

Absconder / Proclaimed Offender Not Entitled To Anticipatory Bail: Allahabad High Court

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

SURESH KUMAR GUPTA; J.

15.11.2022

CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. 9023 of 2022

Dr. Archana Gupta versus State of U.P.

Counsel for Applicant: - Puneet Bhadauria

Counsel for Opposite Party: - G.A., Kuldeep Singh Yadav

Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the first informant.

The present application under Section 438 Cr.P.C. has been filed by the applicant seeking anticipatory bail apprehending arrest in Case Crime No. 460 of 2017, under Sections 419/420/467/468/471 IPC, Police Station Jaswant Nagar, District Etawah.

Learned counsel for the applicant has submitted that the applicant is innocent and has falsely been implicated in the present case. Learned counsel further submits that as per the allegations in the FIR that the first informant is the owner and in actual physical possession over the Araj Gata No. 151/1 measuring area 0.5320 hectare out of 2.3960 hectare situated at Mauja Rajmau, Tehsil- Jawant Nagar, Etawah and her name is duly recorded in the Revenue Records. With intention to grab her property, the applicant has executed an agreement to sale to one anonymous lady Prabha Devi, W/o Ramchandra and thereafter on 21.4.2017, he has executed sale deed in her favour and as such, on the basis of forged and fictitious sale deed the applicant wanted to grab the property of the first informant.

The counsel for the applicant further submits that the whole prosecution story is totally false and concocted. The applicant purchased the land from one Prabha Devi, W/o Ramchandra after verifying the revenue records. The first agreement to sale was executed between the parties till then there was no dispute raised by anyone with regard to the property in question. At present, the applicant is in actual physical possession of the property in question and when she started to raise construction thereon for her hospital, the first informant demanded hush money. The first informant is a prominent lady and was the Village Pradhan of the erstwhile session and when the applicant refused to do so, then the first informant lodged the FIR on the basis of false and fictitious grounds with allegations that the sale deed was executed through impersonation. It is further submitted that the actual name of the first informant is Kanthsri @ Prabha Devi, W/o Ramchandra @ Rambabu. Thereafter the first informant filed civil suit for cancellation of sale deed of the property in question by means of Original Suit No. 433/2017 which is pending before the Civil Judge (J.D.), Etawah. In fact, the applicant herself subjected to a fraud committed by the first informant herself against which the applicant herself lodged an FIR registered as case crime no. 484/2017, U/s 420/406/467/468 against the first informant and others on 2.7.2017.

The learned counsel for the applicant further submits that the applicant is the bonafide purchaser. Earlier after filing of the charge-sheet against the applicant, she approached this Court by means of Application U/s 482 CrPC No. 25709 of 2019

which is still pending before this Court and till today no interim order has been passed and ultimately, the applicant moved the anticipatory bail application before the sessions court concerned but the same was duly rejected. It is further submitted that during course of investigation, the applicant has been protected from arresting till filing of charge-sheet by a coordinate bench of this Court passed in Crl. Misc. Writ Petition No. 19374 of 2017 vide order dated 18.9.2017. There is civil dispute between the parties. During course of investigation, the applicant fully cooperated with the investigation. But the Investigating Officer without collecting any cogent and credible evidence submitted the charge-sheet against the applicant. It is further submitted that proceedings U/s 82 CrPC was initiated against the applicant in a routine manner. The applicant is ready to cooperate with the trial.

The learned counsel for the applicant further submits that insofar as the maintainability of the anticipatory bail after issuance of process U/s 82 CrPC is concerned, the counsel for the applicant relies upon the judgement of this Court passed in Crl. Misc. Anticipatory Bail Application No. 4645 of 2022. The relevant portion of which is being reproduced hereunder:

*"25. The Apex Court has restrained the proclaimed offender to seek anticipatory bail. The person who is not following the process of law and deliberately avoiding the investigation despite all necessary steps have been taken by the investigating officer to apprise him to cooperate with the process of investigation, e.g. summons have been served but to no avail, thereafter bailable warrants have been served but again he / she is not cooperating with the investigation for no plausible and cogent reasons, lastly non-bailable warrant has / have been served but there is no heed thereon, then the investigation officer has got no option except to seek proclamation u/s 82 / 83 Cr.P.C. It is also relevant to note here that the court concerned must ensure before taking any coercive steps that all the aforesaid proceed, i.e. summons, bailable warrants and non-bailable warrants have been duly served upon the person and he / she is deliberately avoiding the same. Issuing summons, bailable warrant and non-bailable warrants would not suffice but what is most important is its service upon the person because unless and until such process is served no further coercive step should be taken in view of the dictum of Apex Court in re: **Inder Mohan Goswami (supra)** inasmuch as these coercive steps are directly related with the liberty of the person which is protected under Article 21 of the Constitution of India.*

26. Therefore, if the aforesaid process is avoided by the person, any appropriate application for seeking proclamation can be filed by the investigating officer supporting with an affidavit to apprise the court concerned as to how despite the summon, bailable warrant and nonbailable warrant having been served upon the person he / she is deliberately avoiding to cooperate with the investigation and the court after having proper satisfaction on the averments of such application may issue proclamation. Only under these circumstances that person may be declared as proclaimed offender and his / her anticipatory bail application should not be heard. In other words, before filing anticipatory bail that person should be proclaimed offender and his / her anticipatory bail application will loose the right of hearing on merits."

Learned AGA as well as the counsel for the first informant vehemently opposed the prayer of the applicant and submitted that the charge-sheet has already been submitted against the applicant in the year 2018 and the case is pending since then. After filing of charge-sheet, the applicant deliberately absented herself from the proceedings. Consequently, the process U/s 82 CrPC has been initiated against the applicant on 22.2.2022 and she has been declared an absconder. It is also submitted that the applicant approached the learned court below for seeking anticipatory bail much later after having been declared as absconder and the anticipatory bail

application was rejected by the sessions court on 18.8.2022. Due to non-cooperation of the applicant, the trial is still pending before the trial court. Sufficient evidence is available against the applicant. There is no ground for false implication of the applicant. Thus, the application of the applicant is liable to be rejected. He further relies upon the judgement of the Apex Court in the case of **Prem Shankar Prasad vs. State of Bihar decided on 21.10.2021 in Criminal Appeal No. 1209 of 2021**. The relevant para of which is being reproduced hereunder:

"16. Recently, in Lavesch v. State (NCT of Delhi) [(2012) 8 SCC 730] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

"12 . From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. 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."

Considering the entire facts and circumstances of the case, I am of the view that the accusation against the applicant is well founded. After filing of the charge-sheet against the applicant, she wilfully absented herself before the trial court and due to this, till today trial against the applicant could not commence. Moreover, it is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. Thus, this is not a fit case for anticipatory bail as per law propounded by the Apex Court. Consequently, the application U/s 438 CrPC is hereby **rejected**.

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