

Court No. - 12

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 31 of 2023

Applicant :- Rajnish Chaurasia Alias Rajnesh Chaurasia

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Civil
Sectt. Lko. And Another

Counsel for Applicant :- Vinay Kumar Verma, Abhishek
Srivastava, Kamini Kumari Ojha, Neeraj Pandey, Surendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

This Court vide order dated 11.01.2023 has passed the following order:-

"Heard learned counsel for the applicant and learned A.G.A. for the State.

Learned A.G.A. has raised a preliminary objection that in view of the judgment in Raj Bahadur Singh versus State of U.P. 2022 LiveLaw(AB)493, passed by a coordinate Bench of this Court, second anticipatory bail application of the applicant is not maintainable as the first anticipatory bail application was decided vide order dated 20.12.2022 passed by a coordinate Bench of this Court in Anticipatory Bail Application No. 2125 of 2022 Rajnish Chaurasia alias Rajnesh Chaurasia versus State of U.P. and another, on merit.

Learned counsel for the applicant while rebutting the submission has contended that due to inadvertence, it could not be brought to the notice of the court that offence under section 386 I.P.C. which was added subsequent to lodging of the first information report is punishable for a sentence upto 10 years. It is submitted that the judgment in Raj Bahadur Singh (supra) does not lay down the correct position of law. He has submitted that the observation of learned Single Judge that the power to grant anticipatory bail does not flow from Art. 21 of the Constitution of India is contrary to the Constitution Bench judgment in Sushila Aggarwal versus State (NCT of Delhi) AIR 2020 SC 831 (relevant paras 54 to 57).

Learned A.G.A., at this stage, prays that he may be granted some time to go through the judgment.

Accordingly, the case is adjourned.

List as fresh on 19.1.2023."

Learned counsel for the applicant rebutting the preliminary objection raised by the learned A.G.A. has placed reliance on the judgment of the Apex Court passed in the case of "Sushila Aggarwal and others versus State (NCT of Delhi) and another (2020)5 SCC 1" and the observations made in the case of "Raj Bahadur Singh Vs. State of UP, reported in 2022 LiveLaw (AB) 493", that the power to grant anticipatory bail does not flow from Article 21 of the Constitution is contrary to the judgment of the Apex Court passed in the case of Sushila

Aggarwal (supra).

Learned A.G.A. though has opposed the maintainability of the present anticipatory bail application, however, does not dispute this fact that Section 438 Cr.P.C. encapsulates the Article 21 of the Constitution. In the aforesaid judgment of Sushila Aggarwal (supra) particularly in para 57 of the judgment, it has been clarified by the Apex Court that Section 438 Cr.P.C. encapsulates Article 21 of the Constitution and this Court has also taken note of the judgment of the Coordinate Bench of this Court passed in the case of Anurag Dubey Vs. State of U.P., Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 1327/2022, wherein it has been held by the Coordinate Bench of this Court that on the fresh grounds, the second anticipatory bail may be considered.

Accordingly, the objection raised by the learned A.G.A. is rejected.

Heard learned counsel for the applicant and learned A.G.A. for the State.

The present bail application under Section 438 Cr.P.C. has been filed seeking anticipatory bail in case crime/F.I.R. No. 264/2022, under Sections 147/148/323/504/506/342/386 I.P.C., P.S. Gazipur, District Lucknow.

Notice to respondent no. 2 is dispensed with.

It has been alleged in the prosecution case that the named accused persons were illegally conducting stand at Polytechnic Chauraha crossing and they asked the informant who was an auto rikshaw driver and who plied his rikshaw at that stand, that they are operating the stand so bring passenger to the buses. When the informant denied the request of the accused persons replying that the police has closed the stand, then they told that they are still operating their stand and they have talked with police personnel. The first informant captured the video of this incidents with the help of some unknown persons. After sometime, the video got viral and the aforesaid person came to know about the video at 5:30 PM. The accused persons Manoj Tiwari along with Abhishek Rai, Ritesh Dubey, Gopal Rai and Golu Chaturvedi along with four to six unknown persons kidnapped the informed from Polytechnic Chauraha near pink booth. The accused persons have badly beaten the first informant with fist and kick and also threatened him. The first informant was compelled to make video against Bhanu Pratap Singh on the pointing out of gun. It is further alleged that the first informant was asked that he could inform the authorities

that he was sent by Bhanu Pratap Singh for recovery of token. It is lastly alleged that Abhishek Rai looted Rs. 1000/- from the pocket of first informant.

Learned counsel for the applicant submits that the incident is of 23.05.2022 whereas F.I.R. has been lodged after a delay of two days on 28.05.2022. In the F.I.R. name of only Chaurasiya is mentioned. The first name of the applicant is not mentioned. He is not known to the informant. The first informant has suffered simple injuries. During course of the investigation, the prosecution story in the F.I.R. was not found true and therefore, Section 364 and 392 I.P.C. have been dropped and in that place Sections 342/386 I.P.C. have been introduced. The applicant has explained the criminal history in para 26 of one case.

It is further submitted that the co-accused Abhishek Rai upon whom clear specific allegations have been made in the F.I.R. has been enlarged on bail by the learned trial court. The order is on record as Annexure No. 11. Several other co-accused persons have also been enlarged on bail, copy of which are on record. Learned counsel for the applicant seeks parity with the co-accused persons. It is also submitted that the case of the applicant is on better footing than that of co-accused Abhishek Rai.

Learned A.G.A. has opposed the prayer made by learned counsel for the applicant submitting that the investigation is going on.

Learned counsel for the applicant further submits that he will cooperate in the investigation.

Without expressing any opinion on the merits of the case and considering the nature of accusation and having no criminal antecedents, coupled with the undertaking given by the applicant that he will cooperate in the investigation, the co-accused Abhishek Rai and three other persons have been enlarged on anticipatory bail and he is not a previous convict, it would be expedient in the interest of justice that the liberty of the applicant may be protected till filing of police report u/s 173(2) Cr.P.C in view of dictum of Apex Court in re: Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98.

In view of the above, it is provided that in the event of arrest, the applicant shall be released on anticipatory bail in the aforesaid Case Crime number on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned with the following conditions:-

(1) The applicant shall cooperate in the investigation and he will not influence the witnesses.

(2) The accused-applicant will remain present as and when the arresting officer/1.O./S.H.O. concerned call (s) for investigation/interrogation.

(3) The applicant shall not leave India without previous permission of the Court.

(4) In case of default, it would be open for the investigating agency to move application for vacation of this interim protection.

The application disposed of.

Order Date :- 19.1.2023

R.C.