

Court No. - 66

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1844 of 2022

Applicant :- Shiv Prakash

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raj Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Chandra Bhushan Yadav, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for anticipatory bail has been filed by applicant-Vinod Kumar in connection with Case Crime No.0036 of 2021, under section 409 IPC, Police Station-Kotwali Ghazipur, District- Ghazipur.

4. Record shows that in respect of an incident, which is alleged to have occurred from 13.06.2018 to 02.09.2020, a delayed F.I.R. dated 29.01.2021 was lodged by first informant Sri Nunil Kumar and was registered as Case Crime No.0036 of 2021, under section 409 IPC, Kotwali Ghazipur, District- Ghazipur. In the aforesaid F.I.R. two persons, namely, Anil Kumar (Senior Assistant/Kashier) and Sri Anoop Kumar (the then Headmaster of the institution) have been nominated as named accused.

5. In brief, according to the prosecution story as unfolded in the F.I.R., it is alleged that applicant has submitted forged and named accused have embezzled Rs. 42, 55, 405=00fictitious of the Government money.

6. Learned counsel for applicant contends that applicant is innocent. He is not named in the F.I.R. Applicant is being is

being falsely prosecuted in afore-mentioned case crime number. Applicant is a man of clean antecedents inasmuch inasmuch as he has no criminal history to his credit except the present one. It is then contended that the F.I.R. giving rise to present application for anticipatory bail was lodged on 29.01.2021. However even after expiry of a period more than one years and one month from the date of lodging of aforementioned F.I.R., no police report under Section 173 (2) Cr.P.C. has been submitted till date. Investigation is still going on and applicant is co-operating with investigation. Therefore, no coercive process has been issued against applicant. As such custodial arrest of applicant is not absolutely necessary for investigating afore-mentioned case crime number. However, irrespective of above, there is imminent threat of arrest of applicant by the police. On the aforesaid premise, learned counsel for applicant contends that applicant is liable to enlarged on anticipatory bail. It is then contended that named accused Anoop Kumar (the then Headmaster of institution) approached this Court by filing criminal misc. anticipatory application no. 3510 of 2021 (Anook Kumar Vs. State of U.P.), which was disposed of finally by this Court vide order dated 17.03.2021. For ready reference order dated 17.03.2021 is reproduced herein under:-

" Heard learned counsel for the applicant and learned A.G.A. for the State.

The instant anticipatory bail application has been filed with a prayer to grant an anticipatory bail to the applicant, Anoop Kumar, in Case Crime No. 36 of 2021, under Sections- 409 I.P.C., Police Station- Kotwali Ghazipur, District- Ghazipur.

Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P., hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A as per Section 438 (3) Cr.P.C. (U.P. Amendment) is not required.

There are allegations in the F.I.R against the applicant and co-accused, Anil Kumar, that they were involved in the misappropriation of public money of Rs. 43,55,405/- between 13.06.2018 to 02.09.2020.

Learned counsel for the applicant has submitted that the inquiry report is the basis of F.I.R. The role of misappropriation and transfer of public money in his personal account has been assigned to co-accused, Anil Kumar, who was the cashier at the relevant time. Against the applicant, there is allegation that he was negligent in performance of his duties which resulted into the commission of the alleged offence.

Learned counsel for the applicant further submits that the applicant is not the beneficiary of the allegedly embezzled amount. Investigation is still underway. The applicant has no criminal history to his credit. The applicant has definite apprehension that he may be arrested by the police any time.

Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant. He has submitted that in view of the seriousness of the allegations made against the applicant, he is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

After considering the rival submissions, this Court finds that there is a case registered against the applicant. It cannot be definitely said when the police may apprehend him. After the lodging of F.I.R., the arrest can be made by the police at will. There is no definite period fixed for the police to arrest an accused against whom an F.I.R. has been lodged. The courts have repeatedly held that arrest should be the last option for the police and it should be restricted to those exceptional cases where arresting the accused is imperative or his custodial interrogation is required. Irrational and indiscriminate arrests are gross violation of human rights. In the case of Joginder Kumar v. State of Uttar Pradesh AIR 1994 SC 1349, the Apex Court has referred to the third report of National Police Commission wherein it is mentioned that arrests by the police in India is one of the chief source of corruption in the police. The report suggested that, by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 percent of expenditure of the jails. Personal liberty is a very precious fundamental rights and it should be curtailed only when it becomes imperative. According to the peculiar facts and circumstances of the case, the arrest of an accused should be made.

Without expressing any opinion on the merits of the case and considering the nature of accusation and his antecedents, the applicant is entitled to be released on anticipatory bail for limited period in this case considering the exceptions considered by the Hon'ble Supreme Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.

In the event of arrest, the applicant shall be released on anticipatory bail till cognizance is taken by the Court on the police report, if any, under section 173 (2) Cr.P.C. before the competent Court on

furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station/ concerned Court with the following conditions:-

(i) The applicant shall make himself available for interrogation by the police officer as and when required;

(ii) 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;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is in progress, who shall ensure the compliance of present order.

Order Date :- 17.3.2021 "

7. Subsequent to above order dated 17.03.2021, another named accused Anil Kumar Yadav approached this Court by means of Criminal Misc. Anticipatory Application No. 5536 of 2021. Same was disposed of finally vide order dated 18.03.2021, which reads as under:-

"Heard learned counsel for the applicant and learned A.G.A for the State.

The instant anticipatory bail application has been filed on behalf of the applicant, Anil Kumar Yadav, with a prayer to release him on bail in

Case Crime No. 36 of 2021, under Section- 409 I.P.C., Police Station- Kotwali, District- Ghazipur, during pendency of trial.

Having heard learned counsel for the parties and upon perusal of material brought on record as well as complicity of accused, he deserves to be enlarged on anticipatory bail for a period of 45 days or till the cognizance is taken by the Magistrate on the police report submitted u/s 173 (2) Cr.P.C. before the competent Court, whichever is earlier, on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station/ concerned Court, subject to the following conditions :-

(i) The applicant shall make himself available for interrogation by the police officer as and when required;

(ii) 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;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is in progress, who shall ensure the compliance of present order

Order Date :- 18.3.2021 "

8. On the aforesaid premise, learned counsel for applicant contends that named accused have already been granted protection by this Court. He then submits that there is no such distinguishing feature on the basis of which case of present

applicant can be distinguished from aforesaid co-accused on the basis of which, protection to applicant could be denied. It is thus urged by learned counsel for applicant that liberty of applicant is also liable to be protected by this Court by extending the benefit of anticipatory bail in his favour on the ground of parity also.

9. Per contra, the learned A.G.A. has opposed this application. However, learned A.G.A. could not dispute the factual and legal submissions urged by learned counsel for applicant nor he could point out any such material fact so as to deny the benefit of anticipatory bail to applicant.

10. Having heard learned counsel for applicant, learned A.G.A. for State, for the facts and reasons mentioned in above orders dated 17.03.2021 and 18.03.2021, accusations made, complicity of applicant but without expressing any opinion on merits of the case, applicant has made out a case for bail.

11. Notices on behalf of opposite party no.1 and 2 have been accepted by learned A.G.A. He prays for and is granted four weeks time to file counter affidavit. Applicant will have two weeks thereafter to file rejoinder affidavit.

12. List for orders after expiry of aforesaid period.

13. In view of above, in the event of arrest, applicant- **Shiv Prakash** shall be released in Case Crime No.0036 of 2021, under section 409 IPC, Kotwali Ghazipur, District- Ghazipur on ad-interim anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station/ concerned Court with the following conditions:-

(i) The applicant shall make himself available for interrogation

by the police officer as and when required;

(ii) 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;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

14. In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

15. The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

16. The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is in progress, who shall ensure the compliance of

present order.

17. In the event of arrest, the applicant shall be released on anticipatory bail till cognizance is taken by the Court on the police report, if any, under section 173 (2) Cr.P.C. before the competent Court on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station/ concerned Court with the following conditions:-

(i) The applicant shall make himself available for interrogation by the police officer as and when required;

(ii) 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;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if

investigation is in progress, who shall ensure the compliance of present order.

Order Date :- 10.3.2022
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