

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL

APPLICATION U/S 438 CR.P.C. No. - 2919 of 2023

Applicant :- Vasudev Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil
Secrt. Lko. And 3 Others

Counsel for Applicant :- Surendra Singh, Beer Bahadur Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Surendra Singh, the learned counsel for the applicant, Sri Rakesh Kumar Singh, learned A.G.A. appearing on behalf of the State as well as Sri Vinod Kumar Pandey 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. 960 of 2023, under Sections 419, 420, 467, 468, 471, 406, 506 I.P.C., registered at Police Station Deva, District Barabanki.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 28.10.2023 alleging that the applicant had entered into an agreement to sell a plot to the informant and had obtained Rs. 40 lakhs for the aforesaid purpose. Thereafter, the informant came to know that the land was disputed and, therefore, he demanded refund of the money paid by him. The informant had refunded merely Rs. 7 lakhs in two installments but the remaining amount has not been refunded. The informant has prayed in the F.I.R. that his money be refunded to him.

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

applicant's criminal history has been explained in para 20 of the affidavit as per which he is involved in 6 other cases, in all of which he has been granted bail.

5. The learned counsel for the informant has vehemently opposed the bail application and he has submitted that an agreement was executed between the parties on 16.11.2022 for return of Rs. 40 lakhs but the applicant has not complied with the conditions of the agreement. He has further submitted that the informant had filed Criminal Misc. Writ Petition No. 8949 of 2023, which has been dismissed by means of an order dated 23.11.2023 passed by a Division Bench of this court.

6. The learned counsel for the applicant has admitted that no registered agreement had been executed between the parties regarding sale and purchase of immovable property.

7. So far as the dismissal of writ petition seeking quashing of the F.I.R is concerned, in **Kamlesh and another vs. State of Rajasthan and another**, 2019 SCC OnLine SC 1822, the High Court of Rajasthan had rejected the application for anticipatory bail only on the ground that petition under Section 482 Cr.P.C., praying for quashing of FIR, had already been rejected. The Hon'ble Supreme Court allowed the appeal filed against the order of the High Court by holding that: -

"5. We are of the view that the order of the High Court cannot be sustained. High Court ought to have considered the application on merits. The fact that petition under Section 482 Cr.P.C. was dismissed for quashing was not conclusive and could not be the reason for rejecting the application."

8. On merits, the case of the informant is that he had entered into an agreement to purchase an immovable property from the informant but admittedly no registered agreement had been executed. The informant claims refund of the money paid to the

applicant and even as per the informant's averments, the applicant has refunded Rs. 5 lakhs till 30.11.2022 and Rs. 22 lakhs on 05.10.202.

9. The learned counsel for the applicant has stated that there after the applicant has refunded Rs. 5 lakhs more to the informant.

10. The F.I.R has been filed when the applicant could not comply with the conditions of the the agreement dated 06.11.2022 executed between the parties. The informant has sought recovery of money through the F.I.R, which relief is predominantly of a civil nature and admittedly, the informant has not initiated any civil proceedings for recovery of the money.

11. In **Indian Oil Corporation vs NEPC India Ltd., & Ors**, 2006 6 SCC 736, the Hon'ble Supreme court has held that:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP, 2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the

process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may"

12. 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.

13. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant- **Vasudev Yadav** 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;

(Subhash Vidyarthi, J.)

Order Date :- 18.12.2023

Preeti.