

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 2872 of 2023

Applicant :- Dushyant Singh

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Lko. And 2
Others

Counsel for Applicant :- Avinash Singh Vishen, Desh Deepak
Singh, Roshan Lal Verma

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Desh Deepak Singh along with Sri Avinash Singh Vishen, the learned counsels for the applicant, Sri Abhishek Tiwari, the learned counsel for the informant as well as Ms. Charu Singh, the Additional Government Advocate appearing on behalf of the State and perused the records.

2. By means of the instant application, the applicant has sought anticipatory bail stating that he is apprehending his arrest by the police of Police Station- Kaiserbagh, District Lucknow as he has received two notices dated 26.10.2023 and 31.10.2023 from the office of Additional Police Commissioner, Kaiserbagh, Lucknow stating that the applicant's wife has given a complaint, which is being investigated and the statement of the applicant is to be recorded.

3. The learned counsel for the informant has raised a preliminary objection stating that the instant application has been filed without making any mention of the F.I.R. filed by the informant and he has produced a copy of the FIR before the Court, which is FIR No. 155 of 2023, under Sections 420, 467, 468, 471 IPC lodged in P.S.- Kaiserbagh, Lucknow Central (Commissionerate Lucknow) against the applicant and his brother Saurabh Singh stating that the object of taking divorce from the informant, the applicant, acting under a conspiracy with his brother, co-accused Saurabh Singh has prepared a fake tenancy agreement and he has got his Aadhar Card prepared with a fake address. The informant has stated that the applicant has attempted to cause undue loss to her by producing fake documents in Court.

4. Learned counsel for the informant has further stated because of non-mention of the aforesaid F.I.R. in the application seeking anticipatory bail, the application is liable to be rejected in limine.

5. Section 438(1) CrPC, as it applies to the State of U.P.,

provides that where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail.

6. For filing an application under Section 438 CrPC and entertainment thereof by the Court, only this much is necessary that the applicant has "reason to believe" that he may be arrested on accusation of having committed a non-cognizable offence and there is no necessity of an F.I.R. having been filed and its particulars having been mentioned in the application. The applicant approached this Court after he had been summoned by the police and he apprehended that he might be arrested. The apprehension stands supported by the information provided by the learned counsel for the informant that an F.I.R. alleging commission of cognizable offences has already been registered and, therefore, the applicant's apprehension is not unfounded and the application is maintainable and a preliminary objection raised by the learned counsel for the informant is rejected and I proceed to examine the merits of the case.

7. The learned counsel for the informant has submitted that the applicant has not approached this Court with clean hands as in the affidavit filed in support of the application seeking anticipatory bail before the Sessions Judge, it was inter alia stated that the applicant no.1 started residing at Lucknow again after he lost his job and since he got his Aadhar Card rectified in October, 2023 whereas in Para No. 41 of the affidavit, he has stated that he started residing at Lucknow again after he lost his job and since he got his Aadhar Card rectified, the applicant omitted to state the month of rectification of Aadhar Card.

8. The learned counsel for the informant has submitted that the reason for this variance in pleadings is that the Aadhar Card was rectified in the month of September, 2023 and the plea raised before the sessions court was false. He has submitted that the aforesaid conduct of the applicant disentitles him for relief of anticipatory bail. Thus, it is prima facie established that the applicant is guilty of getting fake documents prepared. He has further submitted that the applicant had earlier filed two applications under Section 482 CrPC bearing Nos. 7241 of 2023 and 7572 of 2023, but he has made a mention of only Application U/s 482 No. 7572 of 2023 and there is no mention of the previous application. He has next submitted that the document enclosed was prepared even before initiation of litigation between the parties.

9. The applicant and other accused persons had filed Application U/s 482 No. 7572 of 2023 and proceedings of the case arising out of F.I.R. No. 519 of 2022 were stayed by means of an interim order dated 4.8.2023. Thereafter, by means of an order dated 23.8.2023, the matter was referred to mediation centre.

10. Regarding the objection taken by the learned counsel for the informant that the applicant has not disclosed the fact of filing of earlier application under Section 482 CrPC, the learned counsel for the applicant has submitted that the earlier application was also filed for the same relief and that was got dismissed as withdrawn with liberty to file afresh and thereafter, the subsequent Application U/s 482 No. 7572 of 2023 was filed with the same object and, therefore, non-disclosure of the previous application under Section 482 CrPC would not amount to concealment of any material facts.

11. From the material available before the Court, prima facie it appears that there is a matrimonial dispute between the informant and the applicant, regarding which the informant has filed an F.I.R. No. 519 of 2022 against the applicant as well as co-accused Saurabh Singh (the brother of the applicant) and his parents, wherein it is stated that she got married with the applicant on 5.12.2019; she was being harassed for demand of dowry; she was sent to her parents' house on 6.4.2021, where she delivered a baby boy on 19.7.2021. On 25.9.2021, the informant had gone to the applicant's house to attend the *tehrvi* of her father-in-law, who is also an accused in the aforesaid F.I.R. No. 519 of 2022, describing him 'Late Jaiveer Singh Father-in-law'. On 02.10.2021, she was again sent back and thereafter, she had visited the applicant's home for two days in November, 2021 for a social ceremony and since then, she is residing in her parent's home.

12. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the grievance of the informant is against preparation of some fake documents to be used in judicial proceedings regarding the matrimonial dispute between the parties and consequently, she is apprehending that the same will be used against her in matrimonial proceedings. Without making any observations which may affect the merits of the present case, I am of the view that the applicant is entitled to be granted anticipatory bail.

13. The anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant- **Dushyant Singh** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail 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;

14. In default of any of the conditions mentioned above or it is found that applicant has obtained this order concealing any material facts, the Investigating Officer shall be at liberty to file appropriate application for vacation of this order.

Order Date :- 14.12.2023

Shravan