Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 9391 of 2020

Applicant :- Sachin Saini
Opposite Party :- State Of U.P. And 2 Others
Counsel for Applicant :- Manoj Kumar Srivastava
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned AGA for the State.

The instant anticipatory bail application has been filed on behalf of the applicant, Sachin Saini, with a prayer to release him on bail in Case Crime No.889 of 2020, under Section-452, 323, 504, 506 IPC , Police Station- Khurja Nagar, District- Bulandshahar, during pendency of trial.

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.

Learned counsel for the applicant submits that earlier father of the applicant has lodged an first information report against son of the informant on 24.08.2020 under Sections 147, 148, 323, 504, 506 I.P.C. By way of counter blast present first information report has been lodged on 20.09.2020 implicating the applicant in this case falsely.

Learned counsel for the applicant submits that the allegations are absolutely incorrect. No injury was suffered. Applicant has been falsely implicated. He has no criminal history to his credit. The applicant has definite apprehension that he may be arrested by the police any time.

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.

After considering the rival submissions this court finds that there is a case registered/about to be registered against the applicant. It cannot be definitely said when the police may apprehend him. After the lodging of FIR 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 FIR 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 peculiar case the arrest of an accused should be made.

Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant 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 concerned with the following conditions:-

1. The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

2. The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

3. 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;

4. The applicant shall file an undertaking to the effect that he 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 applicant.

5. In case, the applicant misuses 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.

6. The applicant 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 his bail and proceed against him in accordance with law.

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

8. 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 :- 6.1.2021
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