

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 1956 of 2022

Applicant :- Sudhir Kumar Mishra

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

Counsel for Applicant :- Anand Mani Tripathi, Ram Raj Ojha

Counsel for Opposite Party :- G.A., Shitla Prasad Tripathi, Umesh Pratap Singh

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ram Raj Ojha, learned counsel for the applicant, Sri Shaunak Singh, learned A.G.A. for the State and Sri Shitla Prasad Tripathi, learned counsel for the informant and perused the record.
2. The applicant was granted interim order by means of the order dated 22.11.2022:-

"Heard Mr. Anand Mani Tripathi, learned counsel for the applicant, learned Additional Government Advocate for the State of U.P. and perused the record.

This Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. has been moved by the applicant after rejecting his anticipatory bail application by the order dated 13.06.2022 passed by learned Additional District and Session Judge/Special Judge (E.C. Act), Court No. 4, Sultanpur, seeking Anticipatory Bail in Case Crime No. 133 of 2022, under Sections 147, 323, 324, 307 IPC, Police Station Motigarpur, District Sultanpur.

As per the prosecution case in brief, complainant Rakesh Kumar Shukla/opposite party no. 2 lodged the first information report on 18.05.2022 with regard to an incident which took place on 17.05.2022 against seven named accused persons, namely, Sudhir Kumar Mishra (present applicant), Sujeet Kumar Mishra, Sandeep Mishra, Ayodhya Prasad, Sarju Prasad, brother-in-law of Ayodhya Prasad and 3-4 unknown persons making allegation inter alia of assault to him and his brother against accused persons by iron-rod, iron chapad, etc.

It is argued by learned counsel for the applicant that there is an old enmity and dispute between the family members of the applicant and the complainant. On account of this reason, applicant, who is a practicing Advocate of High Court, Lucknow Bench, has been falsely implicated in this case. In support of his submission, it is pointed out that on 01.10.2020, Chandra Bhushan Shukla, who is cousin brother of opposite party no.2/Rakesh Kumar Shukla filed a Civil Suit No. 476 of 2020 against Yashoda Devi (mother of the applicant) and three other persons, namely, Raj Kumar, Shiv Kumar and Nirmala Devi for cancellation of sale deed dated 05.09.2020 executed in favour of Yashoda Devi (mother of the applicant). It is next submitted that Smt. Yashoda (mother of the applicant) has also lodged first information report on 21.05.2022 registered as Case Crime No. 139 of 2022 under Sections 147, 452, 354, 323, 506, 307 IPC against 12 named accused persons including opposite party no. 2 Rakesh Shukla, in which charge-sheet was submitted against him along with his five other relatives. He further submits that proceeding under Section 107/116 Cr.P.C. was also initiated on 22.05.2022 between Anurag Tiwari, who is cousin of the applicant, and opposite party no. 2 Rakesh Shukla. Document in this regard has been brought on record as Annexure No. 7 to the affidavit. It is also pointed out that apart from this case, the applicant has been falsely implicated in other cases also. Reference of the same has been given in paras 19 to 21 to the affidavit and regarding the same, it is also argued that in those cases, the applicant was never summoned either by the Investigating Officer or by the Court. So far as present case is concerned, it is submitted that charge-sheet has been

submitted against other co-accused persons but the matter is under investigation qua the present applicant. Lastly, it is submitted that he has apprehension of imminent arrest and in case, applicant is released on bail, he would not misuse the liberty and would cooperate with the investigation.

Learned Additional Government Advocate for the State of U.P. opposed the prayer for granting anticipatory bail to the applicant in the light of prosecution case as mentioned in F.I.R. by contending that in this case, non-bailable warrant has been issued against the applicant on 12.10.2022 and the matter is under investigation.

Looking to the facts of the case, reasonable apprehension of arrest, taking into consideration the dispute between the parties concerned as noted above, nature of accusation so far as present applicant is concerned and there being no possibility of his fleeing from justice, this Court is of the view that applicant is entitled for interim anticipatory bail.

Learned Additional Government Advocate prays for and is granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed by the applicant within a week thereafter.

Issue notice to opposite party no. 2 returnable at an early date. Steps be taken within three days

List this case on 23.12.2022.

Till the next date of listing, in the event of arrest of the applicant - Sudhir Kumar Mishra involved in the aforesaid case shall be released on ad-interim anticipatory bail on his furnishing a personal bond of Rs.25,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned with the following conditions:-

- i) The applicant shall appear before the investigating officer on 29.11.2022 at 02:00 PM.
- ii) The applicant shall also make himself available for interrogation by the investigating officer as and when required.
- iii) 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.
- iv) In default of any of the conditions mentioned above or it is found that applicant has obtained this order concealing any material facts, the investigating officers shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant."

3. The State has filed a counter affidavit annexing therewith copies of the material collected during investigation and a copy of the charge-sheet submitted on 01.12.2022.

4. The informant has also filed a counter affidavit opposing the anticipatory bail application.

5. The applicant has filed rejoinder affidavit to the counter affidavit filed by the informant.

6. Learned counsel for the informant had vehemently opposed the application and has submitted that the applicant is not cooperating

with the investigation.

7. Learned A.G.A. was directed to seek instruction in the matter and on the basis of written instruction, he has submitted that as the investigation already stands concluded more than a year ago, there is no occasion for the applicant to cooperate with the investigation or to abstain therefrom.

8. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant has already granted interim anticipatory bail by means of the reasoned order; investigation stands completed and charge-sheet has already been submitted, there is no need of custodial interrogation of the applicant, I am of the view that the aforesaid interim order deserves to be made absolute.

9. Accordingly, the application is allowed in terms of the interim order dated 22.11.2022.

(Subhash Vidyarthi, J.)

Order Date :- 5.12.2023

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