

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1327 of 2022

Applicant :- Anurag Dubey (Second Abail)

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

Counsel for Applicant :- Sheo Prakash Singh

Counsel for Opposite Party :- G.A., Ayodhya Prasad Mishra
A.P. Mishra, Rituraj Mishra

Hon'ble Rajesh Singh Chauhan, J.

Heard Sri Sheo Prakash Singh, learned counsel for the applicant, Sri Vinay Kumar Shahi, learned AGA for the State and Sri A.P. Mishra, learned counsel for the informant/complainant.

Counter affidavit filed by the learned AGA is taken on record.

As per learned counsel for the applicant, the present applicant is apprehending his arrest in Case Crime/ F.I.R. No.407 of 2020, under Sections 147, 148, 149 & 307 IPC, Police Station - Kotwali Nagar, District - Pratapgarh.

This is the second anticipatory bail application as the first anticipatory bail application has been rejected on 04.10.2021 passed by this Court in Criminal Misc. Anticipatory Bail Application No.11066 of 2021.

Addressing on the ground of maintainability, learned counsel for the applicant has submitted that the Hon'ble Judge, who has rejected the first anticipatory bail application, has been transferred to another State, therefore, the second anticipatory bail application may be entertained by the regular Court. He has also submitted that the ground of rejection of first anticipatory bail application has been washed off inasmuch as vide order dated 28.10.2021 passed by this Court in Misc. Single No.22124 of 2021 allowed the petition under Section 482 Cr.P.C. of the present applicant quashing the impugned order whereby the proclamation under Section 82 Cr.P.C. was issued against him. Learned counsel for the applicant has also submitted that after rejection of his anticipatory bail application on 04.10.2021 and the order dated 28.10.2021 (Annexure No.2), one co-accused, namely, Varun Mishra has been granted anticipatory bail by this Court vide order dated 28.03.2022 passed in Criminal Misc. Anticipatory Bail Application No.11016 of 2021. Not only the above, after rejection of first anticipatory bail application of the applicant on 04.10.2021, one

another co-accused, namely, Subhendra Mani Tiwari has been granted anticipatory bail by this Court vide order dated 18.10.2021 passed in Criminal Misc. Anticipatory Bail Application No.11019 of 2021. There is one more co-accused, namely, Pankaj Singh alias Ajay Singh, who has been granted anticipatory bail by this Court vide order dated 28.03.2022 passed in Criminal Misc. Anticipatory Bail Application No.10905 of 2021.

Not only the above, attention has been drawn towards one medical certificate dated 03.08.2022, which is taken on record, which discloses that the present applicant has undergone kidney transplant on 01.04.2022, therefore, his physical/ medical condition is so sensitive and he should be kept under isolation to avoid further infections. Therefore, Sri Singh has submitted that since the reason to reject the first anticipatory bail application i.e. present applicant was declared absconder as proclamation under Section 82 Cr.P.C. was issued against him has been washed off as this Court vide order dated 28.10.2021 set aside said order. Other co-accused persons have been granted anticipatory bail subsequent to the rejection of first anticipatory bail application of the present applicant and there is no bar to move the second anticipatory bail application, if the applicant is able to demonstrate new/ fresh ground. Besides, physical/ medical condition of the present applicant is so critical as he has recently undergone kidney transplant on 01.04.2022, therefore, if, in such condition, he is arrested, his life would be endangered and his fundamental right enshrined under Article 21 of the Constitution of India would be violated.

Sri Vinay Kumar Shahi, learned AGA has informed the Court that this is a case wherein the cross FIRs have been lodged from both the sides and charge sheet has been filed. So far as the medical condition of the present applicant is concerned, as per Sri Shahi, he has nothing to say. He has also submitted that he may not dispute those facts that the other co-accused persons have been granted anticipatory bail subsequent to the rejection of first anticipatory bail application of the present applicant.

However, Sri A.P. Mishra, learned counsel for the informant/ complainant has drawn attention of this Court towards his counter affidavit wherein he has shown the orders of the Hon'ble Apex Court whereby anticipatory bails granted in favour of other co-accused persons have been set aside and the issue has been remanded to the High Court to reconsider the same. So far as physical/ medical condition of the present applicant is concerned, Sri A.P. Mishra has submitted that he has nothing to say on that, but he has submitted that since the first anticipatory bail application of the applicant has been

rejected, therefore, instead of filing the second anticipatory bail application, the applicant should file his regular bail application and may seek the benefit disclosing his medical condition to the regular court.

Having heard learned counsel for the parties and having perused the material available on record, I find that in view of the aforesaid facts and circumstances, the second anticipatory bail application is maintainable. If the reason for rejecting the first anticipatory bail application has been washed off vide subsequent order dated 28.10.2021 (Annexure No.2) and other co-accused persons have been granted anticipatory bail, it may be considered as a fresh/ new ground. I am aware of the law that the Hon'ble Apex Court has observed that successive anticipatory bail applications on the same grounds and facts may not be entertained but in the present case, the ground is different, rather it is a fresh ground and the reason for rejecting the first bail application has been washed off, therefore, the second anticipatory bail application may be considered. There is one relevant aspect relating to physical/ medical condition of the present applicant, which discloses that the present applicant has undergone kidney transplant on 01.04.2022 and the patient, who has undergone kidney transplant recently, is prone to infections, therefore, in such condition, if the applicant is taken into custody for any reasons, his life would be endangered. However, it is observed that the present applicant may not take benefit of his physical/ medical condition and he will cooperate with the trial proceedings to the best of his medical condition and capability. If at any place it is found that he deliberately avoids the trial proceedings and misuses the liberty of bail, any appropriate application may be filed seeking cancellation of his bail and that application may be considered at the earliest.

Therefore, without entering into merits of the issue, in view of the facts and circumstances considered above, I find it appropriate that liberty of the present applicant be protected till conclusion of the trial proceedings.

Accordingly, the instant anticipatory bail application is **allowed**.

It is directed that in the event of arrest, applicant- Anurag Dubey shall be released on anticipatory bail in the aforesaid case crime number on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the arresting authority/ court concerned with the following conditions:-

1. that the applicant shall make himself available for

2. 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence;
3. that the accused-applicant shall not leave India during pendency of the investigation/trial without prior permission of the concerned court and shall also surrender his passport, if any, before the concerned Court forthwith.
4. that in default of any of the conditions mentioned above, the investigating officer shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant;
5. that the applicant shall not pressurize/ intimidate the prosecution witness;
6. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
7. that in case of breach of any of the above conditions, the court below shall have the liberty to cancel the bail.

[Rajesh Singh Chauhan,J.]

Order Date :- 20.9.2022
RBS/-