

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 20301 of 2021

Applicant :- Dr. Ayub

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

Counsel for Applicant :- R.K. Sinha, R. B. Tripathi, Sr.
Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori, J.

Heard Shri V.P. Srivastava learned Senior Counsel assisted by Shri R.K. Sinha, learned counsel for the applicant, Shri Vishwa Deepak Mishra, learned A.G.A. for the State and perused the material on record.

The instant Anticipatory Bail Application has been filed by the applicant namely, **Dr. Ayub** with a prayer to grant him anticipatory bail in Case Crime No. 690 of 2016, under Sections 295A, 500, 504, 505, 506, IPC, Police Station - Cantt., District - Gorakhpur after rejecting anticipatory bail application of the applicant by Sessions Judge, Gorakhpur vide order dated 17.12.2021.

Brief facts of the case are that the first information report dated 26.7.2016 has been lodged by Sunil Singh against the applicant and unknown persons stating therein that on 25.7.2016 when the first informant along with two companions were coming from the side of planetarium, they saw that there was a huge crowd in the Champa Devi Park and from the stage the applicant, who was the National President of Peace Party and Member of Legislative Assembly, Khalilabad, was abusing the then Member of Parliament, Gorakhpur and Goraksha Pethadheeshwar by saying that he was a terrorist and would kill him wherever he had been found and would capture the Gorakhnath Temple.

After lodging the first information report and completing the investigation, charge sheet has been submitted on 11.4.2017 and concerned magistrate has taken cognizance on 20.3.2021 in the present matter.

The submission of the learned senior counsel for the applicant is that the applicant is innocent and has been falsely implicated in the present case due to political rivalry. It is further submitted that the applicant came to know for the first time on 14.10.2021 about the present case and no notice has been served upon the

applicant under Section 41A, Cr.P.C. He applied for anticipatory bail before the court below, which has been rejected on 17.12.2021. It is further submitted that this Court has granted interim anticipatory bail to the applicant on 7.1.2022, which is extended till date. It is further submitted that first informant was the President of Hindu Yuva Vahini Sangathan. At that time the applicant was National President of Peace Party and renowned surgeon of Barhalganj, District Gorakhpur. It is further submitted that no electronic evidence has been collected against the applicant to prove the case. First information report has been lodged on the basis of false and frivolous allegations with object to gain political mileage. It is further submitted that offence under Section 295A, 500, 504, 505, 506, IPC is not made out against the applicant. All the offences except Section 295A & 506, IPC are bailable offence. It is further submitted that after filing of counter affidavit, learned A.G.A. has not pointed out as to what material was recovered from the possession of the applicant. It is further submitted that no date and time of the incident has been mentioned in the FIR.

It is further submitted that the applicant has previous criminal history of five other cases, which are mostly related to Representation of People Act and in all the cases, the applicant has been granted bail.

Learned A.G.A. has vehemently opposed the prayer for anticipatory bail of the applicant and submits that the applicant has criminal history of ten cases apart from the present case. It is further submitted that at the time of lodging the present FIR, the applicant has criminal history of only five cases, which are related to political rivalry.

It is settled position of law that the anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied, where the Court is prima facie of the view that the applicant has falsely roped in the crime and would not misuse his liberty.

Considering the facts and circumstances of the case and the law laid down by the Apex Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC Online SC 98**, ground for grant of anticipatory bail is made out.

In case of arrest, the applicant, **Dr. Ayub** is directed to be enlarged on anticipatory bail in above case crime number till the conclusion of trial, on his furnishing personal bond of Rs. 25,000/- and two sureties each of like amount before the Station

House Officer of Police Station/Court concerned with the following conditions:-

- (i) The applicant shall make himself available for interrogation by the police officer as and when required, if investigation is in progress;
- (ii) 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 such person from disclosing such facts to the Court or to any police officer;
- (iii) The applicant shall not leave the country without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned/Court concerned;
- (iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked ;
- (v) 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.

The Investigating Officer will continue with the investigation, if it is in progress and will not be affected by this order.

A copy of this order shall also be produced before the S.P/S.S.P concerned by the applicants, within a week, if the investigation is still in progress, who shall ensure compliance of this order.

With the aforesaid directions, the present Anticipatory Bail Application is **allowed**.

Order Date :- 26.4.2022

T. Sinha