

**Court No. - 16**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 2701 of 2023

**Applicant :-** Mo. Ashfaq @ Ashfaq

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

**Counsel for Applicant :-** Dinesh Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Subhash Vidyarthi,J.**

1. Heard Sri Dinesh Kumar, the learned counsel for the applicant as well as Sri Anant Pratap Singh, the learned Additional Government Advocate appearing on behalf of the State and perused the records.

2. The instant application has been filed by the applicants seeking anticipatory bail in F.I.R. bearing Case Crime No. 901 of 2020, under Sections 419, 420, 467, 468, 471, 406, 120-B IPC, Police Station Chinhat, District Lucknow.

3. The aforesaid case has been registered on the basis of an FIR lodged on 28.12.2020 against 12 persons, including the applicant, alleging that one Mahesh Prasad Nigam had entered into an agreement to sell some of the property of the informant's father Krishna Kumar Bajrai, in the year 1969. The applicant's father had filed Suit No. 39 of 1970 for specific performance of the agreement, which was decreed on 28.04.1975. When the seller did not execute a sale deed even after the decree, Execution Case No. 1 of 1979 was filed for execution thereof, which is pending. With intention of grabbing the property, three power of attorneys were executed purportedly by Mahesh Kumar Nigam, which bears photograph of some other person. Although Mahesh Prasad Nigam was a government servant and he knew both Hindi and English and he did not use to put his thumb impression, the power of attorney bears thumb impression of Mahesh Prasad Nigam in place of his signature. A sale deed was executed in respect of some of the properties of the informant's father in favour of the applicant and one Adib Ahmad in the year 2019.

4. The sale deed, on the strength whereof the applicant claims to have purchased the property, has been annexed with the affidavit filed in support of the application which mentions sale consideration to be Rs. 43 lakh and it has been stated that the

amount had already been paid in installments on various dates.

5. The case was taken up on an earlier date on 24.11.2023, when it was passed over to give an opportunity to the learned counsel for the applicant to file a supplementary affidavit explaining the mode of payment of sale consideration to satisfy the Court that he is a bonafide purchaser for value. However, no supplementary affidavit has been filed and the learned counsel for the applicant has submitted that no documentary proof of sale consideration is available as the entire payment had been made in cash.

6. From the aforesaid facts, prima facie it appears that the applicant's claim of being a bonafide purchaser for value, is not established.

7. Learned counsel for the applicant has submitted that the execution application had been dismissed in default and an application for restoration thereof has also been rejected by means of an order dated 08.08.2023. However, he could not dispute that the decree has not been set aside and it still stands.

8. Be that as it may, without going any further into the merits of the case, this Court is of the view that the applicant claims himself to be a bonafide purchaser for value of the property in dispute whereas he could not even prima facie establish payment of consideration for purchasing the property. From this, the allegation of the property having been grabbed illegally appears to have some force.

9. In view of the aforesaid conduct of the applicant, this Court is not inclined to exercise its discretion in favour of the applicant by granting him pre arrest bail.

10. The anticipatory bail application is ***rejected*** accordingly.

**Order Date :- 29.11.2023**

Pradeep/-