Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 2739 of 2023

Applicant :- Bhuvanesh Chand Agarwal
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko And Another
Counsel for Applicant :- Satendra Kumar (Singh),Abhishek Misra,Rishabh Pandey
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Satendra Kumar (Singh), the learned counsel for the applicant, Sri Anant Pratap Singh, the learned Additional Government Advocate appearing on behalf of the State, Sri Amrendra Nath Tripathi, the learned counsel for the informant 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. 723 of 2023, under Sections 409, 420, 387, 506 IPC, Police Station Thakurganj, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 18.10.2023 against four named persons, including the applicant, and two unknown persons, in furtherance of an application under Section 156(3) Cr.P.C. alleging that co-accused Subhash Chandra Tiwari had purchased 444.71 gram gold from the informant's organization Bahubali Bullion and Jewels Pvt. Ltd. on 02.03.2021, in the name of Ani Bullion and Industries Pvt. Ltd. regarding which Bill No. 1202 for Rs. 22,94,837/- was issued. The gold was delivered under a promise made by co-accused Subhash Tiwari that payment will be made on the following day but payment was not made in spite of the repeated demands. Later on the informant came to know that the person responsible for operations of Ani Bullion, namely, Ajeet Gupta is lodged in jail since 2020 and company is nonfunctional.

4. On 17.09.2023 when the informant was roaming around his house, an unknown bike borne person threatened him and stated that the other companions of Subhash Tiwari were lodged in jail but he had the protection of Pankaj Agarwal, Bhuvanesh Chand Agarwal (the applicant) and Lokesh Agarwal. It is also alleged that the aforesaid unknown person pressurized the informant to

pay Rs. 1 crore as illegal extraction money.

5. In the affidavit filed in support of the application it has been contended that the applicant is innocent and he has falsely been implicated in the present case.

6. The applicant's involvement in two other cases has been disclosed in the affidavit filed in support of the anticipatory bail application. In FIR bearing Case Crime No. 106 of 2021, a charge sheet has been submitted under Sections 504 & 506 IPC only and the applicant has been granted bail by means of an order passed by the Additional Chief Judicial Magistrate-V, Lucknow. Another FIR bearing Case Crime No. 281 of 2020 was lodged against the applicant under Sections 406, 420, 506 IPC, Police Station Chowk, District Lucknow, in which a final report has been submitted by the Investigation Officer. However, a further investigation has been ordered and the same is pending.

7. The learned counsel for the informant has vehemently opposed the application and he has submitted that the applicant is also involved in commission of the offence as co-accused Subhash Tiwari has committed the same under the applicant's protection.

8. He has further submitted that there is an ample evidence of monitory transaction between the applicant and Ani Bullion and Industries Pvt. Ltd.

9. The learned A.G.A. has opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

10. Prima facie, it appears that the informant had sold gold on 02.03.2021, the price whereof was not delivered to the informant and no proceeding was initiated by the informant for recovery of sale consideration. The gold was allegedly purchased for Ani Bullion and Industries Pvt. Ltd., which company has now become non functional and as per the FIR allegations, the persons incharge of the affairs of the aforesaid company are in judicial custody. The applicant has been implicated merely because an unknown person had told that the purchaser of gold has protection of the applicant and other co-accused persons but there is no allegation of any act of commission by the applicant or any other accused persons except Subhash Tiwari.

11. Having considered the aforesaid facts and circumstances of the case 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 during pendency of the trial.

12. In view of the above, the anticipatory bail application of the applicant is ***allowed***. In the event of arrest/ appearance of applicant-***Bhuvanesh Chand Agarwal*** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail during pendency of the trial 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.

Order Date :- 30.11.2023
Pradeep/-

Digitally signed by :-
PRADEEP SINGH
High Court of Judicature at Allahabad,
Lucknow Bench