

**Court No. - 75**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 2650 of 2022

**Applicant :-** Wajid Advocate Alias Wajid Khan And Another

**Opposite Party :-** State Of U.P. And Another

**Counsel for Applicant :-** Bhuvnesh Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Raj Beer Singh,J.**

Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

The present application has been moved by the applicants seeking anticipatory bail in Case Crime No. 1136 of 2019, under Sections 147, 148, 149, 323, 336, 188, 427, 120B, 153A, 295A, 109 IPC, Section 3 of Prevention of Damages to Public Property Act and Section 7 of Criminal Law Amendment Act, P.S. Kotwali City, District Bijnor with the prayer that in the event of arrest, applicants may be released on bail.

It has been argued by the learned counsel for the applicants that applicants are innocent and they have been falsely implicated in this case. The applicants are not named in the FIR. In the FIR, it has been alleged that on 02.12.2019 at about 3.00 PM, a mob comprising about 250-300 persons, armed with lathi sticks and rods, have damaged vehicles lying parked at the side of the road and they have also assaulted the public persons. Learned counsel submitted that in fact Case Crime No. 1132 of 2019, under Sections 147, 148, 149, 188, 307, 323, 332, 336, 353, 427, 436, 120B, 153A, 295A, 109 IPC, Section 7 of Criminal Law Amendment Act, Section 3 of Prevention of Damages to Public Property Act, Police Station-Kotwali City, District-Bijnor, was registered on 20.12.2019 regarding protests being made against Citizen Amendment Act and NRC and applicants

were also named in that case and on the basis of the statement of some co-accused persons, the applicants have been falsely implication in this case. In the above stated Case Crime No. 1132 of 2019, both the applicants have already been granted anticipatory bail vide order dated 17.02.2021, passed in Criminal Misc Anticipatory Bail Application U/S 438 Cr.P.C. No. 2972 of 2021 and by order dated 02.02.2021, passed in Criminal Misc Anticipatory Bail Application U/S 438 Cr.P.C. No. 1728 of 2021. In fact, the present case as well as five more cases are fall out of the incident of Case Crime No. 1132 of 2019 and in one of the similar case i.e. Case Crime No. 1131 of 2019, the applicants have already been granted anticipatory bail. It has further been submitted that applicants have no previous criminal antecedents and that the cases shown against them were registered subsequently. It has been stated that the applicant no. 1 is 68 years old and he is a practising Advocate having experience of more than 40 years and applicant no. 2 is 60 years old and he is also a practising Advocate. It was also pointed out that earlier the applicants were granted interim anticipatory bail vide order dated 06.01.2022 and that now charge-sheet has already been submitted. It was also submitted that applicants undertake to co-operate during investigation and trial and they would appear as and when required by the investigating agency or Court. It has been stated that in case, the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and will co-operate with the investigation and would obey all conditions of bail.

Learned A.G.A. has opposed the application for anticipatory bail and argued that during investigation, involvement of applicants was found and that they have been identified through CCTV footage and that there is previous criminal history against the applicants.

The parameters for granting anticipatory bail have been discussed in **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694**, wherein Hon'ble Supreme Court has observed as under:

*"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*

*"(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

*(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

*(iii) The possibility of the applicant to flee from justice;*

*(iv) The possibility of the accused's likelihood to repeat similar or other offences;*

*(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*

*(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

*(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

*(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

*(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

*(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of*

*grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

A perusal of the parameters for granting anticipatory bail as stated-above, would show that the Court must consider the seriousness of the offense, the nature of investigation that is required before the charge sheet is filed, the likelihood of the applicant's absconding from justice, the antecedents of the accused and chances of the applicants tampering with evidence or threatening the witnesses.

In the instant case, considering aforesaid position of law, the submissions of the learned counsel for the parties, nature of accusations and all attending facts and circumstances of the case, without expressing any opinion on merit of the case, a case for anticipatory bail is made out.

The anticipatory bail application is **allowed**.

In the event of arrest of the applicants- Wajid Advocate alias Mohd. Wajid Khan Advocate and Mohd. Irshad Athar Siddique involved in the aforesaid case crime shall be released on anticipatory bail on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned/Court concerned with the following conditions :-

- (i) the applicants shall make himself available for interrogation by a police officer as and when required;
- (ii) 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 him/her/them from disclosing such facts to the Court or to any police officer;
- (iii) the applicants would co-operate during investigation and trial and would not misuse the liberty of bail.

In default of any of the conditions, the Investigating Officer/prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

**Order Date :- 20.7.2022**

A. Tripathi