

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2441 of 2023

Applicant :- Khadim Rasool

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

Counsel for Applicant :- Anurag Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Anurag 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 Durga Prasad Shukla, 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.194 of 2023 under Sections 419, 420, 467, 468, 471 I.P.C., registered at Police Station Baundi, District Bahraich.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 16.06.2023 against the applicant and one Ramjan on the basis of an application under Section 156(3) Cr.P.C., alleging that the informant' father died on 24.03.2008 but during his life time, wrongly showing him to have died in the year 1997, the accused persons filed an application for mutation in the court of Consolidation Officer got their names mutated in respect of the land belonging to the informant's father, on the basis of heirship. The FIR states that informant came to know about this fact on 20.05.2022 on the basis of information given by some villagers.

4. In the affidavit filed in support of the anticipatory bail-application, it has been contended that the applicant is 66 years old innocent person, and he has falsely been implicated in the present case. Applicant's involvement in two other cases has been disclosed in para

10 of the affidavit.

5. The learned A.G.A. has opposed the prayer for bail and he has submitted that the applicant has filed Criminal Misc Case No.5306 of 2023 which was dismissed by means of the order date 12.07.2023.

6. In Kamlesh and another versus State of Rajasthan and another, 2019 SCC OnLine SC 1822, the High Court of Rajasthan had rejected the application for anticipatory bail only on the ground that petition under Section 482 Cr.P.C., praying for quashing of FIR, had already been rejected. The Hon'ble Supreme Court allowed the appeal filed against the order of the High Court by holding that: -

“5. We are of the view that the order of the High Court cannot be sustained. High Court ought to have considered the application on merits. The fact that petition under Section 482 Cr.P.C. was dismissed for quashing was not conclusive and could not be the reason for rejecting the application.”

7. The learned counsel for the informant has further submitted that the informant has filed another FIR No.309 of 2023 against the applicant and two other persons stating that they are threatening the informant to enter into a settlement regarding this case.

8. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that mutation order in question was passed on 05.05.1999; that the informant claims to have got knowledge about the order on 20.05.2022; no proceedings have been initiated by the informant challenging the validity of the mutation order and the applicant continues to be a recorded tenure holder of the land in question without any challenged till date and the FIR has been lodged on 16.06.2023 and there is no explanation for the delay in lodging the FIR, and 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.

9. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of **applicant-Khadeem Rasool** 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 :- 1.11.2023
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