

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 6730 of 2024

Applicant :- Manish Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Hanuman Prasad Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

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

2. This application has been filed by applicant for granting anticipatory bail in Case Crime No. 278 of 2024, under Section 408, 409 I.P.C., Police Station Prem Nagar, District Jhansi.

3. It is submitted by learned counsel for the applicant that applicant is working on the post of Chief Cashier in the Bank. The Assistant Treasurer Officer-Sri Sunil Kumar Tiwari had deposited an amount of Rs. 39,34,489/- with the bank in cash, however, Sunil Kumar Tiwari was accompanied by Security Guard-Sri Yogendra Singh. Sri Sunil Kumar Tiwari went back to his office, however, Yogendra Singh was present. Subsequently, Yogendra Singh went back without taking receipt of the aforesaid cash, thereafter, on the other day a person was sent to the bank for collecting the receipt, then in respect of receipt of Rs. 39,34,489/-, the receipt of Rs. 11,34,489/- was given. Thereafter the FIR has been lodged by the informant against applicant.

4. Learned counsel for the applicant submits that applicant had received an amount of Rs. 39,34,489/-, however, subsequently, Yogendra Singh had taken away from the applicant an amount of Rs. 28 lacks and a new receipt of Rs. 11,34,489/- was submitted and the previous receipt was cancelled and given back. Learned counsel for the applicant submits that on the instructions being given by Yogendra Singh the aforesaid transaction has taken place. Learned counsel for the applicant further submits that the aforesaid incident has been recorded in the C.C.T.V. footage of the bank. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the case.

5. On a pointed query being made to the learned counsel for the applicant that in which paragraph pleadings have been made

with regard to the fact that the aforesaid transaction, as has been claimed by the applicant, is recorded in the C.C.T.V. footage of the bank and whether the same has been recovered by police or not. Learned counsel for the applicant is unable to show from the averments made in paragraphs of the affidavit filed in support of the present anticipatory bail application.

6. A counsel can only argue a fact which has been pleaded specifically in the anticipatory bail application. A counsel is not authorized to make statement of fact which has not been specifically pleaded, accordingly, the submission of learned counsel for the applicant in this respect cannot be accepted, neither before this Court any vouchers has been produced nor any other material has been produced to indicate the innocence of the applicant.

7. The power of anticipatory bail is somewhat extraordinary in character and it is to be exercised only in exceptional cases where the person is falsely implicated. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule.

8. The court owes duty that justice is done to all the parties (i.e. accused, prosecution, informant, complainant and victim). The citizens in terms of constitutional mandate are required to abide by law. Where from the material and allegation against an accused, offence is made out, the accused is required to show exceptional circumstances warranting the protection of liberty. No circumstances have been shown by applicant(s) to demonstrate that personal liberty of accused in the facts and circumstances of the case is required to be protected. In the facts and circumstances of the case, the grant of anticipatory bail would lead to miscarriage of justice.

9. The Court is required to exercise jurisdiction of anticipatory bail on sound judicial principles. The court should be slow to grant anticipatory bail to an accused who does not abide by law and commits an offence. In the present case, it is not shown by the applicant(s) that the prosecution or complainant has falsely implicated the applicant(s). One cannot lose sight of the fact that unwarranted protection to an accused has adverse effect on the peace and tranquillity of society at large and effects maintenance of law and order in the society. The jurisdiction of anticipatory bail permits the accused to be not produced before the ordinary jurisdictional court although ordinary jurisdictional court at grass root level have greater experience and exposure with regard to situation of maintenance of law and order at the local place. The process of anticipatory bail permits consideration of anticipatory bail by Session Court or High

Court and not by Magistrate courts. Facts and circumstance of each case is to be examined at the time of consideration of anticipatory bail.

10. A perusal of the First Information Report/ Complaint and the material available during investigation would show that offence is made out against the applicant(s). It is not a case where no bailable offence is made out against an accused.

11. The grant of anticipatory bail to accused in the present case would have adverse impact on protection of rights and interest of the informant/complainant/victim.

12. The nature and gravity of offence and the role play by applicant disentitle the applicant to grant of anticipatory bail. Applicant has failed to show that there is harassment, humiliation and unjustified detention of applicant. It is also not shown that there is over implication of the applicant or the applicant has been falsely implicated or there is frivolity in prosecution. A person who has committed an offence is not entitled to grant of discretionary jurisdiction of anticipatory bail unless it is shown that the accused is falsely implicated or is entitled for protection of liberty. A person who has violated the law and has not shown exceptional circumstances is not entitled to the benefit of extraordinary jurisdiction. No extraordinary circumstances have been shown by applicant(s) that refusal to grant anticipatory bail would lead to injustice. Even otherwise, the applicant has failed to demonstrate factors which would entitle the applicant for anticipatory bail.

13. In view of the above, the present anticipatory bail application lacks merit and is accordingly dismissed.

Order Date :- 13.8.2024

S.Prakash