

Court No. - 4

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 2801 of 2023

Applicant :- Shamim Bano

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

Counsel for Applicant :- Dinesh Kr. Sharma, Arshad Hafeez Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Arshad Hafeez Khan, learned counsel for the applicant and Sri Rajbir Singh, learned AGA-I for the State.

2. This is second anticipatory bail application as the first anticipatory bail has been granted by this Court vide order dated 20.10.2022. The aforesaid order reads as under:

"Heard Sri Sachchidanand, learned counsel for the applicant and learned AGA for the State.

As per learned counsel for the applicant, the present applicant is apprehending her arrest in Case Crime No.164 of 2022, under Sections 419, 467, 468, 471, 323 & 504 IPC, Police Station - Fatehpur, District - Barabanki.

Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in the case as she has not committed any offence as alleged. Attention has been drawn towards the impugned FIR, which has been lodged pursuant to the application filed under Section 156 (3) Cr.P.C. In such FIR, there are total eight accused persons including the present applicant. Allegation against the present applicant is that one property of the grand father of the complainant has been got transferred by the present applicant in her name. Learned counsel has drawn attention of this Court towards Annexure No.2 of the application, which is a Hibanama (Gift Deed) being made by the grand father of the present informant in favour of the present applicant on 20.02.1981. Further attention has been drawn towards Annexure No.3 of the application, which is an affidavit of one Noorul Islam Kuraishi, great grand son of Hazi Mohammad Safee, who allegedly gifted his property to the present applicant indicating therein that his great grand father had gifted said property in favour of the present applicant. Learned counsel for the applicant has further submitted that till date, no suit for cancellation of Hibanama (Gift Deed) has been filed by any of the parties including the informant/complainant and the investigation is going on wherein the present applicant is willing to participate. The applicant is an old aged lady of 74 years and she undertakes that she shall not misuse the liberty of bail, if granted and shall abide by all terms and conditions of the bail order.

Per contra, learned AGA has opposed the aforesaid prayer of the learned

counsel for the applicant but could not dispute the submissions so made by the learned counsel for the applicant.

Therefore, without entering into merits of the issue; considering the arguments of the learned counsel for the parties; contents and allegations of the FIR; Hibanama (Gift Deed) in respect of the property in question whereby the property is said to have been gifted in favour of the present applicant; one affidavit given by one of the great grand sons of the person, who has gifted the property in favour of the applicant; the fact that investigation is going on and the undertaking of the applicant that she is willing to participate in the investigation, I find it appropriate that liberty of the present applicant may be protected till completion of investigation/ filing of police report under Section 173 (2) Cr.P.C. in view of the dictum of the Hon'ble Apex Court in re; Sushila Aggarwal vs. State (NCT of Delhi), 2020 SCC online SC 98.

Therefore, it is directed that in the event of arrest, applicant-Shamim Bano shall be released on anticipatory bail in the aforesaid case crime number till filing of police report under Section 173 (2) Cr.P.C. on her furnishing a personal bond and two sureties of Rs.25,000/- each before the arresting authority/ court concerned with the following conditions:-

1. that the applicant shall make herself available for interrogation by a police officer as and when required;
2. 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;
3. that the applicant shall not leave India without the previous permission of the court;
4. that in default of any of the conditions mentioned above, the investigating officer shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant;
5. that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
6. that the applicant shall not pressurize/ intimidate the prosecution witness.

Before parting with, It is directed that the present applicant shall appear before the Investigating Officer on 22.10.2022 at 11:00 AM sharp to participate in the investigation and shall further cooperate with the investigation proceedings as per directions of the Investigating Officer relating to the investigation, failing which benefit of this order shall not be provided to the present applicant and the Investigating Officer/ concerning court may take any coercive steps against the present applicant strictly in accordance with law.

In the aforesaid terms, the instant anticipatory bail application is disposed of."

3. As per learned counsel for the applicant, the present applicant

is apprehending her arrest in Case Crime No. 164 of 2022, under Sections 419/467/468/471/323/504 IPC, Police Station Fatehpur, District Barabanki.

4. Learned counsel for the parties have stated that in compliance of the aforesaid order, the applicant has cooperated with the investigation and has not adopted any delaying tactics so the police concluded the investigation and filed the charge sheet on 20.12.2022.

5. The present applicant was granted anticipatory bail for the reason that she is an old lady aged about 74 years and the dispute in question is having some civil contents as one Hibana (Gift deed) is in her favour.

6. Notably, after filing of the chargesheet, the trial must have commenced. The protection was given to the applicant considering the dictum of the Hon'ble Apex Court in re: **Sushila Aggarwal vs. State (NCT of Delhi), 2020 SCC Online SC 98** and undisputedly, she cooperated in the investigation, therefore, I find it appropriate that the liberty of the present applicant may be protected till conclusion of the trial in view of the dictum of Hon'ble Apex Court in **Sushila Aggarwal** (supra).

7. Accordingly, it is directed that in the event of taking judicial custody of the applicant (Shamim Bano), she shall be released on anticipatory bail in the case in question till conclusion of the trial on her furnishing a personal bond and two sureties of Rs. 50,000/- each before the arresting authority/court concerned with the following conditions:

I. 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;

II. that the applicant shall not leave India without the previous permission of the court;

III. that in default of any of the conditions mentioned above, the investigating officer shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant;

IV. that since chargesheet has been filed, therefore, the applicant shall not tamper any evidence during trial.

8. Before parting with the case, it is expected that the trial in question be conducted and concluded with expedition strictly in accordance with law and in any case if it is found that the applicant has flouted any condition, as indicated above, or any delaying tactics is adopted by the applicant, the appropriate application for cancellation of anticipatory bail may be filed by the prosecution.

9. In view of the aforesaid directions, the instant anticipatory bail application is ***allowed***.

[Rajesh Singh Chauhan,J.]

Order Date :- 7.12.2023

kkv/