

Vijendra Singh vs State Of U.P. on 22 April, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:60502

Court No. - 64

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 12210 of 2024

Applicant :- Vijendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Rajeev Kumar Singh, learned counsel for the applicant, Sri Shashi Kant Pandey, learned A.G.A for the State and perused the records.
3. The anticipatory bail application under Section 438 Cr.P.C. has been filed by the applicant Vijendra Singh with the prayer to grant anticipatory bail in favour of the applicant in Case Crime No.82 of 2021, under Section 13(1) of the Prevention of Corruption Act, 1988, Police Station Cantt. District Gorakhpur during the pendency of trial before the trial court.

4. The facts of the case are that initially after lodging of the FIR the applicant had challenged the same in Criminal Misc. Writ Petition No.2023 of 2021 (Vijendra Singh Vs. State of U.P. and 3 others) in which vide order dated 16.3.2021, the arrest of the applicant who was the petitioner therein was stayed by a Division Bench of this Court till the next date of listing or till submission of police report under Section 173(2) Cr.P.C. whichever is earlier. The said order reads as under:-

"Issue notice to respondent No.4 making it returnable within three weeks.

Notice be sent through registered post.

Steps be taken within a week.

Let this petition be listed on 19.04.2021.

It is alleged that based on some audio, an F.I.R. against the petitioner has been registered without even verifying as to whether the voice in the audio is of the petitioner. The F.I.R. is otherwise registered by the clerk of the District Magistrate and not by the District Magistrate himself.

The audio may have been created at the instance of those against whom the petitioner contested the prosecution case and the accused therein were convicted as the petitioner is working as Special Public Prosecutor.

It is also alleged that no reference of any case or party has been given in which the petitioner had demanded the money.

Keeping in mind the arguments, we find a prima-facie case in favour of the petitioner.

Till the next date of listing or submission of police report under Section 173(2) Cr.P.C., whichever is earlier, the petitioner shall not be arrested pursuant to F.I.R. dated 12.02.2021 in Case Crime No. 82 of 2021 under Section 13(1) of Prevention of Corruption Act, 1988, Police Station- Cantt., District Gorakhpur provided petitioner shall cooperate with the investigation."

5. Thereafter the applicant had filed a Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.5710 of 2024 (Vijendra Singh Vs. State of U.P.) in which interim protection was granted to him vide order dated 15.7.2024 whereby he was granted anticipatory bail by a coordinate Bench of this Court. The said order reads as under:-

"1. Heard Mr. Rajeev Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for anticipatory bail has been filed by applicant-Vijendra Singh seeking his enlargement on anticipatory bail in Case Crime No. 82 of 2021 under Section 13 (1) of Prevention of Corruption Act 1988, Police Station- Cantt., District-Gorakhpur, during the pendency of trial i.e. Special Trial No. 1299 of 2021 (State Vs. Vijendra Singh) under Section 13 (1) of the Prevention of Corruption Act, Police Station- Cantt., District-Gorakhpur,

4. Record shows that an F.I.R. dated 12.02.2021 was lodged by first informant-Rakesh Pandey, Litigation Clerk and was registered as Case Crime No. 0082 of 2021 under Section 13 (1) of Prevention of Corruption Act 1988, Police Station- Cantt., District-Gorakhpur. In the aforesaid F.I.R. applicant Vijendra Singh, who at that time was working as ADGC/Special Public Prosecutor, has nominated as solitary named accused.

5. Gravamen of the allegations made in the F.I.R. is to the effect that applicant is alleged to have demanded a sum of Rs.25,000/- to 50,000/- for securing the acquittal of the accused in Special Trial No. 79 of 2014 under Section 376, 323, 504, 506 I.P.C., Sections 5/6 POCSO Act and Section 3 (2) 5 SC/ST Act, Police Station, Belghat, District, Gorakhpur.

6. 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. Upon completion of investigation, he ultimately submitted the police report in terms of Section 173 (2) Cr.P.C i.e. charge sheet dated 09.08.2021 against applicant whereby applicant has been charge-sheeted under Section 13 (1) of Prevention of Corruption Act. After submission of police report, cognizance was taken upon same by the concerned Special Judge in exercise of jurisdiction under Section 190 (1) (b) Cr.P.C. Resultantly, Special Case No. 1299 of 2021 (State Vs. Vijendra Singh) under Section 13 (1) of Prevention of Corruption Act, Police Station Cantt. District-Gorakhpur came to be registered in the Court of Special Judge (Anti Corruption Act) Court No.1/Additional District and Sessions Judge, Gorakhpur.

7. Attention of the Court was then invited to the order sheet of aforementioned Special Sessions Trial, copy of which has been brought on record as Annexure 10 to the affidavit filed in support of this application for anticipatory bail and on basis thereof, it is urged by the learned counsel for applicant that neither non-bailable warrant has been issued against applicant nor coercive process has been adopted by court below to secure the custody of applicant.

8. It is then contended by the learned counsel for applicant that Special Sessions Trial No. 79 of 2014 was ultimately decided on 08.02.2021 resulting in the acquittal of the accused whereas the F.I.R. giving rise to present criminal proceedings has been lodged on 12.02.2021. On the above premise, he therefore submits that cause of action for initiating present criminal proceedings stood vanished on the date of

lodging of the F.I.R.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as he has 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, 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 record necessitating the custodial arrest of applicant during the pendency of trial. The custodial arrest of applicant is, therefore, not absolutely necessary for conducting trial. Referring to internal page 2 of the Bail Rejection Order passed by court below, the learned counsel for applicant submits that except for hearsay evidence no such clinching and reliable evidence has emerged against applicant, on the basis of which it can even be prima facie said that offence under Section 13 (1) of Prevention of Corruption Act is made out against applicant. On the above premise, the learned counsel for applicant submits that liberty of applicant be protected by extending the benefit of anticipatory bail in his favour. In case the applicant is granted the benefit of anticipatory bail, he shall not misuse the same and shall co-operate with the trial.

11. Per contra, the learned A.G.A. has vehemently opposed the present application for anticipatory bail. He submits that applicant is a named and charge-sheeted accused therefore no indulgence be granted by this Court in his favour. Referring to the judgement of Apex Court in P. Chidambaram Vs. Directorate of Enforcement, AIR 2019 SC 4198, he submits that exercise of jurisdiction under Section 438 Cr.P.C. should be done in rare cases. No exceptional circumstance has emerged so as to grant anticipatory bail to applicant. As such, this application for anticipatory bail is liable to be rejected. 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.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant, matter requires consideration.

13. 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 one week thereafter to file rejoinder affidavit.

14. List for orders after expiry of aforesaid period.

15. In view of above, in the event of arrest, applicant- Vijendra Singh shall be released on anticipatory bail in Case Crime No. 82 of 2021 under Section 13 (1) of Prevention of Corruption Act 1988, Police Station- Cantt., District-Gorakhpur 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. "

6. The said anticipatory bail application was subsequently dismissed in non-prosecution by this Court vide order dated 27.11.2024. The said order reads as under:-

"1. List revised. No one appears on behalf of the applicant to press this anticipatory bail application despite. Sri Vaibhav Dutt Ojha, learned counsel for the State is present.

2. This anticipatory bail application under Section 438 Cr.P.C. has been filed by the applicant seeking anticipatory bail, in the event of arrest, in Case Crime No. 82 of 2021, under Section 13 (1) Prevention of Corruption Act, 1988, Police Station- Cantt., District Gorakhpur.

3. Since there is no representation on behalf of the applicant even when the matter has been taken up in the revised list, the present anticipatory bail application is dismissed in non prosecution.

4. Interim order, if any, stands vacated.

5. Pending application(s), if any, shall stand disposed of."

7. After conclusion of investigation a charge sheet was submitted against the applicant on which the court concerned took cognizance and summoned him. The proceedings of the said case including charge sheet, cognizance order and summoning order were challenged before this Court in Application U/S 482 No.26329 of 2021 (Vijendra Singh Vs. State of U.P.) which was dismissed vide order dated 20.9.2022 by this Court. The said order reads as under:-

"Heard Sri R.P.S. Chauhan, learned counsel for the applicant, Sri B.B. Upadhyay, learned counsel for the State and perused the record.

This application u/s 482 Cr.P.C. has been filed by the applicant Vijendra Singh with the prayer to quash the entire proceedings of Special Trial No. 1299 of 2021 (State vs. Vijendra Singh) arising out of Case Crime No. 82 of 2021, under Section 13(1) of Prevention of Corruption Act, 1988, Police Station Cantt., District Gorakhpur, including the charge sheet no. A-10/2021, dated 29.4.2021 as well as cognizance and summoning order dated 11.8.2021 passed by the Special Judge, Prevention of Corruption Act, Court No. 1/Additional District and Sessions Judge, Gorakhpur with further prayer to stay the further proceedings of Special Trial No. 1299 of 2021 (State vs. Vijendra Singh) arising out of Case Crime No. 82 of 2021, under Section 13(1) of Prevention of Corruption Act, 1988, Police Station Cantt., District Gorakhpur, including the charge sheet no. A-10/2021, dated 29.4.2021 as well as cognizance and summoning order dated 11.8.2021 passed by the Special Judge, Prevention of Corruption Act, Court No. 1/Additional District and Sessions Judge, Gorakhpur.

The prosecution case as per the First Information Report lodged on 12.2.2021 by Rakesh Pandey, suit clerk (??? ?????) in the office of District Magistrate, Gorakhpur naming the applicant only as an accused, is that he has been informed by the Information Department, Gorakhpur that on the social media an audio is viral in which accused Hamid and the A.D.G.C. Vijendra Singh (the applicant) are talking in which there is a discussion going on for exonerating the accused in Special Trial No. 79 of 2014, Case Crime No. 62 of 2014, under Sections 376, 323, 504, 506 I.P.C., Section 5/6 POCSO Act and 3(2) S.C./S.T. Act and a demand of Rs. 25,000/- to Rs. 50,000/- is being done and it is said that the same may not be disclosed to anyone. It is further stated that in the judicial system instead of getting justice to the victim the accused is being favoured which comes within the parameters of corruption. Vijendra Singh has been appointed by the Department of Justice, Govt. of U.P. as Special Public Prosecutor for doing pairvi for the victims for which State Government gives money to him. The said conversation is in pen drive which is being enclosed with the said application and a direction has been issued to him to get a First Information Report lodged against Special Public Prosecutor Vijendra Singh under the provisions of Prevention of Corruption Act. Along with the said application a pen drive is also enclosed.

The matter was investigated and a charge sheet dated 29.4.2021 has been submitted against the applicant under Section 13(1) of Prevention of Corruption Act. Copy of the said charge sheet is annexure no. 9 to the affidavit. The trial court vide order dated 11.8.2021 took cognizance upon the same and summoned the accused. Copy of the order sheet of the trial court is annexure no. 10 to the affidavit.

Learned counsel for the applicant argued that the District Magistrate concerned has not passed any order for lodging of the said F.I.R. It is argued that the audio as is alleged to have been collected, has not been tested till date and report of Forensic Science Lab is still awaited. It is argued that voice sample of the applicant has not been taken till date. It is further argued that the said pen drive has been sent to the

F.S.L., Lucknow on 28.4.2021, reference of the same finds place in the case diary. The said page of the case diary has been placed before the Court which is at page-71 of the paper book. It is argued that during investigation the applicant was granted protection by a Division Bench of this Court vide order dated 16.3.2021 passed in Criminal Misc. Writ Petition No. 2023 of 2021 (Vijendra Singh vs. State of U.P. and 3 others) wherein an order was passed that till next date of listing or submission of police report under Section 173 (2) Cr.P.C., whichever is earlier, he shall not be arrested, copy of the said order has been annexed as annexure no. 8 to the affidavit. It is argued that as such the order taking cognizance and the proceedings are bad in law. There is no evidence whatsoever to indict the applicant in the present case. It is further argued while placing para 4 -5 of the supplementary affidavit dated 22.2.2022 that the applicant is a public servant and as such sanction under Section 19 of Prevention of Corruption Act, 1988 is needed for his prosecution. It is argued that the present application u/s 482 Cr.P.C. be allowed and the prayer as prayed therein be granted.

Per contra, learned State counsel opposed the prayer of the present application and the arguments of learned counsel for the applicant. It is argued that from perusal of the F.I.R. offence is disclosed. It is further argued that although charge sheet in the matter has been submitted but in the said charge sheet itself it is stated that the proceedings for taking voice sample of the accused and its comparison with the audio clip is pending. It is further mentioned therein that pen drive has been sent to the F.S.L., Lucknow and later on after fixing of date appropriate action will be taken and proceedings will be concluded and other relevant proceedings will be done soon. It is further stated that investigation is continuing.

Learned State counsel has argued that since investigation is still continuing the present application u/s 482 Cr.P.C. is not maintainable. Report of the F.S.L. is still awaited, after which the Investigating Officer will take a call on the question of taking voice sample of the accused and sending it for comparison. It is argued that from perusal of the material collected during investigation it cannot be said that no offence is made out. It is further argued that in so far as the question of sanction is concerned, since the investigation is under progress proper care shall be taken for it as and when needed. It is argued that the present application is devoid of any merit and deserves to be dismissed.

After having heard learned counsel for the parties and perusing the records, it is evident that the applicant is named in the F.I.R. The audio clip has been sent to the F.S.L., Lucknow for its testing. The investigating Officer states in the charge sheet that proper steps for collecting voice sample of the applicant and sending it for comparison with the audio collected, shall be done later on. The investigation is stated to be still pending. Since the investigation is still pending, the applicant cannot say that there is no evidence whatsoever against him. There may be chances of collection of further evidence in the matter. It cannot be said that at this stage no

offence is made out. As per the settled principles of law criminal proceedings cannot be quashed at the very inception.

The present application u/s 482 Cr.P.C. is thus devoid of any merits at this stage and is hereby dismissed."

8. Against the said order dated 20.9.2022, the applicant preferred a Special Leave to Appeal before the Apex Court being Special Leave to Appeal (Crl.) No.11035 of 2022 (Vijendra Singh Vs. State of U.P. and another) in which vide order dated 1.12.2022 notice was issued on the special leave petition as well as on interim relief. The said order reads as under:-

"Issue notice on the special leave petition as well as on interim relief."

9. The said Special Leave Petition was finally disposed of vide order dated 22.1.2025 by the Apex Court. The said order reads as under:-

"1. Ms. Tulika Mukherjee, learned counsel submits that the trial is in progress. In fact, it is at an advance stage and is likely to be concluded in immediate future.

2. Having heard learned counsel for the parties at length, we are of the considered view that no case for interference is warranted under Article 136 of the Constitution of India.

3. The Special Leave Petition is disposed of.

4. Pending application(s) shall stand disposed of."

10. In the meantime the trial court proceeded with the trial and prosecution witnesses being eight in number have been examined and only one prosecution witness remains to be examined and now the applicant has been summoned. The applicant has now come up with this second anticipatory bail application.

11. Learned counsel for the applicant submits that the applicant had been attending the trial court regularly and in his presence and in the presence of his lawyer, the evidence of eight prosecution witnesses has been examined. The applicant is cooperating in the trial and there is nothing to show that he is evading the process of law and delaying the trial or avoiding it. It is submitted that now the applicant has an apprehension of his arrest. The present anticipatory bail application be allowed.

12. Learned counsel for the State has been heard who does not dispute the factual matrix of the present matter but opposes the prayer for anticipatory bail.

13 After having heard learned counsel for the parties and perusing the records, it is evident that the applicant was protected initially by an order of Division Bench of this Court during the pendency of investigation. Subsequently charge sheet was submitted and court concerned took cognizance and

summoned the applicant who appeared before the trial court and trial proceeded in which eight witnesses have been examined. The applicant has been summoned now. and only one prosecution witness remains to be examined. Now the applicant has an apprehension of his arrest. Nothing has been reported by learned counsel for the State from the order sheet of the trial court which is annexed as S.A.2 to the supplementary affidavit dated 22.2.2025 and is from 24.10.2024 to 19.2.2025 that the applicant is avoiding the process of law or the trial is being delayed at his behest.

14. Looking to the facts and circumstances of the case, in the event of arrest of the applicant-Vijendra Singh, involved in aforesaid case, he shall be released on anticipatory bail till the period of trial on 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 appear before the court concerned within a period of two weeks from today and file certified copy of this order for its compliance.

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

(iii) 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.

(iv) 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.

15. 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.

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

17. 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.

18. The present anticipatory bail application under Section 438 Cr.P.C. is allowed.

19. Pending application(s) shall stand disposed of.

(Smit Gopal, J.) Order Date :- 22.4.2025 Gaurav Kuls