

**Court No. - 77**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 1379 of 2023

**Applicant :-** Javed Ahmad

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Anurag Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Nalin Kumar Srivastava,J.**

Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant - Javed Ahmad in Case Crime No. Nil, under Sections Nil, Police Station - Mariyahun, District Jaunpur.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.

It is submitted by the learned counsel for the applicant that the opposite party no.2 had given Rs.17,50,000/- to the applicant as financial help for construction of his house, as they were friends and subsequently Rs.1 lakh on respective dates were paid by the applicant to him. However, on 5.1.2023, opposite party no.2 asked for repayment of the total outstanding money and abused and threatened him to repay the same till 20.1.2023 otherwise he could be implicated in false and fabricated case. The applicant informed the incident to the S.P., Jaunpur on 7.1.2023 through registered post and till date he has already paid an amount of Rs.3,20,000/- to opposite party no.2 in his bank account on respective dates, but the applicant has apprehension of his arrest by the police any time after lodging of the F.I.R. against him. There is every likelihood that the applicant may be implicated after foisting of false case against him. It is further submitted that the applicant has no criminal antecedents. If the applicant is enlarged on anticipatory bail, he will not misuse the liberty of the same.

Learned A.G.A. opposed the prayer.

It is admitted that no F.I.R. has been lodged so far in the matter.

It is true that filing of first information report (F.I.R.) is not a condition precedent to exercise the power under Section 438(1)

Cr.P.C., as held in **Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565**, but at the same time it is also to be kept in mind, as held in the aforesaid case by the Hon'ble Apex Court, that "when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable to a specific offence or particular offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which is considering the application, the extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest."

In the landmark case of **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC Page 1 (106)**, it has been emphasized that Section 438 Cr.P.C. does not compel or oblige Courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc.

Prior to the touching of the merit of present application, a perusal of the relevant provisions of Section 438 Cr.P.C. is desirable.

**"438. Direction for grant bail to person apprehending arrest.** — (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely—

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this subsection or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application."

The condition to be focused upon is "Reason to believe" which is something more serious than a mere apprehension of arrest.

The Hon'ble Apex Court in **Adri Dharan Das Vs. State of West Bengal, (2005) 4 SCC 303** has emphasized over this requirement and held as under.

"Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 CrPC convicted for the offence in respect of which he seeks bail. The applicant must show that he has "reason to believe" that he may be arrested in a non-bailable offence. Use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Mere "fear" is not "belief" for which reason it is not enough for the applicant to show that has some sort of vague apprehension that some one is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out of for granting of the relief sought. (Para 16)"

The aforesaid theory makes the legal position explicit that Section 438 (1) of Cr.P.C. applies not only at post FIR stage, but it does not require that the offence must have been registered. It is contemplated by this section that if a person is going to apply for anticipatory bail, he must have a reasonable belief that he may be arrested on accusation of having committed a non-bailable offence.

This Court takes note of what their Lordship held in **K. Rajasekhara Reddy Vs. The State of Andhra Pradesh, (1998) (2) A.P.L.J. 462 (Andhra Pradesh High Court)** —

"The filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed."

If the aforesaid legal theory is translated into the facts and circumstances of the case in hand, the Court finds that the apprehension of arrest on the part of the applicant is not well founded. The applicant has failed to explain as to how he has reasonable belief of being arrested by the police. He has mentioned in his application that from the total money due to Sahab Lal, an amount of Rs.3,20,000/- has been paid by him in his bank account on respective dates. A statement of account has also been filed by the applicant. It also appears from the perusal of the record that no complaint has been moved by the said Sahab Lal to any authority against the present applicant in connection with the recovery of his money given to the applicant. Further, no application before any court has been moved so far by opposite party no.2 to prosecute the applicant. Thus, no reasonable belief of being arrested exists there.

It is also noteworthy that no material in support of his plea of entertaining reasonable belief that he is likely to be arrested in connection with the commission of a non-bailable offence, has been produced on record by the applicant. The law does not permit to knock at the door of the Court for grant of anticipatory bail on merely vague assertions in the absence of any relevant material and certainly the Court will not grant anticipatory bail in such a case.

In view of that, I find no justification to allow the present anticipatory bail application moved by the applicant for want of essential ingredients which are necessary for grant of anticipatory bail under Section 438 Cr.P.C. to any person.

The anticipatory bail application is accordingly rejected.

**Order Date :- 13.2.2023**

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