

Arvind Kumar vs State Of U.P. on 3 March, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:30380

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 7396 of 2024

Applicant :- Arvind Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyam Sunder, Sunil Vashisth

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Sunil Vashisth, learned counsel for the applicant, Sri Ajay Singh, learned counsel for the State and perused the record.
3. Counter affidavit by the State and rejoinder affidavit to the same on behalf of the applicant have been filed in the matter which are taken on record.
4. The records show that the applicant was granted interim anticipatory bail vide the order dated 31.7.2024 passed by a Coordinate Bench of this Court. The order reads as under:

"1. Heard Mr.Sunil Vashisth, the learned counsel for applicant and the learned A.G.A. for State, opposite party-1.

2. Perused the record.

3. This application for anticipatory bail has been filed by applicant-Arvind Kumar seeking his enlargement on anticipatory bail in Case Crime No. 348 of 2022 under Section 120B I.P.C. and Sections 7/8 of Prevention of Corruption Act 1988, Police Station- Dankaur, District-Gautam Buddh Nagar, during the pendency of trial, i.e. Sessions Case No. 70 of 2024 (State Vs. Suresh Chand and others) under Section 120B I.P.C. and Sections 7/8 of Prevention of Corruption Act 1988, Police Station- Dankaur, District-Gautam Buddh Nagar, now pending in the Court of Additional Sessions Judge/Special Judge (P.C. Act), Special Court No.2, Meerut.

4. Record shows that an F.I.R. dated 27.09.2022 was lodged by first informant-Mukut Singh and was registered as Case Crime No. Case Crime No. 348 of 2022 under Sections 420, 467, 468, 471, 120B, 166, 167 I.P.C. and Sections 3 (1) (r), 3 (2) (5) SC/ST Act, Police Station- Dankaur, District-Gautam Buddh Nagar. In the aforesaid F.I.R. two persons namely Suresh Chand, Manager Committee of Management of Dr. Rajendra Prasad Inter College, Bilaspur and Suresh Chand Sharma, Principal of Dr. Rajendra Prasad Inter College, Bilaspura, have been nominated as named accused.

5. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. On the basis of material collected by him during course of investigation, he came to the conclusion that complicity of not only named accused but also not named accused has emerged in the crime in question. He accordingly submitted police report dated 04.01.2024 (charge sheet) in terms of Section 173 (2) Cr.P.C. whereby named accused Suresh Chand, Suresh Chand Sharma and not named accused Arvind Kumar, Anjali Raki, Ram Sagar, Santosh Kumar, Seema Pal Jyoti as well as the first informant Mukut Singh have been charge sheeted. After submission of police report, cognizance was taken upon same by court concerned in exercise of jurisdiction under Section 190 (1) (b) Cr.P.C. Resultantly, Sessions Case No. 70 of 2024 (State Vs. Suresh Chand and others) under Section 120B I.P.C. and Sections 7/8 of Prevention of Corruption Act 1988, Police Station- Dankaur, District-Gautam Buddh Nagar came to be registered.

6. Learned counsel for applicant contends that though applicant is not named in the F.I.R. but a charge sheeted accused yet he is liable to be granted the benefit of anticipatory bail. Applicant is innocent. He has been falsely implicated in aforementioned case crime number. It is then contended by the learned counsel for applicant that named accused Suresh Chand approached this Court by means of Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 6299 of 2024

(Suresh Chand Vs. State of U.P. and another) wherein this Court passed an order dated 28.06.2024. For ready reference the same is reproduced herei-under:

"1. Heard Sri Jitendra Kumar, learned counsel for the applicant and learned AGA for the State.

2. This Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. has been moved by the applicant seeking Anticipatory Bail in Case Crime No.348 of 2022, under Sections 120-B IPC and 7/8 Prevention of Corruption Act, Police Station- Dankaur, District- Gautam Buddh Nagar.

3. Learned counsel for the applicant contends that he is the manager of the Institution, and the first information report was lodged under Sections 420, 467, 468, 471, 120-B, 166, 167 I.P.C. and Section 3(1)(da) & 3(2)(va) of SC/ST Act.

4. After investigation, the charge sheet was submitted and the Court concerned had taken cognizance under Section 120-B IPC and 7/8 of Prevention of Corruption Act. He further submits that no money has been recovered from the account of the applicant, and the money was returned by the Principal, in whose account money was lying. Merely, on the basis of suspicion, the applicant has been roped in the present case. He has brought on record the order granting anticipatory bail to the other co-accused- Suresh Chandra Sharma in Criminal Misc. Anticipatory Bail Application No.5149 of 2024.

5. Matter requires consideration.

6. Learned AGA prays for and is granted three weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

7. List in the first week of August, 2024.

8. Till the next date of listing, the applicant Suresh Chand, if arrested, shall be released on interim anticipatory bail in Case Crime No.348 of 2022, under Section 120-B IPC, 7/8 of Prevention of Corruption Act, Police Station-Dankaur, District-Gautam Buddh Nagar on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) 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.

(iii) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the concerned court.

9. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled/vacated and the applicant shall be taken into custody, forthwith.

10. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same.

11. The court concerned shall not be prejudiced by any observation made by this Court while considering the present anticipatory bail application of the applicant.

12. This order shall only be applicable if the applicant appears before the court concerned within 20 days from today and files the required bail bonds and sureties.

Order Date :- 28.6.2024 "

7. Similarly another named accused Suresh Chand Sharma approached this Court by means of Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 5149 of 2024 (Suresh Chand Sharma Vs. State of U.P.) wherein this Court passed an order dated 10.06.2024. For ready reference the same reads as under:

"1. List has been revised.

2. Heard Sri Sunil Vashisth, learned counsel for the applicant and Sri Ajai Singh, learned A.G.A.-I for the State. Learned counsel for the State submits that he has received instructions in the matter for which the time was granted to him previously.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that the F.I.R. was initially lodged under sections 420, 467, 468, 471, 120B, 166, 167 I.P.C. and sections 3(1)(da) and 3(2)(va) of SC/ST Act after which charge sheet was submitted against the applicant under section 120-B I.P.C. and section 7/8 of the Prevention of Corruption Act on which the court concerned has taken cognizance vide order dated 15.01.2024 and has summoned the applicant and other accused persons. It is submitted by learned counsel for the applicant that implication of the applicant in the present case is on the basis of suspicion only. It is further submitted by learned counsel for the applicant that during the pendency of investigation the arrest of the applicant and other accused persons was stayed till submission of police report under section 173(2) Cr.P.C. vide order dated 14.11.2022 passed by a Division Bench of this Court in Criminal Misc. Writ Petition No. 16918 of 2022 (Suresh Chand and another Versus State of U.P. and 2 others). It is submitted by learned counsel for the applicant that there is nothing on record to show that the applicant did not cooperate in the

investigation or avoided the process of investigation. It is further argued by placing para 26 of the affidavit that applicant has no criminal history.

4. Submission requires consideration.

5. Learned counsel for the State prays for and is granted three weeks time to file counter affidavit. Two weeks thereafter is granted to the learned counsel for the applicant to file rejoinder affidavit.

6. Let the matter be listed on 26.07.2024.

7. Till the next date of listing, the applicant Suresh Chand Sharma, if arrested, shall be released on interim anticipatory bail in Case Crime No. 348 of 2022, under section 120-B I.P.C. and section 7/8 Prevention of Corruption Act, Police Station Dankaur Gautam Budh Nagar, District Gautam Budh Nagar, on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) 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.

(iii) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the concerned court.

8. In case, the applicant do not co-operate in the proceedings of the trial, this order shall stand automatically recalled/ vacated and the applicant shall be taken into custody, forthwith.

9. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same.

10. The court concerned shall not be prejudiced by any observation made by this Court while considering the present anticipatory bail application of the applicant.

11. This order shall only be applicable if the applicant appears before the court concerned within 20 days from today and files the required bail bonds and sureties.

Order Date :- 10.6.2024 "

8. On the above premise, the learned counsel for applicant contends that case of present applicant stands on better footing than that of aforementioned named and charge sheeted accused, who have been granted the benefit of anticipatory bail by this Court. He also contends that there is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from aforementioned named and charge sheeted co-accused in whose favour, the benefit of anticipatory bail has been extended by this court, so as to deny the present applicant the benefit of anticipatory bail. He therefore submits that in view of above and for the facts and reasons recorded in the bail orders of aforementioned named and charge sheeted co-accused, liberty of present applicant is also liable to be protected by granting the benefit of anticipatory bail. It is then contended that the F.I.R. giving rise to present criminal proceedings was lodged on 27.09.2022. Applicant duly co-operated with investigation. At no point of time any application was filed by Investigating Officer before court below for issuance of non-bailable warrant or coercive process under Section 82 Cr.P.C. against applicant to secure his presence in the investigation. Police report in terms of Section 173 (2) Cr.P.C. has been submitted on 04.01.2024 upon which applicant was summoned vide Summoning/Cognizance Taking order dated 15.01.2024 in the consequential criminal case as mentioned above. However, no coercive process has been adopted by the court below to secure the presence of applicant. Categorical averments regarding above has been made in paragraph 5 of the affidavit filed in support of present application for anticipatory bail, which is not disputed by the learned A.G.A. with reference to the instructions received by him. On the above premise, he thus submits that liberty of applicant is also liable to be protected by extending the benefit of anticipatory bail in his favour.

9. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant. Therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged by the learned counsel for applicant that custodial arrest of applicant is not absolutely necessary to continue the trial. To lend support to his submission, he has relied upon the judgement of Apex Court in Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5). On the above premise, it is thus urged by the learned counsel for applicant, the benefit of anticipatory bail is liable to be extended in favour of present applicant also. In case the applicant is granted the benefit of anticipatory bail, he shall not misuse the same and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Placing reliance upon the judgement of Apex Court in P. Chidambaram Vs. Directorate of Enforcement, AIR 2019 SC 4198, it is urged by the

learned A.G.A. that since no exceptional circumstance has emerged in the present case, therefore, remedy lies to applicant to approach court concerned and apply for regular bail. On the basis of above, the learned A.G.A. contends that no interference is warranted by this Court in this application for anticipatory bail. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, and considering the submissions urged by the learned counsel for applicant in support of this application for anticipatory bail, matter requires consideration.

12. Notice on behalf of opposite party-1 has been accepted by the learned A.G.A. He prays for and is granted four weeks time to file counter affidavit. Applicant will have two weeks thereafter to file rejoinder affidavit.

13. List after expiry of the aforesaid period.

14. Connect Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 6299 of 2024 (Suresh Chand Vs. State of U.P. and another) and Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 5149 of 2024 (Suresh Chand Sharma Vs. State of U.P.) alongwith this application for anticipatory bail.

15. In view of above, in the event of arrest, applicant- Arvind Kumar shall be released on anticipatory bail in Case Crime No. 348 of 2022 under Section 120B I.P.C. and Sections 7/8 of Prevention of Corruption Act 1988, Police Station- Dankaur, District-Gautam Buddh Nagar on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of concerned Court with the following conditions:-

(i) 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 her from disclosing such facts to the Court;

(ii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

(iii). In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant."

5. Learned counsel for the applicant submits that subsequently vide the orders dated 25.9.2024, 27.11.2024 and 24.12.2025 interim anticipatory bail granted to the applicant was extended. It is

submitted that there is nothing on record to show that even after grant of anticipatory bail to the applicant vide order dated 31.07.2024 he has misused the said liberty or has evaded the process of law.

6. Learned counsel for the State although opposed the prayer for anticipatory bail and placed his counter affidavit but could not dispute the said argument.

7. In view of the same, it is provided that the order dated 31.7.2024 is hereby made absolute.

8. Since the applicant has been granted interim anticipatory bail vide order dated 31.7.2024, the same is hereby made absolute during the period of trial for the reasons as given in the said order on his furnishing a fresh personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) 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.

(iii) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the concerned court.

9. The applicant shall appear before the trial court concerned within a period of 10 days from today along with the certified copy of this order and file the required bonds and sureties in compliance of the same along with an undertaking to cooperate with the trial

10. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled/vacated and the applicant shall be taken into custody, forthwith.

11. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same.

12. The court concerned shall not be prejudiced by any observation made by this Court while considering and deciding the present anticipatory bail application of the applicant.

13. The present anticipatory bail application is allowed.

Order Date :- 3.3.2025 Kumar Manish (Samit Gopal,J.)