

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2391 of 2023

Applicant :- Indramani Alias Siyaram Tiwari

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

Counsel for Applicant :- Subhash Chandra Mishra, Abhishek Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Heard Sri Abhishek Mishra, learned counsel for the applicant as well as Sri Anant Pratap Singh, learned A.G.A. for the State and perused the record.
3. The instant bail application has been filed seeking anticipatory bail in case crime No. 938/2017, under Sections 419, 420, 467, 468, 471 I.P.C, registered at Police Station Malhipur, District Shrawasti.
4. The aforesaid case has been registered on the basis of a F.I.R. lodged on 28.04.2017, alleging that the informant was working on the post of Head Master and drawing salary from State Bank of India. Upon applying for grant of a loan on 27.02.2017, the informant came to know that by misusing his documents, some person has borrowed Rs. 5,30,000/- from HDFC Bank, Bhinga District Shrawasti. The mobile number of that person was obtained by the informant and upon being contacted, that person introduced himself as Rajendra Prasad Pandey and he gave an affidavit admitting his guilt and he further stated that he was working in a Primary School since November, 2011 and had taken a loan from HDFC and he promised that he would repay the loan and resigned from the service.
5. In his additional statement, the informant's stated that the aforesaid Rajendra Prasad Pandey had told a wrong address and he has switched off his mobile phone.
6. During investigation, the Investigating Officer recorded the statement of one

Surendra Pratap Singh, who was a guarantor in a previous loan taken by Rajendnra Prasad Pandey, which have already been repaid and he stated that the informant is also known by the name of Siyaram Tiwari and he told his address also.

7. The Investigating Officer recorded statement of the applicant's mother, who stated that the applicant used to teach in District Shrawasti and stay there. He visits his home about once in every week or 10 days. Similar statements were given by some villagers also.

8. In the affidavit filed in support of the anticipatory bail application, it has been stated that the applicant is innocent, he has been falsely implicated in the present case and he has no criminal history.

9. The learned A.G.A has opposed the application on the ground that a proclamation of Section 82 Cr.P.C was issued against the applicant on 28.03.2019 and thereafter attachment order was issued under Section 83 Cr.P.C, on 28.05.2019.

10. The learned counsel for the applicant has submitted in reply that the applicant had filed a Criminal Misc. Writ Petition No. 2711 (MB) of 2019 seeking quashing of the F.I.R which was dismissed by means of an order dated 29.01.2019. However, the counsel representing the application did not inform him about dismissal of the writ petition rather he said the applicant that his arrest had been stayed by this court and in May, 2019, he informed the applicant that the F.I.R had been quashed since then the applicant was under an impression that no criminal case was pending against him. It has further been stated in the supplementary affidavit that when the police went to the applicant's house searching for him in May, 2023, the applicant came to know about the present case and thereafter he immediately filed an application seeking anticipatory bail in the Session court.

11. What prima facie appears from the material available before this court at this stage is that the F.I.R was lodged on 28.04.2017, the applicant very well knew

about the proceedings and that is why, he filed a Criminal Misc. Writ Petition No. 2711 (MB) of 2019, which was dismissed on 29.01.2019. Although the applicant claims that his counsel had told him that his arrest had been stayed by this court and had later informed him that writ petition had been allowed, the applicant did not make any effort to obtain a copy of the order.

12. The learned A.G.A has pointed out that after issuance of a proclamation, various household articles were attached, the details whereof are mentioned in the case diary, the relevant extract whereof had been produced by the learned A.G.A for perusal of the court. The applicant's mother and some other villagers have stated that the applicant was working at Shrawasti and he used to visits his house once a every week or 10 days.

13. From the aforesaid facts, prima facie it appears that the applicant has failed to cooperate with the investigation by his non appearance in spite of issuance of proclamation under Section 82 Cr.P.C and attachment order under Section 83 Cr.P.C. This court is of the considered view that the aforesaid facts do not warrant exercise of discretion of this Court by granting pre arrest bail to the applicant.

14. The application stands **rejected** accordingly. However, in case the applicant files an application for grant of bail, the same shall be considered and decided on its merits, without being influenced by any observations made in this order including the law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and others: (2022) 10 SCC 51.**

(Subhash Vidyarthi,J.)

Order Date :- 31.10.2023
Preeti.