

Masrur Ahmad (In Fir Masroof Ahmad) vs State Of U.P. Thru. Prin. Secy. Home Lko. on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12679

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 257 of 2025

Applicant :- Masrur Ahmad (In Fir Masroof Ahmad)

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Dileep Singh,Pravin Kumar Singh

Counsel for Opposite Party :- G.A.,Dadu Ram Shukla (D.R. Shukla)

Hon'ble Shree Prakash Singh,J.

Rejoinder affidavit filed today by counsel for the applicant is taken on record.

Heard counsel for the applicant, Sri D.R. Shukla, counsel for the complainant, learned AGA for the State and perused the record.

The instant application under section 438 of Cr.P.C. has been filed for anticipatory bail in Case Crime No. 148 of 2023, under sections 419, 420, 467, 468, 471 and 120-B of IPC Police Station- Kotwali Nagar District- Gonda.

As per the prosecution story, it is alleged that the applicant being a mafia was involved in committing the offence, as a forged will deed was prepared in collusion with the present applicant including the other co-accused persons and as such, the applicant has committed cheat and fraud.

The contention of learned counsel for the applicant is that the applicant is innocent and has falsely been planted in the first information report due to ulterior motive. He submits that bald allegation is leveled against the applicant that he is a land mafia though, the prosecution has prima facie failed to substantiate the charges. He submits that the applicant is neither executor or receiver of the will deed nor he is the marginal witness of the same and even there is no evidence that he is anyway beneficiary of the will deed in question. He added that uptill date, the police has also failed to collect any cogent evidence that the applicant is involved in committing offence except apart, the story cooked up while narrating the first information report against him. He also submits that this is a case where, without any evidence, the applicant is being harassed even then the applicant is cooperating in the investigation proceedings and there is no complaint against him that he has ever threatened the witness or tampered the evidences. He also submits that the applicant has nine cases criminal history which have been explained in the bail application as well in the rejoinder affidavit and added that the applicant undertakes that he will always remain present before the Investigating Officer, as and when required. Adding his arguments, he submits that no further custodial interrogation is required in the event that the applicant is presenting himself before the Investigating Officer and is according all cooperation. Concluding his arguments, he submits that even after the aforesaid, the police is adamant to arrest the applicant and as such, he may be enlarged on anticipatory bail.

Sri D.R. Shukla, counsel appearing for the complainant has opposed the contentions aforesaid and submits that the applicant is very well involved in committing offence as he had changed his stand thrice and had fixed the name plate over the property in question. He also submits that there are documentary evidence against the applicant and there are nine cases criminal history and as such, he is not entitled for any relief.

In support of his contentions, he has placed reliance on the judgment rendered in the case of Neeru Yadav versus State of U.P. reported in AIR 2015 Supreme Court 3703 and submitted that there are criminal antecedent of the accused/applicant and that cannot be ignored as is held by the Apex Court.

It is noticeable here that the Apex Court has held in case reported in (2020) 11 SCC 648 (Prabhakar Tewari vs The State Of Uttar Pradesh) that the merely pendency of the cases would not be the basis so as to consider the bail of an accused, thus, the abovesaid argument of counsel for the complainant has no force.

He again has placed a judgment reported in (2016) 1 SCC 146 (Sudhir versus state of Maharashtra and Another) and has submitted that Apex Court has held that in cases of misappropriation of public funds and corruption, there are requirement of custodial interrogation and therefore, the case of the applicant is covered with the ratio of judgment above-said.

This Court has also examined the contentions of counsel for the complainant and has gone through the judgment of the Apex Court wherein, it is apparent that the Apex Court has decided the case while dealing with the matter of misappropriation of public funds and therefore, the ratio of the judgment above-said would not apply in the present matter.

Again a case has also been referred which is reported in 1985 2 SCC 597(Pokar Ram versus State of Rajasthan and Others), wherein, it has been held by the Apex Court that application for anticipatory bail moved by a person, accused of committing murder by fire arm is a serious consequence and the Court should be cautious enough while deciding the anticipatory bail application in such matters, whereas, the factual matrix of the present case is altogether different and the applicant is neither the executor, receiver nor the marginal witness of the will deed in question and therefore, the ratio of the abovesaid judgment would also not apply in the present case.

Learned A.G.A. appearing for the State has supported the version of counsel for the complainant and submits that the applicant is not entitled for any relief, but he could not dispute the fact that the applicant is cooperating in the investigation proceedings.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the applicant is neither executor, receiver nor the marginal witness of the will deed in question; prima facie, the counsel for the complainant and A.G.A. have also failed to substantiate their arguments that the applicant is anyway beneficiary as per the allegation made in the first information report or any evidence collected thereof; This Court has also taken note of fact that the criminal history of the applicant has been explained and so far as the allegation made in the present first information report is concerned i.e. prima facie is not substantiated by any documentary evidence yet and the ingredients of the offences as is charged against the applicant do not prima facie, attract in this case. It is also noticeable that the applicant is cooperating in the investigation proceedings as the same could not be disputed by counsel for the State and the applicant has undertaken that he will further cooperate in the investigation and at this stage no further custodial interrogation is seems to be required.

Considering the aforesaid submission and discussions, the instant interim anticipatory bail is hereby granted to the applicant namely, Masrur ahmad (In Fir Masroof Ahmad) till disposal of the trial subject to the following conditions:-

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence;
- (iii) that the applicant shall not leave India without the previous permission of the court'
- (iv) that the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted; and
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness.

In case of default, it would be open for the investigating agency to move application for vacation of this protection.

Order Date :- 3.3.2025 Mayank