

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 2534 of 2023

Applicant :- Ahsan Alias Mohd. Ahsanullah Khan

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

Counsel for Applicant :- Vaibhav Kalia, Vidhu Bhushan Kalia

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Vaibhav Kalia, the learned counsel for the applicant as well as Sri Jayant Singh Tomar, the learned Additional Government Advocate-I appearing on behalf of the State 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.138 of 1997, under Sections 419, 467, 468 I.P.C. and Section 4/10 of U.P. Protection of Trees Act & 3/28 of Transit Act, registered at Police Station Pachperwa, District Balrampur.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 28.10.1997 against 30 persons including the applicant alleging that during confidential inquiry it came to light that huge quantity of wood was transported through railway wagons. It is alleged that ten co-accused persons had acted as agents in commission of the offence.

4. In the affidavit filed in support of the application, it has been stated that initially the applicant was granted bail by means of the order dated 25.05.1998 in connection with the offence mentioned in the FIR under Sections 4/10 of U.P. Protection of Trees Act & 3/28 of Transit Act. Subsequently, the Investigating Officer added commission of offence under Sections 419, 467, 468 IPC. The Special Prosecuting Officer had submitted a report on 18.05.1999 stating that there is absolutely no material to support the allegation of commission of offence under Sections 419, 467 and 468 IPC.

5. Co-accused persons Shamsuduha, Anil Kumar and Nabban alias Shamim Ahmad have been granted bail vide order dated 30.11.2021 passed by learned Additional Sessions Judge, Balrampur. However, the applicant had filed application for grant of anticipatory bail, which has been rejected by means of the order dated 18.10.2023 passed by Ist Additional Sessions Judge, Balrampur.

6. Learned A.G.A has vehemently opposed the prayer for bail and has submitted that the FIR was lodged in the year 1997, after submission of charge sheet, the applicant had filed Criminal Misc Case No.3191, under Section 482 Cr.P.C. and by means of the order dated 29.08.2008, the application was disposed of after recording that the petitioners undertake to appear before the court below on 15.09.2008. The Court had granted liberty to the petitioners to appear through counsel and move an application for discharge which shall be disposed of by a speaking and reasoned order by the court below and till then no coercive steps shall be taken.

7. The application for discharge filed by the applicant was rejected and the applicant filed a revision against the rejection order.

8. Learned counsel for the applicant has submitted that record of the original bail order and rejection of the discharge application could not be made available to the applicant.

9. The applicant had filed application for grant of anticipatory bail before the Sessions court which has been rejected by the impugned order dated 18.10.2023 after relying upon the judgment in the case of **H.D.F.C. Bank Ltd. vs. J.J.Mannan @ J.M. John Paul, AIR 2010 SC 618**, wherein it was held that "once the investigation makes out a case against a person and he is included as an accused in the charge sheet, the accused has to surrender to the custody of the court and pray for regular bail."

10. However, in **Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1**, , a Constitution Bench of the Hon'ble Supreme Court held that the view expressed in **Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667**, **K. L. Verma v. State, (1998) 9 SCC 348**, **Sunita Devi v. State of Bihar, (2005) 1 SCC 608**, **Nirmal Jeet Kaur v. State of M. P., (2004) 7 SCC 558**, **HDFC Bank Ltd. v. J. J. Mannan, (2010) 1 SCC 679**, **Satpal Singh v. State of Punjab, (2018) 13 SCC 813** and **Adri Dharan Das v. State of W.B., (2005) 4 SCC 303** about the Court of Session, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the "normal court" not being "bypassed" or that in certain kinds of serious offences, anticipatory bail should not be granted normally-including in economic offences, etc.-are not good law. The Hon'ble Supreme Court overruled the observations which indicate that such time related or investigative event related conditions, should invariably be imposed at the time of grant of anticipatory bail.

11. Therefore, the learned Session Court has rejected the anticipatory bail application relying upon an overruled decision in the case of **HDFC Bank Ltd. v. J. J. Mannan** and the reason for rejection of the anticipatory bail application is unsustainable in law.

12. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant claims that he has already been granted bail in the present case in the sections originally mentioned in the FIR way back in the year 1997 and the present application has been filed after addition of some more sections on the basis of same set of facts regarding which the opinion of the Special Investigating Officer is that there is no material for inclusion of those sections in the charge sheet against the applicant; the FIR does not contain any specific act of commission by the applicant and that the applicant is 69 years old person having no criminal history 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.

13. In view of the above, the anticipatory bail application of the applicant is allowed. In the event of arrest/ appearance of **applicant-Ahsan Alias Mohd. Ahsanullah Khan** before the learned Trial Court in the aforesaid complaint 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.

14. Let a copy of this order be sent to the Sessions court for being brought to the notice of the Presiding Officer who has passed the order dated 18.10.2023.

Order Date :- 9.11.2023/Renu