

Gopal Yadav And 2 Others vs State Of U.P. on 31 January, 2025

Author: Deepak Verma

Bench: Deepak Verma

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14749

Court No. - 70

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11254 of 2024

Applicant :- Gopal Yadav And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Anurag Vajpeyi, Praveen Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
2. The instant anticipatory bail application has been moved by the applicants for enlarging them on bail in Case Crime No.169 of 2002, under Sections 419, 420, 467, 468, 471, 447 I.P.C., P.S. Cantt. District Varanasi, during pendency of trial.
3. It is submitted by learned counsel for the applicants that applicants are innocent and have been falsely implicated in the present case due to ulterior motive. Instant F.I.R. has been lodged against the applicants in the year 2002 under Sections 419, 420, 467, 468, 471 I.P.C. The applicants challenged the F.I.R. by filing Crl. Misc. Writ Petition No.907 of 2023 before this Court and the Co-ordinate Bench of this Court vide order dated 20.02.2023 stayed the arrest of the applicants till

submission of police report under Section 173(2) Cr.P.C. Thereafter, the Investigating Officer submitted charge sheet against the applicants and concerned court took cognizance and issued summons. The applicants challenged the charge sheet by filing Crl.Misc. Application No.10900 of 2004 before this Court and the Court vide order dated 10.02.2004 disposed of the application of the applicants with the observation that no ground for interference, at this stage, is made out. The Court further observed that the applicants have remedy to raise all these points at the time of framing of charge through counsel. However, they shall not seek any adjournment till the stage of framing of charge. Till today, the court has not framed charges against the applicants and applicants' counsel died in the year 2014 and the applicants had no knowledge regarding death of their counsel. Hence, the applicants did not appear on the date fixed. Thereafter, non bailable warrant has been issued against the applicants. Counsel for the applicants further submits that vide order dated 10.02.2004, the applicants were directed to appear through counsel at the time of framing of charge. It is next submitted that on perusal of F.I.R., no offence under the alleged Sections is made out. Instant case is squarely covered under section 438 Cr.P.C. In case, the applicants are released on bail, they would not misuse the liberty of bail and would co-operate with the trial proceedings. Applicants have definite apprehension of their arrest by the police.

4. Learned A.G.A. vehemently opposed the prayer for bail and has submitted that vide order dated 10.02.2024, the applicants were directed to appear through counsel at the time of framing of charge. On perusal of the order sheet, it is alleged that the applicants have not co-operated with trial proceedings. The applicants have sought date since last twenty years and are avoiding trial proceedings.

5. The object of anticipatory bail is that a person should not be unnecessarily harassed or humiliated in order to satisfy personal vendetta or grudge of complainant or any other person operating the things directly or from behind the curtains.

6. It is well settled that discretionary power conferred by the legislature on this Court cannot be put in a straitjacket formula but such discretionary power either grant or refusal of anticipatory bail has to be exercised carefully in appropriate cases with circumspection on the basis of the available material after evaluating the facts of the particular case and considering other relevant factors (nature and gravity of accusation, role attributed to accused, conduct of accused, criminal antecedents, possibility of the applicant to flee from justice, apprehension of tempering of the witnesses or threat to the complainant, impact of grant of anticipatory bail in investigation or society etc.) with meticulous precision maintaining balance between the conflicting interest, namely, sanctity of individual liberty and interest of society.

7. In the case of Shivam Vs. State of U.P. and Another AIR Online 2021 All 484, in paras 43 (8) and (10) of the judgment the Court has held thus:

"44 (8)Where the accused has unsuccessfully challenged the charge-sheet before this Court or any proceedings are pending before this Court regarding the charge-sheet submitted against the accused, the anticipatory bail cannot be granted to an accused after submission of charge sheet.

(10) Where the accused is avoiding appearance before the Court after the cognizance of offence has been taken by the Court on a police report or in a complaint and coercive processes have been repeatedly issued against him and there is no valid explanation given by the accused for his non-appearance before the Court."

8. Considered the argument raised by counsel for the applicants and perused the record. From the order sheet, it is apparent that applicants have not cooperated with trial proceedings and every time they moved exemption application and took dates. The applicants had knowledge that the charge sheet has been submitted and his 482 Cr.P.C. application has not been entertained by the High Court and no interim protection granted in favour of applicants. Prima facie, it appears that applicants willfully not co-operated with trial. The argument raised by counsel for the applicants have no force. No interference is warranted by this Court.

9. Accordingly, the anticipatory bail application is rejected.

10. Since the Co-ordinate Bench of this Court has also observed in order dated 10.02.2024 that applicants would not seek adjournment but order sheet discloses that since 2005, the applicants have not cooperated with trial proceedings and order sheet is full of adjournment. It is also apparent from the order sheet that court concerned has adopted very careless approach while dealing with the case and allowed adjournments since last twenty years. The order sheet also presents that court concerned without observing order sheet and without opening the files were passing orders since last twenty years. The act of trial court is depreciable.

11. Since the Co-ordinate Bench has passed the order dated 10.02.2004 directing the applicants to appear through counsel while framing of charge but till today, the charge has not been framed, the court concerned is directed to frame the charge against the applicants within a period of two weeks.

12. For the period of two weeks from today, non bailable warrant issued against the applicants in the aforesaid case shall be kept in abeyance.

Order Date :- 31.1.2025 Meenu Singh