

A.F.R.

Judgment Reserved on 09.06.2021

Judgment delivered on 11.06.2021

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Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C.
No. - 5334 of 2021

Applicant :- Mohammad Azam Khan

Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- Nadeem Murtaza, Sheeran Mohiuddin Alavi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. The Court convened through video conferencing.
2. Heard Shri Kapil Sibbal, learned Senior Counsel, Shri I.B. Singh, learned Senior Advocate assisted by Shri Zuber Ahmad, Advocate for the applicant and Shri Santosh Kumar Mishra, learned Additional Government Advocate appearing for the State-respondent.
3. The present application for anticipatory bail under Section 438 Cr.P.C. has been filed on behalf of the applicant with the prayer to enlarge him on anticipatory bail in the event of his arrest/being taken into judicial custody in connection with the F.I.R./Case Crime No.02 of 2018, under Sections 409, 420, 120-B, 201 I.P.C. and Section 13(1)(d) PC Act, Police Station SIT, District Lucknow.
4. Learned A.G.A. has raised preliminary objection with regard to the maintainability of the present bail application under Section 438 Cr.P.C. on the ground that as per the report of District Superintendent of Police, Rampur dated 12.11.2020, the applicant is already detained in District Jail, Sitapur in relation to Case Crime No.980 of 2019, under Sections 420, 467, 468, 471, 120-B I.P.C., P.S. Civil Lines, District Rampur and Case Crime No.392 of 2019, under Sections 420, 467, 468, 471, 447, 201, 120-B I.P.C. and Section 3 of Prevention of Damage to Public Property Act, P.S. Azeem Nagar, District Rampur and in the present F.I.R. No.02 of 2018, B-warrant has been issued by the competent court on 18.04.2020 against the applicant which was duly served on the applicant on

19.11.2020 by the jail authorities of District Jail, Sitapur (annexed as annexure No.1 to the short counter affidavit dated 07.06.2021). Learned A.G.A. while drawing attention of the Court towards para 61 of the bail application has submitted that the applicant has himself admitted that B-warrant has been issued against him by the competent court. Learned A.G.A. has vehemently submitted that the B-warrant issued against the applicant has been received by the Jail Authorities of District Jail, Sitapur and has been duly communicated to the applicant also, meaning thereby, the applicant is in custody in the present case. It has, thus, been submitted that the present anticipatory bail application is not maintainable and at the most, the applicant may move application under Section 439 Cr.P.C.

5. Learned counsel for the applicant, while opposing the preliminary objection, has submitted that merely service of B-warrant does not mean that the applicant has been taken into custody in the present case and therefore, the present bail application is maintainable.

6. It has further been submitted by the learned counsel for the applicant that even if the argument of learned A.G.A. is accepted to the effect that B-warrant has been received by the Jail Authorities of District Jail, Sitapur and has been communicated to the applicant, and moreover, if it is deemed that the applicant is in custody of the State in the present case since 19.11.2020, then the applicant is entitled for default bail for the reason that the charge sheet dated 24.05.2021 was not filed within 90 days from 19.11.2020.

7. I have considered the arguments advanced by the learned counsel for the parties and gone through the record.

It is admitted fact that the present F.I.R. was lodged on 25.04.2018 on the basis of preliminary inquiry conducted by the Special Investigating Team U.P., Lucknow for the offences of giving indefinitely unjust enrichment to some persons, forgery causing disappearance of evidence of the offence, and destroying the documents to prevent its production as evidence with a criminal conspiracy in appointing of 1300 persons on the post of Assistant

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Engineer, Junior Engineer, Clerk and Stenographer. It is further evident that in the present F.I.R. No.02 of 2018, the applicant and four other persons were named, investigation of which was being conducted by the Investigating Officer. However, in the meantime, the applicant was taken into custody in relation to another case i.e., F.I.R. No. 980 of 2019, under Sections 420, 467, 468, 471, 120-B I.P.C., P.S. Civil Lines, District Rampur and F.I.R. No.392 of 2019, under Sections 420, 467, 468, 471, 447, 201, 120-B I.P.C. and Section 3 of Prevention of Damage to Public Property Act, P.S. Azeem Nagar, District Rampur and was confined in District Jail, Sitapur. This fact has been mentioned in para 5 of the short counter affidavit and the same is not contradicted by the learned counsel for the applicant. Further, it is also evident that B-warrant was issued by the competent court on 18.11.2020 was received by the Jail Authorities of District Jail Sitpaur who communicated the same to the applicant on 19.11.2020.

8. " A Division Bench of this Court in the case of Bobby @ Premveer and Anr. vs. State of U.P. reported in 2000 CriLJ 4125 has observed that a Criminal Court when issuing B-warrant under Section 267 Cr.P.C. has to satisfy itself on the justification for issuance of such warrant. The fact that the prosecutor/Investigating Officer is seeking B-warrant regarding the prisoner from the Criminal Court, itself amounts showing the prisoner to be under custody". The relevant para of the aforesaid judgment is reproduced as under:-

"91. If an action is a practical impossibility, no Court would be justified in insisting upon that action in a formal manner. The Criminal Court, when issuing 'B' Warrant has to satisfy itself on the justification for issuance of such warrant. The fact that the prosecutor/Investigating Officer is seeking 'B' Warrant regarding the prisoner from the Criminal Court, itself amounts showing the prisoner to be under custody. Whether or not on merits a 'B' Warrant will be issued is a totally different matter, which has to be settled by that Court when it orders the issuance of the warrant. The arrest of the prisoner shall have been an accomplished fact known to the Court issuing B' Warrant and the Investigating Officer seeking the 'B' Warrant."

9. In view of the facts and discussions made above, the applicant is deemed to be in custody in relation to the present F.I.R. No.02 of 2018 after service of the B-warrant issued by the competent court under the provisions of Section 267(1) Cr.P.C.

10. In view of the above, the preliminary objection raised by the learned A.G.A. has force.

11. Accordingly, the present anticipatory bail application under Section 438 Cr.P.C. is not maintainable and is hereby **rejected**.

12. The prayer of the learned counsel for the applicant for default bail in the present proceedings also cannot be considered, and in this regard the applicant may move appropriate application before the appropriate court, if he so chooses.

13. The party shall file computer generated copy of order downloaded from the official website of High Court Allahabad, self attested by it alongwith a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked, before the concerned Court/Authority/Official.

14. The concerned Court/Authority/Official shall verify the authenticity of the 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 :- 11.6.2021

S. Shivhare