

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2334 of 2023

Applicant :- Alok Kumar Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. And 3 Others

Counsel for Applicant :- Prashant Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Ms Deepanjali Singh, the learned counsel for the applicant as well as Sri Anurag Verma, the learned Additional Government Advocate appearing on behalf of the State and Sri Bhupendra Veer Singh, learned counsel for the informant and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No.11 of 2023, under Sections 420, 467, 468, 409, 506 I.P.C., registered at Police Station Sushant Golf City, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 07.01.2023 against four persons, including the applicant, stating that the informant had paid money for obtaining dealership of a company, in which the applicant was working as Chief Marketing officer and co-accused Satendra Vishwakarma was its director. It is alleged that he was not given distributorship to the company and when he pressed for refund of the money co-accused Satendra Vishwakarma had given two cheques of Rs.6,00,000/-, which were dishonored by the Bank. The FIR alleges that the informant has duped of Rs.17,00,000/- and through the FIR the informant has prayed to Deputy Commissioner of Police that his money be refunded to him.

4. In the affidavit filed in support of the anticipatory bail-application it has been contended that the applicant is innocent, and he has falsely been implicated in the present case. A supplementary affidavit has

been filed on behalf of the applicant disclosing his involvement in Case Crime No.93 of 2022 under Sections 419, 420, 467, 468, 471, 409, 34 IPC in which he has been granted bail.

5. Learned counsel for the applicant has submitted that proceedings under Section 138 of the Negotiable Instruments Act has been initiated by the applicant.

6. Learned counsel for the informant has opposed the bail application and has submitted that accused persons have duped the informant and they are not entitled to be granted anticipatory bail in the present case. It has been further submitted that the applicant is involved in some offences also.

7. The learned A.G.A. has opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

8. Having considered the aforesaid facts and circumstances of the case what *prima facie* appears from the narration made by the informant himself is that he had made investment in the company for getting its distributorship and the cheques given to the informant towards refund of the money have been returned by the bank unpaid. FIR *prima facie* appears to be barred by the provisions contained under Section 122 of the Negotiable Instruments Act. Moreover, through the FIR the informant has prayed to Deputy Commissioner of Police for refund of his money, which relief is in the nature of decree for recovery of money, which can only be granted by a competent civil court after the applicant institutes a civil suit paying the court fee.

9. As far back as in the year 2006, the Hon'ble Supreme Court had observed in **Indian Oil Corpn. v. NEPC India Ltd.**, (2006) 6 SCC 736, that: -

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil

disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636, this Court observed:

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such

misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

10. Relying on the aforesaid proposition of law, this Court while granting bail in the case of **Anil Kumar Tulsiani vs State of U.P. 2023 SCC OnLine All 733** (Criminal Misc. Bail Application No.14783 of 2022) has held as follows:

"16. This tendency of misusing the criminal proceedings for claiming enforcement of civil rights by indirect methods and evading payment of stamp duty, registration fee and court fee cannot be appreciated by the Courts and it should not be encouraged. It is nothing but cheating committed against the public exchequer and the persons who would stand benefited thereby."

11. From the allegations leveled in the FIR itself, it appears that it is the informant himself who has tried to dupe the public at large by misusing criminal proceeding for evasion of payment of court fee payable to the public exchequer.

12. Without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

13. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of **applicant-Alok Kumar Singh** 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 :- 19.10.2023
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