

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2700 of 2023

Applicant :- Baburam

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

Counsel for Applicant :- Vijay Kumar Asthana

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Vijay Kumar Asthana, the learned counsel for the applicant as well as Sri Anurag Verma, 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. 53/2019, under Sections 419, 420, 467, 468, 471, 504, 506 IPC, Police Station Bhinga, District Shrawasti.
3. Sri Anurag Verma, the learned AGA-I has raised an objection that the applicant had filed an application under Section 482 Cr.P.C. No. 1600 of 2020 and he has not made a disclosure of this fact and has not informed the Court about the outcome of that application.
4. The FIR in question was lodged on 11.02.2019 and there is absolutely no averment justifying the lapse of about more than four and a half years period before the applicant has approached this Court seeking anticipatory bail.
5. While considering the prayer for grant of anticipatory bail, the Court has to take into consideration the entire facts and circumstances of the case, including the conduct of the applicant.
6. Sri Anurag Varma, the learned AGA-I has raised an objection that the applicant had earlier approached this Court on three previous occasions regarding which there is no disclosure in the affidavit filed in support of the application. Initially the applicant had filed Criminal Misc. Writ Petition No. 8325 of 2019, presumably, challenging the validity of the FIR. Thereafter the applicant filed an application under Section 482 Cr.P.C. No. 1600 of 2020, which was disposed of by means of an order dated 06.03.2020 leaving it open to the applicant to file an application seeking their discharge from the trial court. After the application for discharge was rejected by the trial court, the applicant filed another application under Section 482 Cr.P.C. No. 5339 of 2023, which was disposed of by means of an order dated 26.05.2023 after observing that the order dated 06.04.2023 rejecting the application for discharge suffers from no illegality. However, it was provided that in case the applicant applies for grant of bail, the trial court shall consider and decide the same expeditiously in

accordance with law.

7. The aforesaid order was passed on 26.05.2023 and instead of filing an application seeking bail, as observed by this Court in the aforesaid order dated 26.05.2023, the applicant has filed the instant application seeking anticipatory bail on 22.11.2023. The applicant filed an application for grant of anticipatory bail before the sessions court, which was rejected on 14.07.2023. Thereafter the applicant approached this Court by filing anticipatory bail on 22.11.2023.

8. While deciding the application for anticipatory bail, this Court has to take into consideration various aspects of the matter, including the conduct of the applicant and base thereon the Court has to assess the probability whether the applicant will cooperate with the trial.

9. In ***Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1***, the Hon'ble Supreme Court has laid down the following considerations to be kept in mind while deciding the anticipatory bail application.

"92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial."

10. Although the fact that two co-accused persons have been granted anticipatory bail would be a relevant factor but the aforesaid facts of previous litigation before this Court were not brought to the notice of the Court while passing the aforesaid orders. An order passed in ignorance of complete facts cannot form the basis of grant of anticipatory bail to another co-accused person on the ground of parity.

11. Keeping in view the aforesaid facts and circumstances of the case, I am of the view that the aforesaid facts dis-entitle the applicant to claim discretion of this Court by granting him pre-arrest bail.

12. The application is accordingly ***rejected***.

Order Date :- 24.11.2023

Pradeep/-