

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 1448 of 2023

Applicant :- Balvant Singh

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

Counsel for Applicant :- Akhand Pratap Singh, Apoorv Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. On 26.06.2023 after hearing learned counsel for the applicant and learned A.G.A. for the State this court had passed the following order:

"1. This anticipatory bail application under Section 438 Cr.P.C. has been filed by applicant, Balvant Singh, seeking to enlarge him on anticipatory bail in FIR/Case Crime No. 15 of 2013 dated 23.12.2012, under Sections 419, 420, 467, 468, 471 I.P.C., police station Kaudiya district Gonda as he is apprehending arrest in the above-mentioned case.

2. Heard Shri Akhand Pratap Singh, learned Counsel for the applicant and Shri Arun Kumar Pandey, learned Additional Government Advocate for the State/respondent.

3. Learned Counsel for the applicant has submitted that the allegation in the F.I.R. is that the applicant has got executed a sale deed in his name by forged person on 16.04.1993. This allegation in the F.I.R. is frivolous and concocted because the applicant has actually purchased land, bearing Gata No. 266 area 0.178 hectare on 16.04.1993 from Kauslendra Das after paying a consideration through registered sale deed at Bahi No. 1 zild 113 serial no. 5571 and since then the applicant is in possession of the aforesaid land and is doing cultivation. According to him, the applicant is aged about 85 years, whereas respondent no.2/complainant is nephew of the applicant and is not having good terms with the applicant.

4. Learned Counsel for the applicant has further submitted that respondent no.2 has filed a civil suit, bearing No. 613 of 2011 against the applicant regarding the land in question and the same is pending before Civil Judge, Junior Division, Gonda since 2011. However, by concealing this fact of pendency of the civil suit between the parties in regard to the land in question and in order to pressurize the applicant, the respondent no.2/complainant has filed an application under Section 156 (3) Cr.P.C. against the applicant and two others and on the direction of the said application, the aforesaid F.I.R. has been registered against the applicant. According to him, earlier the applicant has approached this Court by filing Misc. Bench No. 6629 of 2013, wherein a Division Bench of this Court, vide order dated 01.08.2013, stayed the arrest of the applicant. His submission is that the present dispute is purely civil nature and just to make pressurize the applicant and influence the civil proceedings, criminal proceedings have been initiated against the applicant with oblique motive. Hence, the applicant is entitled to be enlarge on bail.

5. Learned AGA, on the other hand, has opposed the prayer of the bail.

6. Having regard to the submissions made by the learned Counsel for the parties and having perused the record available before this Court and also the facts that the applicant is aged about 85 years old and the dispute between the parties regarding land in question is pending before the Court below, this Court is of the view that prima facie, applicant be granted interim protection from arrest till submission of objection by the State.

7. Issue notice to respondent no.2. Steps be taken within a week.

8. Let counter affidavit be filed within three weeks. Rejoinder affidavit may be filed within one week thereafter.

9. List this case on 27.07.2023.

10. Till the next date of listing, in the event of arrest of the applicant-Balwant Singh involved in the above noted case or on his surrender before the trial court within one week from today, whichever is earlier, he shall be released forthwith on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- with two sureties in the like amount to the satisfaction of the trial court, Station House Officer of the Police Station concerned/ Investigating Officer subject to the following conditions:

(1) The applicant if not arrested earlier, shall surrender before the trial court within one week from today and will cooperate in the trial.

(2) The applicant shall make himself available for interrogation or for discovery of any fact by a police officer as and when required;

(3) 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 them from disclosing such facts to the Court or to any police officer;

(4) The applicant shall not leave the territory of India without the previous permission of the Court.

11. List as directed on 27.07.2023, on which date, this application shall be decided finally."

2. Although counter and rejoinder affidavits have been filed in this case, but nothing 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.

3. The learned A.G.A. could not point out any violation of the conditions of interim anticipatory bail committed by the applicant

4. The learned counsel for the applicant has submitted that the bail bonds have already been furnished in compliance of the interim order dated 26.06.2023.

5. In view of above, the interim order dated 26.06.2023 is made absolute and the anticipatory bail application is **allowed.**

(Subhash Vidyarthi,J.)

Order Date :- 21.11.2023

Preeti.