

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 986 of 2023

Applicant :- Sanwal Prasad

Opposite Party :- State Of U.P. Thru. Prin. Secy./Addl. Chief Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Sameer Kalia, Avinash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Avinash Singh, the learned counsel for the applicant and Smt. Parul Kant, the learned AGA for the State.

2. The aforesaid case has been registered on the basis of an FIR lodged on 09.02.2023 against the applicant, who is a Sub Inspector of Police, alleging that an audio recording had been received from which it appears that the applicant was demanding bribe for providing undue benefit to the accused persons.

3. The applicant was granted interim anticipatory bail by means of the following order passed on 28.04.2023:-

"Supplementary affidavit filed by learned counsel for the applicant is taken on record.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The present application under Section 438 of Cr.P.C. has been filed for anticipatory bail in F.I.R. No.0072 of 2023 under sections 7 and 13 of Prevention of Corruption Act and 506 I.P.C., Police Station Shushant Golf City, District-Lucknow.

Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case on the influence of Durgesh Soni as well as other persons those are accused in the huge financial scam related to M/s Shinecity Infraproperties Pvt. Ltd. He further submitted that Durgesh Soni, who is alleged victim, 18 cases were lodged against him by different persons i.e. Case Crime Nos.940/20, 945/20, 954/20, 973/20, 1005/20 1011/20, 1028/20, 1030/20, 36/20, 38/20, 40/20, 707/21, 708/21, 797/21, 798/21, 799/21, 800/21, 801/21. (the list is annexed as page 19 of supplementary affidavit). He further submitted that the applicant was was Investigating Officer in the case of Durgesh Soni who was making pressure on the applicant for giving a favour to him and all his confessions have already been recorded by the Investigating Officer in the case diary. He further submitted that on the false allegations levelled by the alleged victim, namely, Durgesh Soni, one fabricated inquiry was conducted by the Officials those who were in connivance with him and they lodged the present F.I.R. but no offence under Section 7 and 13 of Prevention of Corruption Act and 506 I.P.C. is made out. He further submitted that the applicant is a Government

Official and ready to cooperate in the investigation, therefore, kind indulgence of this Court is necessary. The applicant never misused the liberty given by the Investigating Officer, therefore, the anticipatory bail may be granted to him.

Learned A.G.A. opposes the prayer of applicant and submitted that applicant misused his position and raised illegal demand from the victim of the present case, namely, Durgesh Soni, whose involvement was alleged in 18 cases, therefore, he may not be granted liberty of anticipatory bail.

Considering the argument of learned counsel for the parties and going through the contents of the FIR, supplementary affidavit as well as other relevant documents, I am of the view that the applicant is entitled for interim anticipatory bail.

Till the next date of listing, in the event of arrest of the applicant, namely, Sanwal Prasad in the aforesaid case, he shall be released forthwith by the Station House Officer of the police station concerned, on his furnishing personal bond of Rs.50,000/- with the following condition:-

(i) That the accused-applicant shall make themselves available for interrogation by police authorities as and when required and will cooperate with the investigation;

(ii) That the accused-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) That the accused-applicant shall not leave India without the previous permission of the Court.

However, it is directed that the applicant will join and participate in each and every aspect of Investigation and will lend full assistance to the Investigating Agency, even with regard to 'discovery of fact' if and when required so by the Investigating Agency.

List this case on 05.05.2023 for final disposal.

On the next date, Investigating Officer of the case in question shall be present in person before this Court.

In the meantime, the AGA may file counter affidavit in response to the contents of the bail application as well as supplementary affidavit filed by learned counsel for the applicant"

4. The State has filed a counter affidavit opposing the bail application. The applicant has filed a supplementary affidavit annexing therewith an application filed before the Investigating Officer stating that he is willing to cooperate in the investigation by submitting his voice sample for forensic examination and he has prayed that the sample be taken in accordance with law laid down by the Hon'ble Supreme Court in ***Sudheer Chaudhary v. State (NCT of Delhi), (2016) 8 SCC 307.***

5. From the aforesaid facts it appears that the applicant is willing to cooperate in the investigation.

6. The State has filed a supplementary counter affidavit stating that the applicant is avoiding giving his voice sample.

7. In view of the aforesaid facts, the application is ***allowed*** in terms of the interim order dated 28.04.2023 with the condition that the applicant shall appear before the Investigating Officer and give his voice sample in accordance with law on 08.12.2023 at 10;30 a.m.

8. The concerned authorities shall take necessary actions for ensuring compliance of this order.

Order Date :- 30.11.2023

Pradeep/-