

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 455 of 2023

Applicant :- Smt. Kusum Shukla

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

Counsel for Applicant :- Shishir Pradhan

Counsel for Opposite Party :- G.A.,Alok Kumar Tripathi

Hon'ble Subhash Vidyarthi,J.

1. Sri Shishir Pradhan, learned counsel for the applicant and Sri Jayant Singh Tomar, learned A.G.A-I for the State are present. Sri Alok Kumar Tripathi, learned counsel for the informant prays for two days further time for filing a counter affidavit.

2. On 16.10.2023, the learned counsel for the informant had sought two weeks' time for filing a counter affidavit but no counter affidavit has been filed within the stipulated period and the learned counsel for the informant is seeking further time for filing a counter affidavit.

3. The anticipatory bail is pending since 20.02.2023 whereas the Section 438 Cr.P.C mandates an application under Section 438 Cr.P.C to be decided within a period of 30 days therefore the request for grant of further time is rejected.

4. By means of an order dated 22.02.2023 the court had passed the following order granting interim anticipatory bail to the applicant:-

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

The present bail application under Section 438 Cr.PC. has been filed seeking anticipatory bail in case crime/F.I.R No. 0648/2022, under Sections 419, 420, 467, 468, 471 I.P.C., P.S. Lalganj, district Pratapgarh.

In the prosecution case it is alleged by the informant that his cousin uncle Brij Bhushan Ojha and Chandra Bhushan Ojha were unmarried and were untraceable for the last 50 years and the accused persons by impersonating them by Girija Shankar Shukla and Rameshwar Prasad Tiwari have bought the immovable property of his grand father and transferred in the name of the applicant and another co-accused.

Learned counsel for the applicant submits that the dispute is purely civil in nature. The applicant is a lady having no criminal antecedents. Regarding the property in dispute, two civil suits one by the applicant and another by the complainant have been filed before the competent court of civil jurisdiction. The interim injunction orders have been passed in both the civil suits which are on record. It is also submitted that purely a civil dispute is sought to be given a criminal colour by filing the false F.I.R. that too after a delay of 1 year and 8 months.

Learned counsel for the applicant submits that the applicant is not a previous convict; she has no criminal antecedents and she undertakes to cooperate in the investigation.

Issue notice to respondent No. 2.

Learned Addl. Government Advocate prays for and is allowed 15 days' time to file counter affidavit.

List on 21.03.2023 and connect with anticipatory Bail No.347 of 2023 Smt. Uma Devi alias Usha Tiwari versus State of U.P. and another.

Considering the above aspect of the matter, perusal of the record as well as the fact that the applicant is a lady, having no criminal antecedents, civil suit regarding the disputed property are pending wherein interim injunction have been granted, and the applicant undertakes to cooperate in the investigation as also the judgment of Apex Court passed in Sushila Aggarwal and others versus State (NCT of Delhi) and another (2020)5 SCC 1, it would be appropriate to grant interim protection to the applicant under Section 438 Cr.P.C.

Till the next date of listing, it is provided that in the event of arrest, the applicant shall be released on bail on her furnishing a personal bond and two sureties of the like amount to the satisfaction of the arresting officer/I.O./S.H.O. concerned.

The applicant shall cooperate in the investigation and she will not influence the witness. The accused-applicant will remain present as and when the arresting officer/ I.O./S.H.O. concerned call(s) for investigation/interrogation. The applicant shall not leave India without previous permission of the Court.

In case of default, it would be open for the investigating agency to move application for vacation of this interim protection."

5. The State has filed a counter affidavit annexing therewith copies of statements recorded and material collected during investigation, which has already been annexed with the affidavit filed in support of the application and no new fact has come to light which may persuade this court to take a view, other than the view taken at the time of granting interim anticipatory bail to the applicant.

6. The learned counsel for the informant states that a charge sheet has already been submitted against the applicant, from which it appears that the investigation is complete and now there is no need for custodial interrogation of the applicant.

7. The learned A.G.A. as well as the learned counsel for the informant, could not point out any violation of the conditions of interim anticipatory bail committed by the applicant.

8. The learned counsel for the applicant has submitted that the bail bonds have already been furnished in compliance of an interim order dated 22.02.2023.

9. In view of above, the interim order dated 22.02.2023 is made absolute and the anticipatory bail application is **allowed.**

(Subhash Vidyarthi,J.)

Order Date :- 6.11.2023/Preeti.