

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2380 of 2023

Applicant :- Surendra Kumar

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

Counsel for Applicant :- Rahul Kapoor

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Ms Adya Antya, holding brief of Sri Rahul Kapoor, the learned counsel for the applicant as well as Sri Rakesh Kumar Singh, the learned Additional Government Advocate appearing on behalf of the State and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in FIR bearing Case Crime No. 466 of 2023, under Sections 406, 419, 420, 506, 120-B IPC, Police Station Gomti Nagar, District Lucknow East, Commissionerate Lucknow.

3. The aforesaid case has been registered on the basis of an FIR lodged on 02.08.2023 against five named persons, including the applicant and some unnamed persons, stating that the accused persons had proposed to provide funds to P.P. Pandey and Jaigovind Singh, and those persons had paid some amount for obtaining the funds through banking transaction. It is alleged that co-accused-Shan Miyan Chaudhary had given a cheque to the informant but the account had been closed.

4. In the affidavit filed in support of the application, it has been contended that the applicant is innocent and he has falsely been implicated in the present case. The applicant's involvement in Case Crime No. 472 of 2022, under Sections 420, 406, 504, 506, 120-B, 467, 468, 471 IPC, Police Station Kotwali, District Ghaziabad has been disclosed in para 22 of the affidavit, in which the applicant has been granted bail by means of an order dated 23.12.2022 passed by the Sessions Court, Ghaziabad.

5. It has further been stated in the affidavit filed in support of the application that a notice under Section 138 of the Negotiable Instrument Act has been sent by the informant, the contents whereof are materially different from the allegations levelled in the FIR. Co-accused Shan Miyan Chaudhary has

been granted anticipatory bail by means of the order dated 04.10.2023 passed in Criminal Misc. Anticipatory Bail Application U/S 438 CR.P.C. No.2158 of 2023.

6. Having considered the aforesaid facts and circumstances of the case, what prima facie appears is that there was some monetary transactions between the parties regarding providing of funds for commercial purposes to two persons, other than the informant. The FIR itself states that the co-accused had given a cheque, presumably towards refund of the money. The cheque has been dishonored and a notice under Section 138 of the Negotiable Instrument Act has already been given. Lodging of the FIR appears to be barred by the provisions contained in Section 142 of the Negotiable Instruments Act.

7. Keeping in view the aforesaid facts and circumstances of the case, I am of the view that the applicant is entitled to be granted anticipatory bail in the present case.

8. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant-**Surendra Kumar** before the learned Trial Court in the aforesaid case, 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.

Order Date :- 28.10.2023
Pradeep/-