the FIR, his name has come up later on in the statement of co-accused persons during investigation. There is no previous criminal history of the applicant. Learned counsel for the applicant undertakes that he will co-operate in the

investigation failing which the State can move appropriate application for vacation of the interim protection.

Learned A.G.A. has opposed the application for anticipatory bail. However, he could not dispute the submissions raised by learned counsel for the applicant.

Matter requires consideration.

Three weeks' time is granted to learned A.G.A. and learned counsel for the first informant to file counter affidavit.

One week's time, thereafter, is granted to learned counsel for the applicant for filing rejoinder affidavit.

On due consideration to the arguments advance 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, as an interim measure, is liable to be enlarged on anticipatory bail in view of the Constitution Bench judgment of Supreme Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98". 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.

In the event of arrest, the accused-applicant- Raghuvver Nishad shall be released forthwith in the aforesaid case crime (supra) on interim anticipatory bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned on the following conditions:-

(i) the applicant shall make himself available for interrogation 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 from disclosing such facts to the Court or to any police officer; and

(iii) the applicant shall not leave India without the previous permission of the Court.

List on 5th April, 2022 in the additional cause list."

7. While granting interim anticipatory bail to the applicant, the State was granted three weeks' time for filing counter affidavit but no counter affidavit has been filed till date.

8. Thus the averments made in the affidavit filed in support of the anticipatory bail application remains uncontroverted.

9. The application is pending since 14.02.2022 whereas the law mandates disposal of an application under Section 438 Cr.P.C. within 30 days.

10. In view of above, the interim order dated 22.02.2022 is made absolute and the anticipatory bail application is **allowed**.

11. In case the applicant has not furnished bail bonds till date, he may do so within a period of two weeks from today.

Order Date :- 28.11.2023

Pradeep/-