

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2514 of 2023

Applicant :- Shahbaj Khan @ Sibbu

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

Counsel for Applicant :- Azmi Yousuf

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Shri Azmi Yousuf, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.
2. The instant application has been moved by the accused applicant-Shahbaj Khan @ Sibbu in F.I.R./Case Crime No. 0501 of 2020, under Sections 379, 411, 413, 414, 419, 420, 467, 468, 471, 484 and 120-B I.P.C., Police Station Gomti Nagar, District Lucknow, with the prayer to enlarge him on anticipatory bail, as he is apprehending arrest in the above-mentioned case.
3. While drawing attention of this Court towards the extract of the first information report bearing Case Crime No. 423 of 2020 lodged on 21.06.2020 at Police Station Gomti Nagar, District Lucknow, it is vehemently submitted by learned counsel for the applicant that complicity of the applicant in this case is shown to have been surfaced in the statement of the co-accused persons who were allegedly arrested by the police and on their pointing out some vehicles were also said to have been recovered and thereafter the applicant was also arrested in this case and was released on bail by a co-ordinate Bench of this Court vide order dated 20.07.2021 passed in Bail No. 7015 of 2021. However, with regard to the same matter another F.I.R. is shown to have been lodged on 05.06.2020 bearing Case Crime No. 501 of 2020 at Police Station Gomti Nagar, District Lucknow and the charge sheet has also been filed by the investigating officer, wherein the name of the applicant has been again mentioned as one of the accused against whom the investigation is pending, while with regard to the same set of facts pertaining to another first information report the applicant has already been released on bail by co-ordinate Bench of this Court and, therefore, the act of the investigating officer of the instant case in arraying the applicant as an accused would amount to 'double jeopardy', as the material and allegations are

same in both the F.I.R.s so far as the instant applicant is concerned in both the F.I.R.s.

4. It is vehemently submitted by learned counsel for the applicant that from before the involvement of the applicant in the instant case and in the F.I.R. bearing Case Crime No. 423 of 2020, he was not involved in any other criminal case and there is no apprehension that after being released on anticipatory bail he may flee from the course of law or may otherwise misuse the liberty and he undertakes that he will co-operate in the investigation, which according to the charge sheet submitted against the other co-accused persons is pending against the applicant. Thus, protection from arrest may be granted to him.

5. Learned counsel for the applicant has submitted that co-accused Satpal Singh has already been granted anticipatory bail by this Court by means of an order dated 19.07.2023, passed in Criminal Misc. Anticipatory Bail Application No.733 of 2023.

6. Learned A.G.A., however, opposes the prayer of anticipatory bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled for any protection.

7. Having heard learned counsel for the parties and having perused the record, *prima facie* it appears that with regard to the similar allegations the applicant was apprehended in connection with the F.I.R. lodged at Case Crime No. 423 of 2020 and by order of the co-ordinate Bench he has already been released in that case. The correct position pertaining to the factual matrix could only be surfaced after providing an opportunity to the State to file detailed counter affidavit. However, in the considered opinion of this Court, having regard to the law laid down by the Hon'ble Supreme Court in ***Gurbaksh Singh Sibbia vs. State of Punjab; (1980) 2 SCC 655, Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694, Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1 and in Nathu Singh Vs State of U.P. and Others, 2021(6) SCC 64, MANU/SC/0360/2021***, protection from arrest may be granted to the instant applicant for a limited period of time.

8. In the event of arrest of the **accused-applicant, namely, Shahbaj Khan @ Sibbu** involved in the above noted case, he shall be released forthwith on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- and two sureties each in the like amount to the satisfaction of the Station House Officer of the Police Station concerned/ Investigating Officer subject to the following conditions:-

(1) The applicant shall make himself available for interrogation or for discovery of any fact by a police officer as and when required;

(2) 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 them from disclosing such facts to the Court or to any police officer;

(3) The applicant shall not leave the District concerned without the previous permission of the Court.

Order Date :- 7.11.2023

Renu/-