

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9391 of 2022

Applicant :- Shahzad

Opposite Party :- State of U.P.

Counsel for Applicant :- M J Akhtar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

Heard Sri V.M. Zaidi, learned Senior Counsel assisted by Sri M.J. Akhtar, learned counsel for the applicant and Sri Vibhav Anand Singh, learned A.G.A. for the State as well as perused the record.

The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.390 of 2021, under Section 3/7 of The Essential Commodities Act, Police Station-Sarsawa, District Saharanpur with a prayer to enlarge him on anticipatory bail.

Learned Senior Counsel for the applicant has stated that the applicant was enlarged on bail by the Sessions Judge, Saharanpur vide order dated 28.02.2022, under Sections 379, 427 IPC, Sections 15, 16 of The Petroleum and Minerals Pipeline (Acquisition of Users in Land) Act, Section 3/4 of the Exclusive Substances Act and 3/4 of The Prevention of Damages to Public Property Act. Learned Senior Counsel has further stated that after investigation, final report has been submitted in the added Sections 3/7 of Essential Commodities Act. The said sections have been added just to frustrate the case of the applicant, so that he may be sent behind the bars. Learned Senior Counsel has further stated that once the applicant has been admitted to bail and there is nothing on record to suggest that he has misused it or he has committed any other offence, then he may be enlarged on bail under the added sections under the provisions of 438 Cr.P.C. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

Learned Senior Counsel has placed much reliance on the judgments of the Apex Court passed in case of ***Bhadresh Bipinbhai Sheth vs. State of Gujarat & Another*** reported in ***2016 (1) SCC (Cri) 240*** and ***Manoj Suresh Jadhav & Ors. vs. The State of Maharashtra***, reported in ***2018 SCC OnLine SC 3428***, wherein the applicant therein was enlarged on anticipatory bail in the added sections U/S 438 Cr.P.C. after being enlarged on regular bail U/S 439 Cr.P.C. Learned Senior Counsel has also placed reliance on the judgment of this Court passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.9742 of 2021, wherein the accused was enlarged on anticipatory bail after being granted regular bail. He has further stated that the applicant does not have any criminal antecedents to his credit.

Per contra, the prayer for anticipatory bail has been vehemently opposed learned A.G.A. However, he could not dispute the said facts advanced by learned Senior Counsel for the applicant.

It is true that the applicant was enlarged on bail in the said F.I.R. and he has not misused it during investigation and no apprehension of tampering with evidence has been raised by the A.G.A. Sending the applicant behind bars again in the added sections would be of no fruitful use.

The expression 'bail' whether it is a regular bail or an anticipatory bail from Sections 437 to 439 of the Code states that a person accused of, or suspected of, the commissioning of offences of the type referred therein may be 'released on bail'. The only difference between Sections 437, 438 and 439 Cr.P.C. is that an order of anticipatory bail under Section 438 Cr.P.C. insulates a person arrested from custody, while an order of bail under Section 437 or 439 Cr.P.C. gets him released from custody. Under all the three provisions, Sections 437 to 439 Cr.P.C., the person is set at liberty on security being taken for his appearance on a bail and a place.

On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant and the case law produced by learned Senior Counsel, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of ***"Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1"***. The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

In view of the above, the anticipatory bail application of the

applicant is allowed. Let the accused-applicant- **Shahzad** be released forthwith in the aforesaid case crime (supra) on anticipatory bail on furnishing a personal bond of Rs.50,000/- and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

1. that the applicant shall make himself available for interrogation by a police officer as and when required;
2. that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;
3. that the applicant shall not leave India without the previous permission of the court;
4. that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
5. that the applicant shall not pressurize/ intimidate the prosecution witness;
6. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
7. that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail.

It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial or deciding the regular bail application.

Order Date :- 30.9.2022
Ravi Kant