

Court No. - 11

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2294 of 2024

Applicant :- Rakesh Kumar Singhal (Wrongly Mentioned As
Rakesh Kumar Singhal In The Fir)

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

Counsel for Applicant :- Siddhartha Sinha, Arun Sinha, Pranshu
Agrawal, Ram Chandra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Shri Arun Sinha, learned counsel for the applicant and Shri Vinod Kumar Shahi, learned Additional Advocate General of U.P. assisted by Shri Vivek Gupta, learned A.G.A.
2. Shri Sinha has filed second supplementary affidavit, the same is taken on record.
3. Shri Shahi has filed a report dated 15.10.2024 provided by the Vice Chairman, L.D.A., Lucknow, the same is also taken on record.
4. This anticipatory bail application has been filed by the present applicant apprehending his arrest in Case Crime/F.I.R. No. 376 of 2024, under Sections 115(2), 110, 105, 318(4) B.N.S., 2023 & Section 7 Criminal Law Amendment Act, Police Station- Sarojini Nagar, District-Lucknow.
5. Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story so narrated in the F.I.R.
6. At the very outset, Shri Sinha has stated that the incident in question which had taken place on 07.09.2024 is an unfortunate incident which was beyond the control of the present applicant

inasmuch as mainly due to two reasons, the incident in question had taken place. Firstly, due to heavy rains in the month of September, the building in question got affected. Secondly, due to two trucks having rammed into the building in question, the building got damaged.

7. So as to substantiate the aforesaid submission, Shri Sinha has drawn attention of the Court towards Annexure-6 which is a true photocopy of the news items published in Hindustan Times dated 8.9.2024, Swatantra Bharat dated 8.9.2024 and Aaj Tak dated 9.9.2024 including the paper cuttings showing the hitting of truck. At this stage, Shri Sinha has further drawn attention of the Court towards SA-1 of the second supplementary affidavit which is a true photocopy of the inspection report given by the L.D.A., wherein the findings of the aforesaid report (preliminary report of the spot inspection) has been given in pages no. 8 and 9 vide para no. 6 thereof, which clearly verifies that due to hit by the truck on the pillar of the building, it got damaged and due to heavy vibrations on account of such accident, some portion of the building damaged and fell on earth and such accident was beyond the control of the applicant.

8. The report of the L.D.A. so submitted today clearly indicates that while constructing the building, the settled norms to construct the building have not been followed, therefore, considering the earlier preliminary inquiry report, the State Government has directed to hold a detailed inquiry which is pending consideration.

9. Shri Shahi, learned Additional Advocate General has stated that after completion of the aforesaid detailed inquiry, the culpability of the other persons, if any, may be ascertained and on the basis thereof, charge-sheet may be filed against all the erring persons.

10. Shri Sinha, learned counsel for the applicant has submitted that the aforesaid building was constructed in the year 2012 as per the approved plan of L.D.A. and the construction of said building started in the year 2010. In such building, the applicant was carrying on his own business in the name of M/s Advance Medical Devices for supplying costly medical equipments to several hospitals, the firm which is in the name of the applicant. One huge godown for keeping costly medical equipments etc. is situated in such building. On the date of incident, the applicant was keeping the costly medical equipments etc. in such godown which were worth about Rs. 12 crores and on account of the aforesaid unfortunate incident on 7.9.2024, several costly medical equipments either got damaged or were still under the debris of such building. Therefore, Shri Sinha has submitted that had the applicant intended to instruct the contractor of the building to construct the building in a casual manner, he would not have kept those costly items in a godown of the same building which have been damaged. He has further stated that the applicant had instructed the contractor of the building to construct a strong building for all purposes and he was under bonafide impression that the construction of the building was so strong.

11. Shri Sinha has further submitted that the applicant is an old aged, sick and infirm person suffering from several diseases. He is aged about 78 years. He is having cardiac problem, diabetic problem, prostrate problem, hyperthyroid, slip disc etc.

12. Attention has been drawn towards the para no. 16 of the affidavit filed in support of the anticipatory bail application, whereby the ailments and diseases of the applicant have been explained. The applicant suffered heart attack in the year 1993 and was admitted in S.G.P.G.I., Lucknow in 1993. Again on account of serious heart problem, he was admitted in S.G.P.G.I.,

Lucknow in the year 1997 and 2011. In the year 2017, he was again admitted in S.G.P.G.I., Lucknow where his angiography was done. In the year 2018, he was again admitted in S.G.P.G.I. and he was advised for bypass surgery. He was again admitted in Fortis Escorts Hospital at Delhi in the year 2018 and five stents were implanted so as to save his life. The applicant is a chronic diabetic patient and he uses to take insulin four times in a day. All relevant medical prescriptions/details have been enclosed as Annexure-5 of the anticipatory bail application.

13. Therefore, Shri Sinha has submitted that in view of the aforesaid facts and circumstances, the present applicant may be granted anticipatory bail at least till completion of the investigation and he undertakes that he shall cooperate in the investigation properly.

14. Shri Sinha has fairly submitted that on account of severe medical problems, the applicant could not appear before the investigating agency till date having apprehension of arrest and in case, he is arrested or sent to judicial custody in such ailing condition, his life may be endangered.

15. Shri Sinha has also drawn attention of the Court towards Section 18 of the B.N.S. (Section 80 IPC) which clearly provides that nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

16. As per Shri Sinha, the unfortunate incident in question is an accident which was beyond the control of the present applicant, as submitted herein above. The applicant is a respected businessman of the city and is having no prior criminal history of any kind whatsoever, therefore, this may not be a case where the custodial interrogation is necessary for the applicant.

17. Shri Sinha has further drawn attention of the Court towards the order dated 14.02.2023 passed by this Court in Criminal Misc. Anticipatory Bail Application No. 350 of 2023 (Pawan Agarwal vs. State of U.P.), wherein the facts and circumstances are more or less similar to the extent that the applicant of that case was also an old aged ailing person and was ready to cooperate in the investigation. Therefore, this Court considering the dictum of the Apex Court in re: **Sushila Aggarwal Vs. State (NCT of Delhi), 2020 SCC online SC 98** granted anticipatory bail to the applicant of that case namely, Pawan Agarwal. In the aforesaid order dated 14.2.2023, the order dated 19.10.2022 passed by this Court in Criminal Misc. Anticipatory Bail Application No. 1625 of 2022 (Pawan Agarwal vs. State of U.P.) was reproduced.

18. Para Nos. 12 to 16 of the aforesaid order dated 19.10.2022 are being reproduced herein under:

“12. Sri Dileep Kumar, learned Senior Advocate has submitted that if the allegations of the F.I.R. is taken on its face value, however it is not admitted, which says that act of the present applicant is done with the knowledge that it is likely to cause death, but without any intention to cause death, and in that case the imprisonment may be for ten years, or fine or both, meaning thereby in such case the learned trial court may only award the fine against the accused persons.

13. Sri Dilip Kumar, learned Senior Advocate has submitted that the factum of knowledge as per Section 304 I.P.C. would be missing in the present case inasmuch as all possible preventive measures were taken in the Hotel, however, the aforesaid fact may be established during investigation. But in that case too, the only punishment of fine may be awarded.

14. So as to substantiate his arguments that in the present case the offence in question at the best may be considered 'as causing death by negligent act' as defined under Section 304-A I.P.C. wherein the maximum punishment is two years or fine or both, Sri Dileep Kumar has drawn attention of this Court towards the decision of Apex Court rendered in re: Sushil Ansal vs. State through Central Bureau of Investigation reported in (2014) 6 SCC 173 wherein fire had broken out in a Cinema Hall in the name of 'Uphar Cinema' of Sunil Ansal and Gopal Ansal and 59 persons succumbed due to lethal carbon monoxide. The prosecution in that case had pleaded that the offence of those accused persons should be tried

under Section 304 Part-II whereas learned Advocates from the side of those accused persons had pleaded that the offence, if any, committed by those accused persons should be considered under Section 304-A I.P.C.

15. Sri Dileep Kumar, learned Senior Advocate has referred paras-192 and 199, which read as under:-

"192. In the appeal filed by AVUT against the order passed by the High Court in the above revision petition, they have agitated the very same issue before us. Appearing for the Victims Association, Mr. Tulsi argued that the acts of omission and commission of Ansal brothers by which the egress of the patrons was obstructed warranted a conviction not merely for the offence punishable under Section 304-A IPC but also for the offence punishable under Section 304 Part II since according to the learned counsel the said acts were committed with the knowledge that death was likely to result thereby. Mr. Tulsi in particular contended that the act of installing an eight-seater box that entirely blocked the right-side exit in the balcony was itself sufficient for the Court to order a retrial of the Ansal brothers, since they knew by such an act they were likely to cause death of the patrons in the event of a fire incident. On that premise, he contended that the matter should be remanded back to the Trial Court for retrial for commission of the offence punishable under Section 304 Part II. In support of the contention that the fact situation in the case at hand established a case under Section 304 Part II.

16. The decision in Alister Anthony Pereira's case (supra) or that delivered in Sanjeev Nanda's case (supra) does not lay down any specific test for determining whether the accused had the knowledge that his act was likely to cause death. The decisions simply accept the proposition that drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The case at hand is more akin on facts to Keshub Mahindra's case (supra) where this Court was dealing with the question whether a case under Section 304 part II was made out against the management of Union Carbide India Ltd., whose negligence had resulted in highly toxic MIC gas escaping from the plant at Bhopal. The trial Court in that case had framed a charge against the management of the company for commission of an offence under Section 304 Part II, IPC, which was upheld by the High Court in revision. This Court, however, set aside the order framing the charge under Section 304 Part II and directed that charges be framed under Section 304A IPC instead."

(emphasis supplied)

19. Per contra, Shri Shahi, learned Additional Advocate General has stated that though he is not disputing on the fact that the present applicant is an old aged ailing person but he has stated on the basis of instructions being received from L.D.A. that the

required norms to construct the huge building in a commercial area have not been followed, resultant thereof, the major life casualty took place on account of the said incident.

20. Shri Shahi has stated that in para no. 13 of the report dated 15.10.2024 so provided by L.D.A., the violation of the norms while making construction of the building in question has been indicated thoroughly. He has also submitted that after lodging of the F.I.R. on 7.9.2024, the applicant has not cooperated in the investigation, therefore, the investigation is not having good progress. Though for the purposes of investigation, the statement of the son of the applicant has been recorded by the investigating agency and the statement of the other persons, who could be available, have been recorded.

21. Shri Shahi has further submitted that without proper cooperation of the applicant in the investigation, it may not be concluded and in that case, the prosecution may suffer irreparably, therefore, a direction may be issued to the applicant to cooperate in the investigation properly.

22. Having heard learned counsel for the parties and having perused the material available on record, without entering into merits of the issue which may affect the investigation, it may be observed at this stage that the present applicant is an old aged ailing person suffering from various serious ailments, as considered above. So far as the main two reasons with regard to the incident in question, which have been submitted by the learned counsel for the applicant, are concerned, I restrain myself to observe anything on such aspect inasmuch as this is up to the investigating officer to go into the detail of the facts and circumstances of the issue in question so that it could be ascertained and verified as to whether the unfortunate incident in question was beyond the control of the present applicant or

the applicant was having any control at the time of construction of the building.

23. At this stage, my sole consideration to dispose of this anticipatory bail application is that the life of the old aged ailing person is precious and if he undertakes to cooperate in the investigation properly, he should be given at least one chance to cooperate in the investigation properly, failing which the investigating officer may take the present applicant into judicial custody after filing an appropriate application before this Court for passing any appropriate order.

24. Notably, the present applicant is a reputed businessman of the city and there is no criminal history of any kind whatsoever against him. He himself was carrying on business in the same building in the name of M/s Advance Medical Devices to supply costly medical equipments to the reputed hospitals of the city including S.G.P.G.I. and his own costly stock to the tune of Rs. 12 crores has been damaged or is kept under the debris of the said building.

25. In more or less similar facts and circumstances in re: **Pawan Agarwal (supra)**, this Court granted anticipatory bail to such applicant namely, Pawan Agarwal till completion of the investigation and filing of the police report vide order dated 19.10.2022 and after considering his conduct during investigation, he was granted anticipatory bail till conclusion of the trial vide order dated 14.2.2023.

26. Since the investigation is going on where the cooperation of the present applicant is required, therefore, on the basis of principles of parity and also in view of the dictum of the Apex Court in re: **Sushila Aggarwal (supra)**, I find it appropriate that the liberty of the present applicant be protected till completion of the investigation and filing of the police report.

27. Before granting anticipatory bail to the present applicant till completion of the investigation and filing of the police report, the applicant is directed to appear before the Investigating Officer on 24.10.2024 at 11:30 a.m. Thereafter, he shall abide by all the directions of the Investigating Officer regarding his cooperation in the investigation. He shall provide all the required material/evidences which are within his possession to the investigating officer as and when the same is demanded. In a nutshell, his proper cooperation in the investigation would be the paramount consideration to keep him out of judicial custody, failing which any appropriate application may be filed by the investigating officer in the Court and any appropriate order may be passed thereon.

28. Therefore, it is directed that in the event of arrest, applicant- **Rakesh Kumar Singhal** shall be released on anticipatory bail in the aforesaid case crime number, till completion of investigation and filing of police report on his furnishing a personal bond of Rs. 2,00,000/- with two sureties each in the like amount to the satisfaction of the arresting authority/ court concerned with the following conditions:-

- (i). That the applicant shall make himself available for interrogation by the police officer as and when required;
- (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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without prior permission of the court;
- (iv). that the applicant shall not pressurize/ intimidate the prosecution witnesses and shall not tamper with evidence during trial

(v). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted

(vi). that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail;

(vii). that in default of any of the conditions mentioned above, the learned counsel for the State shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

29. In view of the aforesaid terms, this anticipatory bail application is **disposed of finally**.

Order Date :- 17.10.2024

Shravan