

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2671 of 2023

Applicant :- Makkhan Lal

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

Counsel for Applicant :- Sri Shailendra Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Shailendra Srivastava, learned counsel for the applicant, Sri Jayant Singh Tomar, learned A.G.A.-I for the State as well as Sri Ranvijay Singh, learned counsel for the Chief Standing Counsel has assisted the court on a request made by the court and perused the record.
2. The instant bail application has been filed seeking anticipatory bail in case crime No. 411/2020, under Sections 406, 419, 420, 467, 468, 471 I.P.C, registered at Police Station Kotwali City, District Hardoi.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged 07.08.2020 against 14 persons, including the applicant alleging that the accused persons had got appointed on the post of Assistant Teacher in government Higher Primary School on the basis of TET certificates, which were found to be fake.
4. In the affidavit filed in support of the anticipatory bail-application it has been contended that the applicant is innocent, he has falsely been implicated in the present case and he has no criminal history.
5. The learned counsel for the applicant has submitted that five

other similar situation co-accused persons have been granted anticipatory bail and, therefore, the applicant is also entitled to be granted anticipatory bail on the ground of parity.

6. Opposing the application, the learned A.G.A has submitted that the co-accused persons were granted anticipatory bail as in their case, the TET certificates were verified from an authority, which had not issued the same. In the present case, the applicant has annexed a copy of the U.P. Teacher Eligibility Test, 2011, certificate, issued by the Board of High School and Intermediate Education, Uttar Pradesh, Allahabad claiming that he had secured 92 marks. The aforesaid certificates have been verified from the Secretary of the Board of High School and Intermediate Education, U.P. and he has sent written instructions to the effect that certificate produced by the applicant is fake and he has in fact secured only 76 marks out of 150 and he has failed in the test.

7. As the co-accused persons were granted anticipatory bail for the reason that their TET certificates were got verified from an authority which had not issued the same and in the present case, the TET certificate has been verified from the Secretary of the Board of High school and Intermediate Education, U.P. which had issued the TET certificate and it has been informed to the court that the certificate annexed by the applicant is fake, I am of the view that the applicant is not entitled to be granted anticipatory bail in spite of the fact that some co-accused persons have been granted anticipatory bail for want of proper verification of their certificates.

8. The learned counsel for the applicant has placed reliance on a judgment of the Hon'ble Supreme Court in the Case of **Tarun Kumar Vs. Assistant Director, Director of Enforcement**, S.L.P (Crl.) No. 9431 of 2023 decided on 20.11.2023, wherein

the Hon'ble Supreme Court held that:-

"13. It is trite that the court while considering an application seeking bail, is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witness being tampered with, the larger interests of the public/State etc. Though, the findings recorded by the Court while granting or refusing bail would be tentative in nature, nonetheless the Court is expected to express prima facie opinion for granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the economic offences."

9. The Hon'ble Supreme Court has further held that:-

"19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the 20 Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision."

10. The facts of the case have already been taken into consideration, which prima facie indicates that the applicant is guilty of securing public employment on the strength of fake educational certificate. The offences allegedly committed by the applicant carry a maximum appointment of employment upto to life. Although the co-accused persons have been granted bail, while granting bail to those persons, the court had taken into consideration the fact that their TET certificates had not been

verified from the authority which had issued the same whereas in the present case, the petitioners TET certificates has been verified from the Board of High School and Intermediate Education, U.P. and Secretary of the Board has reported that the certificate is fake and as against the claim of petitioner having appointed 90 marks, he has been awarded merely 76 marks and he has failed the test, therefore, the applicant would not be entitled to be granted anticipatory bail on the ground of parity of orders passed in favour of some other candidates, whose certificate could not be verified by the proper authority.

11. In view of the aforesaid discussions, I am of the view that the applicant is not entitled to receive discretion of this Court by granting pre arrest bail to him.

12. The application stands **rejected** accordingly.

(Subhash Vidyarthi,J.)

Order Date :- 23.11.2023

Preeti.