

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11761 of 2021

Applicant :- Radhe Lal

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

Counsel for Applicant :- Lal Mani Singh, Praveen Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

Heard Sri Lal Mani Singh, learned counsel for the applicant, Sri B.B. Upadhyay, learned A.G.A. for the State and perused the material on record.

The applicant Radhe Lal was granted anticipatory bail vide order dated 01.9.2021 by a co-ordinate Bench of this Court.

The said order is quoted herein below:-

"(1) Heard learned counsel for the applicant and learned A.G.A. and perused the record. Supplementary affidavit filed by learned counsel for the applicant today in the Court is taken on record.

(2) The instant application is being moved by the applicant namely Radhe Lal invoking the powers of Section 438 Cr.P.C. that he has every reason to believe that he may be arrested on the accusation of having committed a non-bailable offence in connection with Case Crime no.1504 of 2020, under Sections 420, 467, 468, 471 and 120-B I.P.C., Police Station-Kalyanpur, District-Kanpur Nagar.

(3) From the record, it is evident that the applicant has approached this Court straightway without getting his anticipatory bail rejected from the court of sessions.

(4) Learned counsel for the applicant has drawn attention of the Court to Clause-7 of Section 438 Cr.P.C. (U.P. Act No.4 of 2019), which read thus :

"(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session."

(5) After interpreting the aforesaid clause, it is clear that the Legislature in its own wisdom bestowed two avenues upon the accused with a rider that if the accused has chosen to come to the High Court straightway, then he would not be relegated back to exhaust his remedy before the Court of Session first. In this regard, learned counsel for the applicant has placed reliance upon the Full Bench judgment of this Court in the case of Ankit Bharti and others Vs. State of U.P. and another, 2020(3) ADJ 575 in which the Bench has directed to spell out the

extraordinary and special reasons for coming to the High Court. After perusal of those pleadings/reasons in this regard, this Court is satisfied that the reasons mentioned therein are quite convincing to entertain the present anticipatory bail application before this Court itself.

(6) 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.

(7) It has been contended by the learned counsel for the applicant that the applicant has got no criminal antecedents and he has not undergone any imprisonment after conviction by any court of law in relation to any cognizable offence previously. An assurance was also advanced by learned counsel for the applicant on behalf of the applicant that he would render all requisite co-operation and assistance in the process of law and with the investigating agency and shall not create any hindrance to reach to its logical conclusion and shall not flee away from the course of justice.

(8) Learned counsel for the applicant has strenuously argued that the applicant has been made target just to besmirch his reputation and belittle him in the public estimate by the informant. Number of arguments were advanced by learned counsel for the applicant to demonstrate the falsity of the accusation made in the FIR against the applicant by the informant. Learned counsel for the applicant has also relied upon the judgements in the cases of Arnesh Kumar vs State of Bihar and another, (2014) 8 SCC 273; Joginder Kumar vs State of U.P. and others (1994) 4 SCC 260 and Sanaul Haque vs State of U.P. and another, 2008 Cri. LJ 1998, to buttress his contentions.

(9) In this backdrop of legal as well as factual proposition, contention raised by learned counsel for the applicant is that name of the informant is Radhey Lal Goyal s/o Ram Milan@Rami Mal whereas the accused-applicant no.1 too is Radhey Lal having father's name as Late Ram Milan@Ramilal. Taking the advantage of this extra-ordinary strange situation, there are volley of litigations by the informant against the applicant. The next contention is that applicant is the owner of Arazi No.782 and the informant, after taking advantage of his name and his paternity, wants to grab the property of the applicant. The sole and gist of the entire controversy is regarding the identity of the land in question for which proper demarcation is required to be done and for this, remedy lies somewhere else. However, the applicant is ready to cooperate in the investigation. Keeping in view the nature of offence, the applicant apprehends his arrest.

(10) Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application by mentioning that though the applicant has got no criminal antecedents but there is nothing on record to satisfy that the police personnel are

after the applicant to arrest him. The alleged apprehension on behalf of applicant is imaginary and unfounded one. Learned A.G.A. has also submitted that in view of the seriousness of the allegations made in the F.I.R., the applicant is not entitled for any relaxation from this Court.

(11) After the close scrutiny of Section 438 Cr.P.C.(U.P. Act No.4 of 2019) and its relevant clauses, the Court is satisfied that the applicant has made out the case for interim order protecting the liberty of applicant in connection with aforesaid case crime pending investigation.

(12) Without expressing any opinion upon ultimate merits of the case either ways which may be adversely affect the investigation and subsequent stage of the case, the Court directs that in the event of arrest of the applicant in aforesaid case crime, he shall be released on bail on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Arresting Officer till the submission of report under section 173(2) Cr.P.C. by the investigating officer with the conditions that :

(i) The applicant shall make himself available for the interrogation by the police as and when required. The Investigating Officer of the case would give 48 hours prior notice or telephonically inform the concerned accused-applicant to remain available to him for the purposes of interrogation and the accused-applicant is obliged to abide by such directions.

(ii) The applicant shall not directly or indirectly make any inducement, threats or comments to any person acquainted with the facts of the case so as to dissuade him from disclosing the correct facts to the court or to the police officer.

(iii) The Investigating Officer of the case would make all necessary endeavour to gear up the investigation in utmost transparent and professional way and would try to conclude the same within a maximum period of 90 days. During this period the accused-applicant would not leave the State of Uttar Pradesh without informing the Investigating Officer of the case and sharing his contact number.

(iv) In the event the applicant is having his passport, he will have to surrender the same before the concerned SP/SSP of the District till the submission of report u/s 173(2) Cr.P.C.

(13) In the event, the applicant breaches or attempts to breach any of the aforesaid conditions or wilfully violate above conditions or abstains himself from the investigation, it would be open for the Investigating Officer or the concerned authority to apply before the court of Session for cancellation of interim protection and the Court of Session has every liberty and freedom to revoke the anticipatory bail after recording the reasons for the same.

(14) While entertaining the instant anticipatory bail application before this Court, there is no concrete material on record except the canvassed apprehension of the applicant on his arrest and the severity of accusation made in the FIR

against him. After being satisfied on the limited material, the interest/liberty of the applicant is protected by this Court with aforesaid riders during the course of investigation, after recording its nascent satisfaction. However, continuance of instant interim protection or ultimate fate of instant application would be decided, subject to the counter affidavit filed by learned A.G.A. and the material brought on record against the applicant during the investigation.

(15) Learned A.G.A. should file counter affidavit soon after submission of report under section 173(2) Cr.P.C. or 90 days, whichever is earlier.

(16) Life of the instant protection would continue till the submission of charge sheet or 90 days, whichever is earlier.

(17) List this anticipatory bail application after two months before appropriate Court. "

In view of the said order, no order is needed to be passed as the order is very specific particularly in para 16 of it.

The present anticipatory bail application is allowed.

(Samit Gopal,J.)

Order Date :- 15.12.2021

Naresh