

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1981 of 2023

Applicant :- Khalid Anwar Alias Anwar Khalid

Opposite Party :- Central Bureau Of Investigation Thru. Branch Hear
New Delhi

Counsel for Applicant :- Shitla Prasad Tripathi, Amresh Singh

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri. Arpit Chaudhary Advocate, holding brief of Sri. Shitla Prasad Tripathi Advocate, the learned Counsel for the applicant and the learned Counsel for the respondent – C.B.I. and perused the record.
2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing R.C. No. 220/2022/E0011-CBI/EO-11/ND, under Sections 120-B, read with 419, 420 I.P.C. and Section 7 (c), 13(1)(a) read with 13(2) of Prevention of Corruption Act, 1988, registered at Police Station CBI/EO-II/New Delhi, District New Delhi.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 10.08.2022 against 19 named persons, including the applicant, and some unknown public servants and private persons, stating that a written complaint dated 01.07.2022 had been received from the Assistant Commissioner, Directorate General of Vigilance, Indirect Taxes and Customs of Lucknow Zonal Unit regarding smuggling of contraband goods of foreign origin like gold (5501.99 grams), reputed foreign brand cigarettes (434400 sticks) and saffron (30 kgs.).

4. The learned counsel for the respondent-C.B.I has raised a preliminary objection that a proclamation under Section 82 Cr.P.C has been issued against the applicant and, therefore, in view of the law laid down by the Hon'ble Supreme Court in **Lavesh v. State (NCT of Delhi)**, (2012) 8 SCC 730, the applicant is not entitled to be granted anticipatory bail.

5. Section 82 Cr.P.C. reads as follows: -

82. Proclamation for person absconding.— (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

6. In the present case, a proclamation under Section 82 (1) Cr.P.C has been issued on 01.08.2023 requiring the applicant to appear before the

Court on 02.09.2023. However, there is nothing on record to indicate that the proclamation has been '*published*' as provided under Sub-section (1) of Section 82 Cr.P.C., as there is no material to indicate that the proclamation was publicly read in some conspicuous place of the town or village in which the applicant ordinarily resides or that it has been affixed to some conspicuous part of the house or homestead in which the applicant ordinarily resides or to some conspicuous place of such town or village or a copy of the proclamation has been affixed to some conspicuous part of the Court house or that it has been published in a daily newspaper circulating in the place in which the applicant ordinarily resides, which are the modes of publication mandated in Sub-section (2) of Section 82 Cr.P.C.

7. The Court issuing the proclamation has not made any statement in writing as provided in Sub-section (3) of Section 82 Cr.P.C. to the effect that the proclamation was duly published in the manner specified in clause (i) of sub-section (2).

8. When the proclamation has not even been published as per the law, the occasion for the applicant being "**declared**" a proclaimed offender under Sub-section (4) of Section 82 Cr.P.C has not yet arisen.

9. In **Lavesh** (Supra) the applicant had been declared a proclaimed offender and in these circumstances, the Hon'ble Supreme Court had held that:-

"Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

10. Therefore, as the applicant has not been declared to be a proclaimed offender as yet, the bar created by the principle of law laid down by the Hon'ble Supreme Court in **Lavesh** (supra) would not apply to the present case.

11. The learned counsel for the respondent has relied upon another judgment passed by the Hon'ble Supreme Court in **Sanatan Pandey Vs. State of Uttar Pradesh and Another**, 2021 (4) CriminalCC 512. In that case, the petitioner was charged for the offences punishable under sections 147, 148, 323, 324, 307, 308, 504, 452 I.P.C. The incident took place on 05.03.2017. A charge-sheet was filed on 20.11.2018. The petitioner had filed an application under Section 482 Cr.P.C seeking quashing of the charge-sheet and this application was dismissed by the High Court by means of an order dated 10.12.2019. While dismissing the application under Section 482 Cr.P.C, the High Court had directed that in case the petitioner appears and surrenders before the court within 30 days and applies for bail, his prayer for bail shall be considered and during that period, no coercive steps shall be taken against the applicant. Despite having taken the benefit of the order dated 10.12.2019, the petitioner did not surrender and apply for grant of bail. Thereafter, a non-bailable warrant was issued against him and proceedings under Section 82 Cr.P.C. were initiated. In this factual background, the Hon'ble Supreme Court held that a prima facie case was found against the petitioner for the aforesaid offences, charge-sheet has been filed against him and he was absconding. Therefore, it was not a fit case to grant anticipatory bail to the petitioner.

12. While dismissing the S.L.P on the aforesaid grounds, the Hon'ble Supreme Court observed in **Sanatan Pandey** (Supra) that *“the court shall not come to rescue or help of the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr.P.C has been issued.”*

13. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts, more particularly when the facts are not even remotely similar. As the applicant has not been declared

to be a proclaimed offender as yet and the bar created by the principle of law laid down by the Hon'ble Supreme Court in **Lavesh** (supra) does not apply to the present case, I reject the preliminary objection raised by the learned Counsel for the respondent. **Sanatan Pandey** (Supra) was decided after taking into the facts of the case and I also proceed to examine the merits of the application.

14. The allegation against the applicant is that he was carrying 400 gms. foreign origin gold worth Rs.15,48,000/- and the same was seized under Section 110 of the Customs Act, 1962.

15. On the same set of allegations, the Directorate of Revenue Intelligence has filed a complaint against the applicant. Section 135(1) of the Customs Act, 1962 provides that in such cases, the accused shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and Section 104 of the Customs Act, 1962, provides that the offence will be non-cognizable and bailable.

16. The C.B.I. has registered F.I.R. on the basis of allegations, which are already the subject matter of a complaint filed by the Directorate of Revenue Intelligence. The C.B.I. *inter alia* alleges commission of offence under the Prevention of Corruption Act, 1988 and the applicant is not a public servant.

17. A co-accused Ajeet Tiwari, from whom 22,000 sticks of imported cigarettes were recovered has been granted anticipatory bail by means of an order dated 24.07.2023 passed by this court in Criminal Misc. Anticipatory Bail Application No. 664 of 2023.

18. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the alleged recovery was made on 19.12.2019 but the F.I.R has been lodged on 10.08.2022 and there is no explanation for the delay in lodging the F.I.R.; that the substantive offence allegedly committed by the applicant is non-cognizable, bailable and carries a maximum punishment of

imprisonment upto 3 years; that although the C.B.I. has alleged commission of offences under the Prevention of Corruption Act, 1988, the applicant is not a public servant; that the applicant has no other criminal history and that a co-accused person Ajeet Kumar has already been granted bail and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

19. In view of the above, the anticipatory bail application of the applicants is ***allowed***. In the event of arrest / appearance of applicant- **Khalid Anwar Alias Anwar Khalid** before the learned Trial Court in the aforesaid case crime, he shall be released on bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of Officer/Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court: -

(i). That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(ii). That 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iii). That the applicant shall not pressurize/ intimidate the prosecution witness.

(Subhash Vidyarthi, J.)

Order Date :- 6.9.2023/Preeti.