

Court No. - 14

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 706 of 2024

Applicant :- Rishabh Kumar @ Rishabh Shukla and Ramesh Prasad

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

Counsel for Applicant :- Utkarsh Misra, Abhishek, Anand Dubey, Sheikh
Abu Huraira Siddiqui

Counsel for Opposite Party :- G.A., Asim Kumar Singh

Hon'ble Karunesh Singh Pawar, J.

1. The applicants have moved the present application under Section 438 of Cr.P.C. praying for grant of anticipatory bail in Complaint Case No.4234 of 2020 under sections 323, 392 I.P.C., P.S. Para, district Lucknow.

2. Heard learned counsel for the applicants, learned counsel for the complainant who has filed a short counter affidavit today in court, which is taken on record, and learned A.G.A. for the State.

3. It is alleged in the prosecution case that while the informant was going for his personal work on 27.7.2019 to Lucknow and as soon as he reached near police station Para, he stepped out of the vehicle to ease out, then Ramesh Prasad and Rishabh Kumar (present applicant) with two unknown persons came there on Scorpio vehicle. These persons were chasing the informant's vehicle since long. As soon as they came, they started beating the informant and dragged him inside their vehicle and put a pistol on his chest and demanded Rs.50 lacs and 50% share in lease. It is further alleged that in case this amount is not given within a week, he would be killed. Due to fear, the informant promised to give Rs.50 lacs and 50% share of his Morang. He was forced to

sign on blank papers and stamps.

4.Learned counsel for the complainant has raised a preliminary objection regarding maintainability of the application for anticipatory bail. It is submitted that the applicant is absconding for the last four years. Non-bailable warrant has been issued on 1.6.2024 and therefore, in view of the judgment of Supreme Court in Srikant Upadhyaya and others versus State of Bihar and another 2024 SCC OnLine SC 282, present anticipatory bail application cannot be entertained.

5.Rebutting the argument of the learned counsel for the complainant, the applicant's counsel has submitted that the first information report under sections 384, 323, 506 I.P.C. was lodged on 1.8.2019. Final report was submitted on 13.8.2019, against which a protest petition was filed on 19.8.2020, which was registered as a complaint case. After recording of statement under section 200 CrPC of the complainant and 202 CrPC of the witnesses, summoning order was passed on 4.6.2022. This summoning order was assailed by filing a petition under section 482 CrPC No.963 of 2023. This Court while allowing the petition vide order dated 1.2.2023 quashed the summoning order.

After remand, the Court below again passed summoning order on 27.6.2023. Thereafter, bailable warrant was issued on 23.1.2024. The applicant again filed a petition under section 482 CrPC petition No.1114 of 2024 challenging the summoning order, which was dismissed on 13.2.2024. Thereafter, the applicant immediately filed anticipatory bail application before the

District & Sessions Judge, Lucknow which was rejected vide order dated 20.3.2024. On 29.3.2024, the applicant has filed present anticipatory bail application in this Court. It is submitted that during pendency of the anticipatory bail application, on 1.6.2024, non bailable warrant has been issued against the applicants.

It is submitted that gist of the judgment in Srikanth's case (supra) is that if the accused is absconding and avoiding the proceedings of the trial court and warrant and proceedings under sections 82/83 CrPC have been initiated, then he is not entitled for anticipatory bail.

It is lastly submitted that present case falls under exception given in Srikanth's case (supra) as the first information report in the present case was registered as a counter blast, by the opposite party No.2. The police investigated the matter twice and submitted final report in favour of the applicants. The applicants have never avoided proceedings of the trial court and have availed remedy as per law and therefore, the applicants are entitled to anticipatory bail.

6.I have considered the submission advanced and perused the record.

A perusal of the judgment in Srikanth's case (supra) shows that in that case, the accused did not appear before the trial court after receipt of summon and as such, bailable warrant was issued. He surrendered before the trial court by moving a surrender application, however, he withdrew it on the fear of being arrested. Then the trial court issued non-bailable warrant on 3.11.2022 and then proceedings under section 82

CrPC were issued but no step was taken to challenge it or appear in court before the trial court to avert the consequences.

7. In the present case, firstly summoning order dated 4.6.2022 was assailed by the applicants in a petition under section 482 CrPC, in which the summoning order was quashed and the matter was remanded. Again summoning order dated 27.6.2023 as also the bailable warrant dated 23.1.2024 was issued. Again a petition under section 482 CrPC, as referred to above, was filed before this Court. The said petition has been dismissed vide order dated 13.2.2024. Thereafter, the applicants filed anticipatory bail application before the District & Sessions Judge, Lucknow, which was rejected vide order dated 20.3.2024. Thereafter, present anticipatory bail application has been filed on 29.3.2024 which remained pending and during pendency of this application, non bailable warrant was issued against the applicants. Thus, facts of the present case are quite distinct and the judgment in Srikant Upadhyaya's case (supra) is distinguishable on these grounds.

Even in Srikant Upadhyay's judgment, the Supreme Court has observed that even if warrant of arrest or proclamation is issued, the Court is not precluded to grant pre-arrest bail in exceptional circumstances in the interest of justice.

In the case in hand, the first information report is alleged to have been lodged as a counter blast by respondent No.2. The police twice investigated the matter and submitted final report. The applicants availed legal remedies, as per law.

Therefore, I am of the opinion that this case falls under exceptional case(s) as mentioned in Srikanth's case (supra) and as such, the application is very well maintainable.

8. On merit also, it has been submitted on behalf of the applicants that after lodging of the first information report, investigation was carried out and the final report was submitted by the investigating officer. As no incriminating evidence was found, the investigating officer submitted a final report, against which the complainant preferred a protest petition. The learned Magistrate registered the protest petition as a complaint case. Statements under sections 200 and 202 CrPC were recorded where while giving statement under section 200 CrPC, an improvement has been made by the complainant and the allegation of forcibly taking Rs.9000/- from the pocket of the informant has been made for the first time.

It is submitted that the complaint case has been registered as a counter blast to the first information report lodged by applicant No.2 on 17.7.2019 which was registered as case crime No.467 of 2019 under sections 147, 148, 323, 392, 342, 504, 506 I.P.C., P.S. Kotwali, district Fatehpur for beating the applicant No.1 and his son, along with other crime. In that incident, the applicant was hospitalised for several days.

It is submitted that the facts stated in the complaint case are highly improbable. There are major contradictions in the statement of the witnesses and improvement has been made. Even, the complainant neither in the complaint case nor in the first information report has

disclosed the number of the Scorpio vehicle which was used in the alleged incident.

9.Learned A.G.A. as well as learned counsel for the complainant have vehemently opposed the application, however, they could not dispute the fact that the complainant while lodging the first information report or in the protest petition has even not mentioned the number of the Scorpio vehicle which was used by the accused persons in commission of the crime.

10. On due consideration to the argument advanced, discussions made hereinabove, fact that the applicants have no criminal history, improbability of the incident as also considering the judgment in Srikanth's case (supra), I find it a fit case for grant of anticipatory bail.

11.In view of the above. the accused applicants are directed to surrender before trial court consequent to the process issued by the concerned court, within 15 days from today. The accused applicants shall be released on anticipatory bail by the trial court on their furnishing a personal bond and two sureties each of the like amount to the satisfaction of the trial Court, with the following conditions.

(i) The applicants 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 tamper with the evidence;

(ii) The applicants shall not leave India without the previous permission of the court;

(iii)The applicants shall not pressurize/ intimidate

the prosecution witness;

(iv) The applicants shall appear before the trial court on each date fixed unless personal presence is exempted;

(v) In case of breach of any of the above conditions the court below shall have the liberty to cancel the anticipatory bail;

Any other reasonable restrictions/conditions which the trial court may deem fit and proper can be imposed.

It is made clear that the observations made in granting bail to the applicants shall not in any way affect the trial Judge in forming his independent opinion based on the testimony of the witnesses.

12. In view of the aforesaid, the anticipatory bail application is allowed.

Order Date :- 5.7.2024
kkb/