

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 5239 of 2021

Applicant :- Naveen Kumar Rohilla And Another

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

Counsel for Applicant :- Prakash Chandra Srivastava

Counsel for Opposite Party :- G.A.,Lalit Kumar Misra

Hon'ble Siddharth,J.

As per Resolution dated 07.04.2021 of the Committee of this Court for the purpose of taking preventive and remedial measures and for combating the impending threat of Covid-19, this case is being heard by way of virtual mode.

Heard learned counsel for the applicants; Sri Lalit Kumar Misra, counsel for the informant and learned A.G.A for State through video conferencing.

The instant Anticipatory Bail Application has been filed with a prayer to grant an anticipatory bail to the applicants, namely, **Naveen Kumar Rohilla and Madan Lal**, in Case Crime No. 0046 of 2021, under Section- 380 IPC, Police Station- Fatehganj West, District- Bareilly.

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.

The informant is a defaulting borrower of Bank of Baroda. In proceedings under the SARFAESI Act, 2002, the property of the institution of the informant has been taken into possession by the bank and subsequently sold to the auction purchaser. There is allegation in the FIR that the properties of the institution of the informant have been stolen by the applicants. The applicants are the Bank Officers and they were entrusted with the recovery proceedings by the bank.

Counsel for the applicants has submitted that when the possession of the property was taken the inventory of the goods kept therein was prepared and videography of the same was

also done. The same is still available. The allegation in the FIR is that on 02.02.2021 the informant went inside the sold property and found good kept therein to be stolen is false since at that time the property was under the control of the recovery agent and on account of security it was impossible for the informant to enter into the premises. They have definite apprehension of their arrest by the police.

Learned AGA 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. He has also submitted that final report has been submitted against the applicants.

After considering the rival submissions, this Court finds that there is a case registered against the applicants. It cannot be definitely said when the police may apprehend them. 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 their antecedents and also the second surge in the cases of novel coronavirus and possibility of further surge of the pandemic, the applicants are 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 applicants shall be released on anticipatory bail. Let the applicants involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court/ Investigating Officer concerned with the following conditions:-

1. The applicants shall, at the time of execution of the bond, furnish their address and mobile number and shall not change the residence till the conclusion of investigation/ trial without informing the Investigating Officer of the police/ the Court concerned of change of address and the reasons for the same before changing the same.

2. The applicants shall not leave the country during the pendency of trial/ investigation by police without prior permission from the concerned trial Court.

3. The applicants shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the Investigating Officer of the police;

4. The applicants shall surrender their passports, if any, to the concerned Court/ Investigating Officer forthwith. Their passports will remain in custody of the concerned Court/ Investigating Officer till the investigation is completed. In case they have no passports, they will file their affidavits before the Court/ Investigating Officer concerned in this regard.

5. That the applicants 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 their from disclosing such facts to the Court or to any police officer;

6. The applicants shall maintain law and order.

7. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.

8. In case, the applicants misuse the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98** and the Government Advocate/informant/complainant can file bail cancellation application.

9. The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and proceed against them in accordance with law.

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

11. 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.

Order Date :- 24.5.2021

Rohit