

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2949 of 2023

Applicant :- Bindumati

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

Counsel for Applicant :- Mohd. Ali, Ankit Mishra, Tanzeem
Fatima

Counsel for Opposite Party :- G.A., Brijesh Kumar Pandey

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Mohd. Ali, the learned counsel for the applicant as well as Sri Akhilesh Kumar Vyas, the learned Additional Government Advocate appearing on behalf of the State and Sri Brijesh Kumar Pandey, learned counsel for the informant and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in Case Crime No. 410 of 2020, under Sections 419, 420, 467, 468 471, 120-B, 506 I.P.C., registered at Police Station Kotwali Dehat, District Balrampur.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 24.11.2020 against five persons, including the applicant, her husband, her son and two grand sons, stating that the informant had purchased some land from her father-in-law and his name was mutated in the revenue record. The co-accused Anil Kumar Shukla prepared a fake sale deed dated 26.06.1972 in favour of the applicant and got the name of the applicant mutated on the basis thereof on 25.05.2019.

4. In the affidavit filed in support of the application it has been stated that the applicant is a 70 years old innocent women having no criminal history. She has undergone hip replacement surgery on 13.12.2022 and she is in bed ridden condition.

5. The applicant had also filed a writ petition bearing no. 16672 of 2021(M/B); Bindumati and others Vs. State of U.P. and others and her arrest was stayed till filing of a police report under Section 172 CrPC. After investigation chargesheet has been submitted on 14.08.2021 against the applicant and her son Anil Kumar Shukla only and the applicant's husband/co-accused Sachchida Nand Shukla has died pending investigation and the allegations leveled against the grand sons could not be

established and their names have not been included in the chargesheet.

6. Although the FIR mentions that the applicant is claiming land on the basis of sale deed dated 26.06.1972, in the chargesheet the Investigating Officer has mentioned that the applicant is claiming title on the basis of fake will deed, which is nobody's case.

7. Learned counsel for the informant has vehemently opposed the anticipatory bail application and he has also submitted that the applicant is claiming title on the basis of a sale deed dated 26.06.1972 which is fake.

8. Proceedings arising out of mutation of names on the basis of sale deed is pending before revenue authorities but no suit for cancellation of the sale deed has been filed by the informant.

9. Learned counsel for the informant has also opposed the anticipatory bail application on the ground that the applicant's application under Section 482 CrPC has been dismissed by this Court and that the applicant has not disclosed the particulars thereof and has not filed a copy of that order passed in that application.

10. In paragraph 18 of the affidavit filed in support of the anticipatory bail application it has been stated that the applicant and her son had approached this Court by filing an application under Section 482 CrPC in which they remained unsuccessful, therefore, there is no concealment of facts on the part of the applicant.

11. In the case of **Kamlesh & ANR. Vs. The State of Rajasthan & ANR.** reported in **2019 SCC Online SC 1822**, the Hon'ble Supreme Court has held that an anticipatory bail application cannot be dismissed merely on the ground of dismissal of application under Section 482 CrPC and the anticipatory bail application has to be decided on its merits. Therefore, the dismissal of the application under Section 482 CrPC is not relevant for the present case and yet the applicant has disclosed this fact in the affidavit filed in support of the anticipatory bail application. This objection of the learned counsel for the informant is mis-conceived.

12. Learned counsel for the informant has next submitted that the medical report of the applicants relate to the year 2022 and presently she is completely fit.

13. In the year 2022, the applicant had undergone surgery for

hip replacement and her age is increasing undisputedly. Various medical documents annexed with the affidavit indicate that the applicant is still undergoing treatment and a prescription dated 29.11.2023 mentions the age of the applicant as 76 years. This Court lacks requisite expertise to scrutinize the findings of the medical reports and to doubt that the applicant is fit and yet she is undergoing treatment by a doctor and the Court finds itself unable to accept this submission of the learned counsel for the informant.

14. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the parties are claiming title of a land in question through a common ancestor; the applicant is claiming title on the basis of a sale deed dated 26.06.1972 validity whereof is seriously disputed but no suit for cancellation of the said sale deed has been initiated; the litigation arising out of the mutation proceedings is still pending before the Board of Revenue; the applicant is claiming title on the basis of sale deed which is disputed by the informant but after investigation, Investigating Officer has mentioned in the chargesheet that the applicant is claiming title on the basis of a will, which is nobody's case; the investigation has already been concluded and a chargesheet has also been filed and there is no need for custodial interrogation of the applicant and the fact that she is a 74 years old women, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

15. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of **applicant- Bindumati** before the learned Trial Court in the aforesaid case crime, she 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;

16. 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 :- 19.12.2023

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