

HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No.1148 of 2024

Rohit Kumar

...Applicant

Versus

State of Uttarakhand

...Respondent

Present:-

Mr. Bharat Singh, Advocate for the applicants.

Mr. S.C. Dumka, A.G.A. for the State.

Mr. Arvind Vashistha, Senior Advocate, assisted by
Mr. Rachit Manglik, Advocate for the informant.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant seeks anticipatory bail in FIR No. 749 of 2024, under Sections 115 (2), 318 (4), 333, 351 (2), 352, 61 (1), 140 (1) (b), 140 (2) of the Bharatiya Nyaya Sanhita, 2023, Police Station Kotwali Jwalapur, District Haridwar.

2. Heard learned counsel for the parties and perused the record.

3. According to the FIR, the applicant alongwith the co-accused induced the informant to invest money in property business and took Rs.60 Lakh from the informant.

4. Learned counsel for the applicant would submit that the FIR is delayed by 14 days. The applicant has no criminal history.

5. Learned Senior Counsel for the informant would submit that it is the applicant, who alongwith the co-accused cheated the informant. He had filed repeated anticipatory bail applications before the court below, which have been rejected. He also filed a writ petition seeking interim protection from the Court, but the interim protection was rejected on 04.10.2024. Thereafter, other cases were also lodged against the applicant and non bailable warrant and process under Section 82 of the Code of Criminal Procedure, 1973 ("the Code") have also been issued against the applicant. He would submit that, in fact, the applicant also tried to kidnapped the child of the informant and it is being substantiated during investigation.

6. Learned State counsel would submit that non bailable warrant and process under Section 82 of the Code have already been issued against the applicant. He would submit that two more case have already been lodged against the applicant. He would also submit that during investigation, there has been substance in the allegations against the applicant that he tried to kidnap the child.

7. Learned counsel for the applicant would submit that issuance of proclamation under Section 82 of the Code does not create a complete embargo for considering the anticipatory bail application. He would refer to the

principles of law, as laid down in the case of Asha Dubey Vs. State of Madhya Pradesh, Criminal Appeal no. 4564 of 2024 (SLP (CRL.) No. 13123 of 2024) dated 12.11.2024.

8. It is a stage of anticipatory bail. Much of the discussion is not expected of. Arguments are being appreciated with the caveat that any observation made in this order shall have no bearing at any subsequent stage of the trial or in any other proceedings.

9. It is true that there cannot be any complete embargo in the exercise of power of this Court insofar as grant of anticipatory bail is concerned. But then, the facts and circumstances of each case are to be examined.

10. In the case of Srikant Upadhyay and others Vs. State of Bihar and others, 2024 SCC Online SC 282, the Hon'ble Supreme Court discussed all these aspects and in para 25 observed that **“At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice.”**

11. There are allegations against the applicant that he cheated the informant to the tune of Rs.60 Lakh. It is

stated that repeated anticipatory bail applications of the applicant have already been rejected. It is also admitted that the applicant has filed a criminal writ petition seeking interim protection, which was rejected on 04.10.2024 in WPCRL No.1094 of 2024. What is stated by the prosecution is that the warrant of arrest and the proclamation under Section 82 of the Code have already been issued against the applicant. All these circumstances taken together, commands this Court to reject the anticipatory bail application.

12. Having considered, this Court is of the view that there is no reason to grant anticipatory bail to the applicant. Accordingly, the anticipatory bail application deserves to be rejected.

13. The anticipatory bail application is rejected.

(Ravindra Maithani, J.)
12.12.2024