

Court No. - 65

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 3315 of 2020

Applicant :- Imran

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Kant Bharadwaj, Abou Sofian
Usmani, Upendra Upadhyay

Counsel for Opposite Party :- G.A., Kamlesh Shukla, Omar Zamin

Hon'ble Saumitra Dayal Singh, J.

1. Heard Mr. Upendra Upadhyay along with Mr. Abou Sofian Usmani and Mr. Chandra Kant Bharadwaj, learned counsel for the applicant, Sri Omar Zamin, learned counsel for informant no. 1 and Sri Sanjay Kumar Singh, learned AGA and perused the material on record.

2. This anticipatory bail application has been filed on behalf of the applicant - Imran, seeking anticipatory bail in Case Crime No. 30 of 2019, under Sections - 147, 148, 149, 323, 504, 506, 394, 342, 364, 120-B I.P.C. & Section 7 Criminal Law (Amendment) Act, Police Station - Dhoomanganj, District - Allahabad, during the pendency of trial.

3. A short counter affidavit has been filed by the State today. Learned counsel for the applicant do not propose to file any rejoinder affidavit. They prayed that the matter be heard today.

4. Upon hearing learned counsel for the parties, it transpires that most serious allegations have been made in the FIR of unauthorised entry having been allowed in a district jail and of commission of serious cognizable offence inside the cell of a jail inmate. The allegations are to the effect that the victim had been abducted at Prayagraj and taken to District Jail, Deoria where they were assaulted inside a jail cell on 22.11.2018. Similar allegation appears to have been made in another case with respect to incident dated 26.12.2018. However, those are not subject matter of the present FIR.

5. By means of the short counter affidavit, learned AGA has placed on record the

charge sheet submitted against various jail officials and punishment order passed upon completion of the enquiry, with respect to the incidents that took place on 22.11.2018 and 22.6.2018.

6. Further, a perusal of the documents appended to the short counter affidavit reveals that during the course of the aforesaid enquiry, video recordings of the Closed Circuit T.V. (CCTV in short) Camera installed at the jail premises were examined. While a categorical allegation appears to have been made with respect to unauthorised entry of 13 persons on 26.12.2018, a reference has been made to unauthorised entry of 5-6 persons in the incident dated 22.11.2018. However, the video recording of the C.C.T.V. Camera has not been made available to the learned AGA. At the same time, existence of such recording has been asserted on the strength of a letter written by the Superintendent, District Jail, Deoria to the Director General (Jails), dated 24.10.2020 wherein a request was made to make available that CCTV footage on a pen-drive of District Jail, Deoria.

7. The submissions of learned counsel for the applicant are that in the first place, the applicant had not visited the District Jail, Deoria on 22.11.2018, inasmuch as neither he signed the visitor register nor there is any video recording of his presence at that place and at that time as may require the applicant's participation or arrest in the investigation arising from the present FIR. He further submits that the applicant was in fact, busy attending a marriage ceremony at Prayagraj on 22.11.2018 with respect to which specific pleadings have been made and in support thereof certain photographs have been annexed to submit that those photographs are of the date 22.11.2018 when the applicant was present at Prayagraj. He has also submitted that if the location of the applicant's cellular phone would be checked, it would show that he was present on 22.11.2018 at Prayagraj and he never travelled to Deoria on that day.

8. Second, it has been submitted that the FIR is wholly belated inasmuch as the incident is alleged to have taken place on 22.11.2018 whereas the FIR was first registered on 8.1.2019 i.e. after more than one month.

9. Last, it has been submitted that whereas the FIR allegation is of 15 persons having carried out the act of abduction of the victim at Prayagraj and of having taken them to the district jail, Deoria, according to own case of the prosecution agency, only 5-6 persons had unauthorisedly entered the district jail, Deoria on 22.11.2018.

10. Controverting the aforesaid submissions, Sri Sanjay Kumar Singh, learned AGA for the State, would submit that, at this stage, there is evidence in the shape of a video recording of 5-6 persons having gained unauthorised entry into the district jail, Deoria on 22.11.2018. Thus it cannot be said that the fact allegations made in the FIR are false or unfounded or that the applicant was not one of the 5-6 persons who had participated in the occurrence on 22.11.2018 at the district jail, Deoria. As to absence of the pen drive or the video recording, it has been submitted that the same had been sent to the Director General, Jails for the purpose of the earlier departmental enquiry. Upon it being returned, the same would be made available to the Investigating Officer who may now proceed in accordance with law. Keeping in mind the nature of allegations made in the FIR, it has been submitted that complete freedom may be granted to the Investigating Officer to carry out his task as the nature of allegations are most serious involving use of district jail premises to commit serious offences. Learned AGA has also pointed out that the applicant has criminal history of three cases.

11. In short, it has been submitted that the allegations made in the FIR, are of commission of most serious offences within the jail premises by people who have earlier been accused of commission of serious and / or heinous offences. Therefore, even otherwise, the Court may not interfere in exercise of its discretion.

12. Having heard learned counsel for the parties and having perused the record, in the first place, it cannot be denied that the FIR allegations as they stand are of most serious / grave nature. There cannot be a more heinous offence than one which is alleged to have been committed by a person lodged at a district jail facility. If the premises of a district jail facility are itself so porous and its administration so lax as may allow such jail premises to be used to commit

further crime both outside and inside the jail, the members of the society would be under a serious threat and the entire social and civil structure and order would be at risk of erosion. The fact that the preliminary enquiry conducted by the departmental authority has found truth in the allegation, it commends to the Court to *prima-facie* believe the correctness of the allegations made in the FIR.

13. While no conclusion is required to be drawn at this stage and none is being reached as the matter is pending investigation, yet, the Court cannot even on prima-facie basis admit a possibility at this stage that the applicant was not one of the 5-6 persons who went inside the district jail, Deoria, on 22.11.2018. Though, the CCTV recording has not been produced before this Court, at the same time, for the purposes of the present application, there is nothing to disbelieve the claim made by the State as to its existence inasmuch as, besides the letter dated 20.10.2020 written by the Jail Superintendent, District Jail, Deoria to the Director General, Jails, requesting his higher authority to return the pen-drive containing such recording, the disciplinary enquiry proceedings make a clear reference to the unauthorised entry of 5-6 persons in the jail premises on 22.11.2018. Any further observation made by this Court would risk interference in a full and fair investigation. Therefore, that issue is left to the Investigating Officer to examine thread bare.

14. The submission of learned counsel for the applicant that the applicant had remained present at Prayagraj on 22.11.2018, is founded on certain photographs and pleadings & cellular phone details which again may be inquired into at the appropriate stage. In any case, by very nature of the plea, it is one of an alibi, and therefore, does not merit any consideration at this stage.

15. Similarly the fact that only 5-6 individuals had unauthorisedly entered in district jail, Deoria is a matter that may not absolve the present applicant at this stage as, in the first place, identity of those 5-6 individual has to be ascertained by the investigating officer and thereafter their accomplices or conspirators would have to be determined. In any case, the applicant has been assigned a direct role in abduction of the victim at Prayagraj. Again, the matter being pending investigation, the Court stops short of making any further observation in

that regard, but expects a thread bare investigation.

16. The submission of the learned counsel for the applicant that the FIR is wholly belated, may not itself lead to any conclusion in favour of the applicant at any stage, as in such a case, the very nature of the allegation is so shocking to the Court that if the narration of the event made in the FIR be true, it is no surprise that the FIR came to be lodged with some delay. If a citizen is abducted and his abductors have the audacity and the means to take the abducted inside the district jail premises for the purposes of commission of serious cognizable offence, the only surprise that the Court may express is at such a citizen having found enough courage to lodge an FIR, thereafter. The courage shown would be commendable. The time taken by him to act and to lodge FIR can only be described as reasonable. However, the truthfulness of the allegation is not being commented upon at this stage as the matter is pending investigation. Yet the Court must underline and emphasise that the investigation be carried out meticulously, in the right earnest, free from any influence other than to discover the truth and no stone be left unturned to uncover it, speedily.

17. The police owes an obligation to the laws and the society. If such offence has been committed, not only it has a chilling effect on the individual members of the society who, for their individual circumstances may not be strong enough to counter the threats posed to them by such offences and offenders but more importantly it completely undermines the authority of law and the law enforcing agencies as also justice delivery structure, created and supported by our Constitution.

18. Accordingly, purely to secure the minimum interest of justice, certain observations have become necessary to be made even while rejecting the anticipatory bail application filed by one of the named accused persons:

- (i) The SSP, Prayagraj is directed to personally ensure that the investigation is carried out strictly in accordance with law with utmost expedition, which duty the said authority is otherwise obliged to perform by very nature of his official position and also by virtue of the implied trust of the society.
- (ii) The SSP Prayagraj shall personally remain cognizant of the security and

safety of the first informant as also all witnesses of fact during the currency of the investigation as also till conclusion of the trial, if any. Such obligation also pre-exists on that authority.

(iii) The concerned magistrate shall remain cognizant of his jurisdiction and powers to ensure that a fair and proper investigation is conducted in the case, keeping in mind the law laid down in that regard by the Supreme Court in Sakiri Vasu Vs. State of U.P. & Ors., (2008) 2 SCC 409.

(iv) For the purposes of securing a fair and proper investigation, the learned magistrate may also remain vigilant as to the safety and security of the first informant and the witnesses during the investigation and he may pass such order in that regard, as may appear necessary if the SSP Prayagraj fails to discharge the trust placed on him, by virtue of the earlier directions issued above.

19. The Court is conscious that, in normal circumstances, such observations and directions, as have been made above, would be unwarranted and may be even out of place, to be made while rejecting an anticipatory bail application. However, the Court cannot turn a blind eye to the allegations made in the FIR which, if true, would fall in the nature of most undesirable and impermissible nature of organised crime, as narrated in the FIR. In any case, the directions and observations made are reiteration of the settled position of law.

20. In view of the above, the anticipatory application is rejected. The interim order and protection granted earlier is specifically vacated. Let a copy of this order be made available to the learned AGA for being communicated to the SSP, Prayagraj. Also, the Registrar General of the Court may communicate a copy of this order to the Chief Judicial Magistrate, Prayagraj for being marked and communicated to the concerned magistrate for effective compliance.

Order Date :- 4.11.2020

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