

**Court No. - 67**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 1826 of 2022

**Applicant :-** Tarun Aggarwal

**Opposite Party :-** Union Of India And 2 Others

**Counsel for Applicant :-** Vimlendu Tripathi, Anshul Kumar Singhal

**Counsel for Opposite Party :-** Sanjay Kumar Yadav

**Hon'ble Rahul Chaturvedi, J.**

(1) Pleadings have been exchanged between the parties and the matter is ripe for final disposal.

(2) Heard Shri Vimlendu Tripathi, learned counsel for the applicant, Shri Gyan Prakash, learned Senior Counsel assisted by Shri Sanjay Kumar Yadav, learned counsel for the C.B.I. and Shri Ghanshyam Verma, learned Additional Government Advocate representing the State and perused the record.

(3) The instant application is being moved by the applicant, namely, Tarun Aggarwal invoking the powers of Section 438 Cr.P.C. that he has every reason to believe that he may be arrested on the accusation of having committed a non-bailable offence in connection with Case Crime No. RC1202017A0013, under Sections 120-B, 420, 467, 468, 471 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, police station C.B.I. ACB, Ghaziabad

(4) From the record, it is evident that the applicant has approached this Court after getting his anticipatory bail rejected from the court of sessions vide order dated 16.2.2022.

(5) Learned counsel for the applicant has drawn attention of the Court to Clause-7 of Section 438 Cr.P.C. (U.P. Act No.4 of 2019), which read thus :

***"(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session."***

(6) After interpreting the aforesaid clause, it is clear that the Legislature in its own wisdom

bestowed two avenues upon the accused with a rider that if the accused has chosen to come to the High Court straightaway, then he would not be relegated back to exhaust his remedy before the Court of Session first. In this regard, learned counsel for the applicant has placed reliance upon the Full Bench judgment of this Court in the case of **Ankit Bharti and others Vs. State of U.P. and another**, 2020(3) ADJ 575 in which the Bench has directed to spell out the extraordinary and special reasons for coming to the High Court. After perusal of those pleadings/reasons in this regard, this Court is satisfied that the reasons mentioned therein are quite convincing to entertain the present anticipatory bail application before this Court itself.

(7) Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.8072 of 2020, **Govind Mishra @ Chhotu Versus State of U.P.**, hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A. as per Section 438(3) Cr.P.C. (U.P. Amendment) is not required.

(8) It is given to understand that the charge sheet has been submitted in the matter by the C.B.I. and the Magistrate concerned has taken cognizance to the offence and process have been issued against the applicant during the pendency of this anticipatory bail application.

(9) The applicant-Tarun Aggarwal is an Advocate and was appointed as Standing/Additional Lawyer (panel lawyer) for the branches of Syndicate Bank in district Ghaziabad vide appointment letter dated 8.2.2014 issued by the Assistant General Manager, Regional Office Syndicate Bank, District Ghaziabad. In the loan matter, the Bank often seek a legal opinion from the panel lawyers. The applicant was given search report-cum-legal opinion in total thirteen matter of the Bank, out of which in eight his search report-cum-legal opinion found to be perfectly in order and the Bank has

acted upon his report/opinion

(10) It also come to the surface that during investigation, the Central Bureau of Investigation has recorded the statement of another panel lawyer, namely, Amit Jain under Sections 161 Cr.P.C. as a witness, who in his statement recorded under Section 161 Cr.P.C. opined that out of thirteen cases, in which the applicant has given the search report-cum-legal opinion, only five matters were found to be tainted one.

(11) On this factual premise, a prosecution has been raised against the applicant. In the F.I.R., it is clearly mentioned that the role of the applicant-Tarun Aggarwal, who submitted a legal opinion-cum-search report in some of the matter, is suspected.

(12) After having indepth probe into the matter, the only material against the applicant is the statement of Mr. Amit Jain, the another panel lawyer of the said Bank.

(13) A short counter affidavit filed by Shri Sanjay Kumar Yadav, learned counsel for the C.B.I. annexing the statement of witness-Amit Jain recorded under Section 161 Cr.P.C. I have perused the statement of Amit Jain, Advocate containing the six matters, in which Shri Jain has given his opinion.

(14) Shri Vimlendu Tripathi, learned counsel for the applicant submits that Shri Amit Jain, Advocate has given the report as incorrect, but it was given a colour of fake search-cum-legal opinion, has been branded by the C.B.I. This could not be for the vested interest also or the question of perception. The so-called 161 Cr.P.C. statement cannot be taken as gospel thuth, that too by a professional rival.

(15) Further Shri Tripathi has placed reliance upon the decision of Hon'ble the Apex Court in the case of **Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao** reported in 2012 (Supp.) ACC 308. The relevant paragraph Nos. 20, 23 and 26 of the said judgment are

reproduced herein below:

**"(20) The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.**

**(23) A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.**

**(26) Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators."**

(16) Besides this, Shri Vimlendu Tripathi, learned counsel for the applicant has drawn the attention of the Court towards the appointment letter of the applicant-Tarun Aggarwal, in which he was only entrusted the work of issuing legal notices or furnishing legal opinions and filing of execution petitions/civil suits. In the afore-mentioned appointment letter, it also mentioned that the opinion/certification of the applicant would be an input for the Bank decision making. Shri Tripathi contended that it could be out of sheer oversight, the applicant-Tarun Aggarwal could not point out the deficiencies in the documents, but on this bona fides can not be questioned.

(17) Per contra, Shri Gyan Prakash, learned Senior Counsel appearing for the C.B.I. vehemently opposed the prayer of anticipatory bail application by contending that non-bailable warrants have been issued against the applicant, which are pending against him. Though, the same has been issued during the pendency of the present anticipatory bail application.

(18) Shri Gyan Prakash, learned Senior Advocate further submits that Mr. Gian Chand Verma, the then Senior Branch Manager of Ghaziabd Baishali Branch, who had sanctioned the loans was approached this Court by filing the anticipatory bail application being Criminal Misc. Anticipatory Bail Application No. 2420 of 2022 and the same was disposed of by the Coordinate Bench of this Court vide order dated 31.3.2022, and aggrieved by the said order, he has filed Special Leave Petition before Hon'ble the Supreme Court, which was also disposed of. Thereafter, the Gian Chand Verma, Senior Branch Manager has again approached this Court by filing second anticipatory bail application being Criminal Misc. Anticipatory Bail Application Under Section 438 Cr.P.C. No. 3164 of 200, which is still pending before this Court and no order has been passed in the said second anticipatory bail application. Thus, it is contended that the case of the present applicant is at par with the case of Senior Branch Manager.

(19) I am afraid to accept the contention of Shri Gyan Prakash, learned Senior Counsel. The

applicant is a purely professional Advocate, who has allegedly given mistaken legal advice, as per opinion of one Amit Jain, yet another professional Advocate, but to brand every mistake as a conspiracy, the prosecution has long way to go to establish this fact.

(20) It has been contended by the learned counsel for the applicant that the applicant has got no criminal antecedents and he has not undergone any imprisonment after conviction by any court of law in relation to any cognizable offence previously. An assurance was also advanced by learned counsel for the applicant on behalf of the applicant that he would render all requisite co-operation and assistance in the process of law and with the investigating agency and shall not create any hindrance to reach to its logical conclusion and shall not flee away from the course of justice.

(21) Learned counsel for the applicant has strenuously argued that the applicant has been made target just to besmirch his reputation and belittle him in the public estimate by the informant. Number of arguments were advanced by learned counsel for the applicant to demonstrate the falsity of the accusation made in the FIR against the applicant by the informant. Learned counsel for the applicant has also relied upon the judgements in the cases of **Arnesh Kumar vs State of Bihar and another**, (2014) 8 SCC 273; **Joginder Kumar vs State of U.P. and others** (1994) 4 SCC 260 and **Sanaul Haque vs State of U.P. and another**, 2008 Cri. LJ 1998, to buttress his contentions.

(22) In this backdrop of legal as well as factual proposition, learned counsel for the applicant has submitted that since the applicant has already participated in the investigation and the charge sheet has been submitted and he undertakes that he would regularly participate in the trial too.

(23) After the close scrutiny of Section 438 Cr.P.C. (U.P. Act No.4 of 2019) and its relevant clauses, the Court is satisfied that the applicant has made out the case for interim order protecting the liberty of applicant in connection with aforesaid case

crime during trial upto framing of charge.

(24) Looking to the facts of the case, reasonable apprehension of arrest, taking into consideration the gravity and nature of accusation, and there being no possibility of his fleeing from justice, this Court is of the view that applicant is entitled for anticipatory bail upto framing of charge.

(25) Till the framing of CHARGE, in the event of arrest of the applicant Tarun Aggarwal involved in the aforesaid case shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned with the following conditions:-

(1) 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.

(2) The applicant shall not leave India without the previous permission of the court.

(3) In default of any of the conditions mentioned above or it is found that applicant has obtained this order concealing any material facts, the investigating officer shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The application is disposed of.

**Order Date :-** 25.5.2022

Sumaira