

**Court No. - 72**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 8819 of 2022

**Applicant :-** Rudra Dutt Sharma Alias Rudra Singh

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

**Counsel for Applicant :-** Saurabh Kesarwani

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

**Hon'ble Suresh Kumar Gupta,J.**

Heard learned counsel for the applicant, the learned Additional Government Advocate for the State and perused the record.

This anticipatory bail application under section 438 Cr.P.C. has been moved seeking anticipatory bail in Case Crime No. 1038 of 2017, under sections- 147/353 IPC, Police Station Khurjanagar, District Bulandshahar.

Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present. The applicant has not committed any offence as alleged by the prosecution. It is further submitted that the applicant is 60 years old. No specific role was assigned to the applicant. The offence levelled against the applicant is punishable upto two years. After filing of charge-sheet, the applicant moved the anticipatory bail application before the sessions court, but the sessions court without appreciating the material available on record rejected the same. There is apprehension of arrest of the applicant, therefore, he seeks anticipatory bail.

The counsel for the applicant submits that however, no offence is made out against the applicant, hence, the applicant may be enlarged on anticipatory bail till conclusion of trial. In support of his submission, he has relied upon the judgement of Hon'ble Apex Court in the case of ***Aman Preet Singh vs. C.B.I. through Director, AIR 2021 Supreme Court 4154***. The applicant has no criminal antecedents and he is ready to cooperate in the trial.

Learned A.G.A. has opposed the prayer for bail, but could not dispute the above facts.

I have considered the rival submissions advanced by learned counsel for the parties and perused the entire material available on record.

The Hon'ble Supreme Court in the case of ***Aman Preet Singh (Supra)***, the Court has observed as under:

*"10. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.*

*11. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."*

In **Aman Preet Singh (supra)**, the Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, I am of the view that often it is seen that even in a petty issue, the sessions court rejects the bail application without application of judicial mind and in a routine manner. This is a very sorry state of affairs. Such type of bail application should be considered and decided by the sessions court. It is a fit case for grant of anticipatory bail to the applicant.

Accordingly, the anticipatory bail application is hereby **allowed**.

In the event of arrest, the applicant- **Rudra Dutt Sharma alias Rudra Singh** involved in the aforesaid case crime shall be released on anticipatory bail till conclusion of trial on furnishing a personal bond and, two sureties each in the like amount to the satisfaction of the trial Court concerned with the following conditions:

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code. The applicant shall cooperate in the investigation;

(iii) In case, the applicant misuses the liberty of bail and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them in accordance with law, under Section 174-A of the Indian Penal Code; and

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

**Order Date :- 16.9.2022**

Shravan