

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2928 of 2023

Applicant :- Hafeez Ahmad Khan

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

Counsel for Applicant :- Raj Nath Singh, Prateek Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Prateek Tewari, the learned counsel for the applicant, Smt Poonam Gupta, learned A.G.A. appearing on behalf of the State as well as Sri Anuj Kumar Srivastava, the learned counsel for the respondent 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. 715 of 2023, under Sections 419, 420, 467, 468, 471, 120-B I.P.C. and Section 2/3 of Public Property Damages Act, registered at Police Station Kotwali City, District Hardoi.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 12.10.2023 against two named persons, including the applicant and unknown members of Anjuman Islamia Committee, stating that the accused persons have illegally made allotment of 22 kiosks/shops on the side of a road belonging to Nagar Palika Parishad and they are extracting rent in respect of the kiosks/shops since September 2016. The F.I.R. alleges misappropriation of Rs. 9,35,00,000/- amount of Nagar Palika Parishad.

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 and he has no criminal history.

5. The learned counsel for the respondent- Nagar Palika Parishad, Hardoi has opposed the anticipatory bail application and he has submitted that earlier the applicant had filed a Criminal Misc. Writ Petition No. 9132 of 2023 which has been dismissed by means of an order dated 30.11.2023. It has been observed in the aforesaid order passed by a Division Bench of this court that the petitioners contended that the land on which the kiosks have been set up belongs to a Kabrishtan under the management of Anjuman Islamia Committee whereas the Nagar Palika Parishad also claims ownership on the land.

6. The learned counsel for the respondent No.2 has further submitted that the City Magistrate, Hardoi had sent a notice to the Executive Officer, Nagar Palika Parishad, Hardoi alleging connivance with the

accused persons in this matter and apparently, the F.I.R has been lodged after the aforesaid notice.

7. The learned counsel for the respondent No.2 has next submitted that it is the admitted case of the parties that the land in dispute belongs to Nagar Palika Parishad, Hardoi and that the applicant has illegally issued allotment letters and rent receipts in response to the shops constructed on the land of Nagar Palika Parishad. In response to the Court's question as to where has the applicant admitted the title of the Nagar Palika Parishad in respect of the land in question, learned counsel for the Nagar Palika Parishad drew attention of the Court towards a copy of the written statement filed by the Nagar Palika Parishad. Written Statement contains contention of the Nagar Palika Parishad in response to the pleas of the applicant in the suit claiming title in respect of the land in dispute and the contention of Nagar Palika Parishad cannot be termed as an admitted case of the parties. Therefore, fact remains that both the parties are claiming ownership in response to the properties in dispute and Suit No.505 of 2022 filed by Anjuman Islamia in the Court of Civil Judge (Junior Division), West, Hardoi is pending. Nagar Palika Parishad has not initiated any proceedings claiming title or possession of the land in dispute and although it has filed written statement in the suit filed by Anjuman Islamia, it has not even filed any counter claim in that suit.

8. The other named accused-Mohd Khalid has been granted anticipatory bail by means of the order dated 14.12.2023 passed in CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No.2874 of 2023.

9. So far as the question of dismissal of writ petition filed for quashing of F.I.R is concerned, that writ petition was dismissed for the reason that the allegations levelled in the F.I.R make out a case of commission of a cognizable offence and, therefore, there is no occasion for quashing the F.I.R. However, an application for anticipatory bail would not be dismissed for the reason of dismissal of an application by quashing an F.I.R. In **Kamlesh and another versus 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."

10. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the Anjuman Islamia Committee and the Nagar Palika Parishad both are claiming ownership in respect of the land in question; even as per the informant, the kiosks/shops were set up and are continuing to exist since 2016 without any hindrance from any quarters and no proceedings regarding title or possession of land have been instituted, a co-accused has already been granted anticipatory bail 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.

11. In view of the above, the anticipatory bail application of the applicant is allowed. In the event of arrest/ appearance of applicant-Hafeez Ahmad Khan 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
prateek