

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2238 of 2023

Applicant :- Rajendra Prasad Agrawal

Opposite Party :- State Of U.P. Thru. U.P. Vigilance Establishment Lko. And
Another

Counsel for Applicant :- Ankit Tripathi, Nadeem Murtaza, Sudhanshu S.
Tripathi, Wali Nawaz Khan

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Nadeem Murtaza, learned counsel for the applicant and Sri Rao Narendra Singh, learned A.G.A. and perused the record.
2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No.1 of 2014 (S.T. No.168 of 2021), under Sections 409/120-B I.P.C., registered at Police Station Gomti Nagar, District Lucknow.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 01.01.2014 against 19 persons, not including the applicant, alleging various financial irregularities committed in the construction of various memorials and gardens during the period 2007-2011. The applicant has been implicated subsequently because he had supplied some sand stones allegedly on exorbitant rates.
4. It is submitted by the learned counsel for the applicant that 42 persons have already been granted anticipatory bail in the present case in a bunch of applications decided by means of an order dated 25.07.2022, the leading case bearing Criminal Misc. Anticipatory Bail Application No.10048 of 2021. While allowing the anticipatory bail applications of the co-accused persons this court has taken note of the fact that charge sheets have already been filed and the accused applicants were not arrested during course of investigation and no useful purpose will be served at this distant point of time by taking the accused applicants to judicial custody.
5. It has been further submitted that the accused is aged about 89 years and suffering from various age related ailments.
6. The following passage from the judgment in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another, (2021) 10 SCC 773**, has been reproduced in the counter affidavit: -

"We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

"Categories/Types of Offences A) Offences

A) punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts."

7. The present case alleges commission of offences under Section 409/120-B I.P.C. and it falls under Category B, regarding which the Hon'ble Supreme Court has held that on appearance of the accused person, his bail application shall be decided on its merit..

8. A reference to the following passage from the judgment in the case of Pankaj Grover Vs. Directorate of Enforcement, 2021 SCC Online All 566: -

"30. The importance and relevance.....

"76. In Siddharam Satlingappa Mhetre v. State of Maharashtra (supra), the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to Siddharam Satlingappa Mhetre judgment and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar, the Supreme Court held as under : (SCC p.386, para 19) "19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharashtra v. Modh. Sajid Husain Mohd. S. Husain and Union of India v. Padam Narain Aggarwal.) Economic Offences:

78. Power under Section 438 Code of Criminal Procedure being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105, it was held that in economic offences, the Accused is not entitled to anticipatory bail.

79. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that

money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the Appellate is necessary.

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364, it was held as under:

5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439, the Supreme Court held as under:

34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

9. However, in **Satender Kumar Antil v. CBI, (2022) 10 SCC 51**, the Hon'ble Supreme Court held that: -

90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis...."

10. Therefore, all the economic offences do not form a separate category. The applicant has been charged with an offence under the I.P.C. and he has not been charged with commission of an economic offence under any special Act like

PMLA etc.

11. In the case of *Sushila Aggarwal* (2020) 5 SCC 1, a Bench consisting of 5 Hon'ble Judges of the Hon'ble Supreme Court held that: -

75. For the above reasons, the answer to the first question in the reference made to this Bench is that there is no offence, per se, which stands excluded from the purview of Section 438, except the offences mentioned in Section 438(4). In other words, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or statute, which exclude relief under Section 438(1) they would have to be duly considered. Also, whether anticipatory bail should be granted, in the given facts and circumstances of any case, where the allegations relating to the commission of offences of a serious nature, with certain special conditions, is a matter of discretion to be exercised, having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing justice (or not fleeing justice), likelihood of cooperation or non-cooperation with the investigating agency or police, etc. There can be no inflexible time-frame for which an order of anticipatory bail can continue.

*76. Therefore, this Court holds that the view expressed in *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, (1996) 1 SCC 667, *K. L. Verma v. State*, (1998) 9 SCC 348, *Nirmal Jeet Kaur v. State of M.P.*, (2004) 7 SCC 558, *Satpal Singh v. State of Punjab*, (2018) 13 SCC 813, *Adri Dharan Das v. State of W.B.*, (2005) 4 SCC 303, *HDFC Bank Ltd. v. J.J. Mannan*, (2010) 1 SCC 679 and *Naresh Kumar Yadav v. Ravindra Kumar*, (2008) 1 SCC 632 about the Court of Session, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the "normal court" not being "bypassed" or that in certain kinds of serious offences, anticipatory bail should not be granted normally — including in economic offences, etc.—are not good law."*

12. Therefore, I am of the view that the instant application seeking Anticipatory Bail in a case involving allegation of commission of offences under Section 409/120-B I.P.C. is maintainable and it has to be considered and decided on its merits.

13. The constructions in question were raised during the period 2007-2011 and the F.I.R. was lodged on 01.01.2014. The applicant was not included amongst the 19 persons named in the F.I.R. lodged several years after raising of the construction. The applicant has been implicated subsequently because he had supplied some sand stones allegedly on exorbitant rates. There is no allegation that the applicant had obtained any payment without making any supplies. 42 persons have already been granted anticipatory bail in the present case in a bunch of applications decided by means of an order dated 25.07.2022, the leading case bearing Criminal Misc. Anticipatory Bail Application No.10048 of 2021 on the consideration that charge sheets have already been filed and the accused applicants were not arrested during course of investigation and no

useful purpose will be served at this distant point of time by taking the accused applicants to judicial custody.

14. In view of the above, the anticipatory bail application of the applicant is ***allowed***.

15. In the event of arrest/ appearance of applicant-**Rajendra Prasad Agrawal** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i) That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(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 pressurize/ intimidate the prosecution witness;

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[Subhash Vidyarthi, J.]

Order Date :- 12.10.2023

-Amit K-