

Court No. - 88

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2904 of 2022

Applicant :- Ali @ Ali Ahmad

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Shadab Ali, Khan Saulat
Hanif, Ravindra Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Aslam, J.

Heard Sri Daya Shanker Mishra, learned Senior Advocate and Shri Anil Tiwari, Senior Advocate, assisted by Shri Shadab Ali, Sri Abhishek Mishra and Shri Chandra Kesh Mishra, learned counsel for the applicant and Shri Manish Goyal, learned Additional Advocate General assisted by Shri Ashutosh Sand and Shri Rajesh Mishra, learned AGA and Shri Abhijeet Mukherji, State Law Officer appearing on behalf of State and perused the record.

The instant anticipatory bail application U/S 438 Cr.P.C has been filed on behalf of the applicant **Ali @ Ali Ahmad** with a prayer to release him on bail in Case Crime No.732 of 2021, under sections 147, 148, 149, 323, 504, 506, 307, 308, 386 and 427 IPC, Police Station Kareli, District Prayagraj in the event of his arrest by police.

The brief facts of the case are that the informant Jeeshan S/o Mohd. Zai has lodged a first information report on 31.12.2021 at 21.18 P.M. at Police Station Kareli, District Prayagraj on the basis of written complaint, wherein it is alleged that he is resident of 207, Chakia, Police Station Khuldabad, District Prayagraj. On 31.12.2021 at 3.45 P.M. when he was sitting in his house along with family at Ainuddinpur, then applicant Ali @ Ali Ahmad S/o Atiq Ahmad, Mohd. Asad, Arif alias Kachholi, Sanjay Singh, Imran alias Guddu, Saif alias Mama,

Aman, Kullu (Mausera brother of Atiq Ahmad) and 15 other persons arrived at his house in 3-4 four wheeler vehicles, thereupon applicant Ali has put pistol on his temporal at the skull and stated him to talk his father Atiq Ahmad, when he refused to talk his father Atiq Ahmad, he demanded Rs.5/- crores as 'rangdari' or he will execute sale-deed of some land situate in village Ainuddinpur in the name of her wife and threatened him to kill and his family. He refused to do so, thereupon all the aforesaid accused persons along with 15 unknown persons have started beating him with rifle, pistol and Tamancha and they also beaten his relative, Gufran, Fahad and Ali Zafar and due to which, they sustained injuries in the head, hand, legs and stomach. Thereafter, they were sent hospital for treatment and they demolished their office by JCB of 'Nate' and accused applicant Ali @ Ali Ahmad and Asad opened fire by their pistols and anyhow, they saved themselves by taking shelter of wall and on the reaching of police they had fled away from there after extending threat to kill the informant.

The learned counsel for the applicant has also filed supplementary affidavit annexing photostat copy of statement of first informant u/s 161 Cr.P.C as Annexure No.SA-1, second statement of first informant as Annexure No.SA-2, photostat copy of statement of first informant u/s 164 Cr.P.C as Annexure No.SA-3 and photostat copy of criminal history of Mohd. Zeeshan S/o Mohd. Zai as Annexure No.SA-4 and photostat copy of Anticipatory Bail order passed by co-ordinate Bench of this Court vide order dated 31.3.2022 passed in Criminal Misc.Anticipatory Bail Application No.2038 of 2022 (Imran Guddu Vs. State of U.P. and another) respectively.

Counter Affidavit has been filed on behalf of State and along with Counter Affidavit, he has filed Call Details Report (CDR)

as **Annexure CA-1** (8 pages), copy of NBW issued against the applicant Ali @ Ali Ahmad dated 25.01.2022 as **Annexure No.CA-2**, Office Note dated 9.4.2022 issued by Inspector General of Police, Prayagraj Zone, Prayagraj as **Annexure No.CA-3**, by which, Ali @ Ali Ahmad was declared absconder and declared that the person who will arrest him may get reward of Rs.50,000/-, previously this reward was declared as Rs.25,000/-. The police has also submitted a report dated 3.2.2022 of police station Kareli, district Prayagraj regarding absconding of the accused applicant and others when the police had gone for execution of NBW as Annexure **No.CA-4**.

It is submitted by the learned counsel for the applicant that the applicant comes from highly reputed political family of State of Uttar Pradesh and his father Shri Atiq Ahmad was M.L.A from Allahabad City of West Constituency for 05 consecutive terms and one term Member of Parliament from Phoolpur Lok Sabha Constituency and uncle of the applicant, Khalid Azim alias Ashraf was the M.L.A from the Samajwadi Party from Allahabad City of West Constituency.

It is further submitted that the informant is the Mousa (Khaloo) of the applicant and his father were doing the work of real estate business together.

It is further submitted by the learned counsel for the applicant that the first informant Mohd. Zeeshan is the younger brother of applicant's Mousa, Imran and the first informant, his brother Kamran and Imran all are engaged in real estate business. The father of the applicant when gone in jail, had given a huge amount of money to the first informant and his brother Imran for investment in his business but after long incarceration of his father, Atiq Ahmad, and looking no possibility of his coming out in near future from jail, the informant and his brother turned

become dishonest and the present F.I.R has been maliciously lodged to usurp money & property in connivance with a State Government Minister who wants to secure minority votes for his party in the forthcoming State Assembly Election. It is further submitted that the informant and his brother Mohd. Imran are well known property grabbers and bhu-mafias inasmuch as the first informant Mohd. Zeeshan is a scheduled offender and history sheeter of Khuldabad police station and a dozens of criminal cases of serious nature are registered and pending against him. The first informant has been in contact with the high profile local leader of B.J.P as well as sitting Ministers of the State Government and in a bid to secure Muslims votes for the party in the forthcoming assembly election the first informant has been indirectly pressurizing the applicant's family due to their political ideology and commitment to secularism did not yield to the pressure, which resulted in lodging of present F.I.R by the first informant a ploy to further selfish political end.

It is further submitted that the applicant has come to know that the police has obtained nonailable warrants of the applicant to arrest and confine the applicant in prison and the career of 19 years old law Ist year student is at the stake. It is further submitted that due to B.J.P. rule in Centre as well as in the State of U.P. , the administration is leaving no stone unturned in oppression of the applicant's family. There is political motivation and malice behind lodging of the present FIR against the applicant and others. At the time of the alleged incident, Sanjay Singh, Mohd. Imran and two of the named accused were present in the Sub Registrar Office-II, Sadar, Prayagraj and they had executed a sale deed on 31.12.2021 and were present in the Sub Registrar Office-II Sadar, Prayagraj at 3:32:55 p.m. and during the course of investigation the

Investigating Officer also recorded the statement of Sub Registrar-II Sadar, Prayagraj. It is further submitted that the case of the applicant is culminated because at the time of incident, the father of the applicant was detained in jail at Gujarat, no phone call was made to any mobile number of Gujrat from the aforesaid mobile of the applicant. It is further submitted that till date, the investigation of the present case is going on and no charge sheet has been submitted against the applicant. It is further submitted that the applicant filed a Misc. Application before the Court concerned on 10.01.2022 stating therein that the police station Kareli is raiding the house of the applicant since last 10 days and harassing the other family members of the applicant.

It is further submitted that co-accused Sanjay Singh has already been granted anticipatory bail by co-ordinate Bench of this Court vide order dated 22.2.2022 passed in Criminal Misc. Anticipatory Bail Application No.1546 of 2022 and co-accused Imran Guddu has also been granted anticipatory bail by co-ordinate Bench of this Court vide order dated 31.3.2022 passed in Criminal Misc. Anticipatory Bail Application No.2038 of 2022. It is further submitted that the injury sustained by the injured persons are all simple in nature. It is further submitted that the injury reports are fabricated.

It is further submitted by the learned counsel for the applicant that the associates of the applicant had opened fire, which shows that the FIR was based on concocted version. It is further submitted that in the office memo of the I.G. it is stated that after making enquiry an award shall be given to the person who will arrest the applicant. He has further submitted that no offence under section 386 IPC is made out in view of the law laid down by the Hon'ble Supreme Court in **Issac Isanga**

Musuniba and others Vs. State of Maharashtra and others, (2014)15 SCC357. He has further submitted that learned lower Court has illegally issued NBW and the learned Magistrate ought to have issued summon first and relied upon the law laid down by the Hon'ble Supreme Court in **State of U.P. Vs. Poosu and another, 1976 (3) SCC 1.** He has also submitted that a public prosecutor appointed under Section 24 Cr.P.C occupies a statutory office of high regard. Rather than a part of the investigating agency, they are instead, an independent statutory authority who serve as officers to the Court. The role of the public prosecutor is intrinsically dedicated to conducting a fair trial, and not for a "thirst to reach the case in conviction."

He has also submitted that before issuing the process of 82-83 Cr.P.C, the Court has to ensure that the NBW cannot be served due to avoiding the arrest of accused and the learned Court without satisfying the aforesaid condition cannot issue NBW and relied upon the law laid down by the Hon'ble Supreme Court in **Criminal Appeal No.1209 of 2021, Prem Shankar Prasad Vs. The State of Bihar and another decided on 21.10.2021.** He has submitted that rejection of the anticipatory bail of Mohd. Arif @ Khachholi vide order dated 7.5.2022 passed by coordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C No.3864 of 2022, the anticipatory bail of the applicant cannot be rejected. There is no priority in the reject of the bail.

Learned Additional Advocate General has submitted that the applicant is named in the first information report. It is further submitted that the case of the co-accused Aashif, Sanjay and Mohd. Arif @ Khachauli have no parity in this case because the applicant was leading miscreants. It is further submitted that the anticipatory bail application of Mohd. Arif @ Khachauli

was rejected.

From perusal of paragraph no.21 of the Anticipatory Bail Application, it appears that the applicant has full knowledge of N.B.W. issued against him but he is not cooperating with the police. It is further submitted that the police has also obtained a non- bailable warrant, which cannot be executed because the applicant is absconding, hence reward of arrest of the accused applicant Ali @ Ali Ahmad was declared as Rs.25,000/- which was later on increased to the tune of Rs.50,000/-. It is further submitted that the accused is absconding since 2021.

It is further submitted that the accused/applicant Ali @ Ali Ahmad has challenged the office memo regarding declaration of award for arrest of the accused/applicant in Criminal Misc. Writ Petition No.4683 of 2022 (Ali @ Ali Ahmad Vs. State of U.P. and seven others) but still no order was passed in this writ petition and on 27.04.2022 and 28.4.2022, the learned counsel for the applicant has sought adjournment from the Court and on 29.4.2022 the application for amendment was allowed and still no stay order was passed regarding office memo declaring the award of the accused- applicant.

It is further submitted that accused applicant was not cooperating in the investigation and was avoiding his arrest. Under these circumstances, the anticipatory bail application of the mother-in-law was rejected by the Hon'ble Supreme Court in the case of **Vipan Kumar Dhir Vs. State of Punjab and another, 2021 SCC OnLine SC854**. He has also relied upon the law laid down by the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Pradeep Sharma, 2014 (2) SCC171**, in which the Court held that if anyone is declared as an absconder/proclaimed offender in terms of section 82 Cr.P.C, he is not entitled to relief of anticipatory bail. It is also

submitted that the Hon'ble Supreme Court in the case of **Abhishek Vs. State of Maharashtra and others, 2022 LiveLaw (SC) 516**, held that where the accused declared absconder, no question of giving benefit of section 319 Cr.P.C arise and, therefore, he cannot be released on anticipatory bail.

This Court has gone through the record and respective ruling filed by the learned counsel for the parties and from perusal of the first information report, it appears that the accused-applicant is named in the first information report and he was leading accused in the commission of crime and it has been alleged that the accused-applicant has demanded Rs.5 crores from the complainant as Rangdari and has also stated that the complainant has other option to execute sale deed of the land situated in Ainuddinpur, district Prayagraj in the name of his wife. In this occurrence, three persons sustained injuries, fractured and dislocation were found in the shoulder of the complainant.

From perusal of the report of N.B.W, it appears that accused is avoiding the execution of N.B.W and in spite of knowledge as stated in the affidavit, he has not surrendered himself before the Court and he is not co-operating in the investigation, therefore, rulings referred does not apply to the present circumstances of the case. From the evidence on record, the accused is avoiding arrest and N.B.W has been issued and the reward of Rs.50,000/- has been announced regarding his arrest. The purpose of granting Anticipatory Bail to the person to co-operate investigation but the conduct of the applicant shows that he is not co-operating in the investigation and non-bailable warrant issued against him and has challenged the order of the award of Rs.25,000/- and Rs.50,000/- before the Hon'ble High Court.

In the above circumstances and as per allegations made in the

affidavit, accused- applicant and complainant are closed relative and they are doing business of real estate. There is no evidence available on record, which indicates that the complainant lodged the F.I.R only to get arrest of the accused/applicant and to humiliate him and this case related to the demand of Rs.5 crore as rangdari, otherwise execute a sale-deed in favour of his wife by the applicant of the land situated in Ainuddinpur, district Prayagraj.

Keeping in view of the facts and circumstances, the applicant is not co-operating in the investigation and non-bailable warrant could not be executed due to avoidance, this Court find it is not a fit case for grant of anticipatory bail, so far as release of co-accused Sanjay and Imran, it appears that on the ground of plea of alibi and they were present before the Sub Registrar Second, Prayagraj, hence the parity is not made out.

In view of above, the Anticipatory Bail Application U/S 438 Cr.P.C is, hereby, **rejected**.

Order Date :- 26.5.2022

SFH