

Jamal Ahamad vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:7402

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 2595 of 2024

Applicant :- Jamal Ahamad

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

Counsel for Applicant :- Utkarsh Misra,Abhishek

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

1. From perusal of the order sheet, it transpires that the notice has been issued to complainant/ informant/ opposite party no.2 and as per the office report the same has also been served but no one is present for the opposite party no.2.
2. Heard learned counsel for the applicant, learned AGA for the State and perused the material placed on record.
3. Instant application has been filed with the prayer to enlarge the accused-applicant on anticipatory bail in Case Crime No.839 of 2018, under Sections 419, 420, 467, 468 & 471 I.P.C., Police Station-Kotwali Nagar, District-Gonda.
4. From perusal of the order sheet, it appears that on 22.11.2024, the following order was passed:-

"1.Heard Sri Abhishek, learned counsel for the applicant and Sri Hari Shanker Bajpai, learned Additional Government Advocate-I for the State.

2. The present applicant has filed the instant application under Section 438 Cr.P.C. having apprehension that he may be arrested in Case Crime No.839 of 2018, under Sections 419, 420, 467, 468 & 471 I.P.C., Police Station-Kotwali Nagar, District-Gonda, as the charge-sheet has been filed against the present applicant.

3. Issue notice to opposite party No.2 returnable at an early date, for which, necessary steps be taken within a week.

4. Office to proceed accordingly.

5. Let the counter affidavit be filed within a period of four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

6. List this case in the third week of January, 2025.

7. At the very outset, attention has been drawn towards Annexure No.8 of the application which is an interim anticipatory bail order dated 09.12.2019 granted by the learned Additional Session Judge, Gonda upto the stage of investigation. The charge-sheet has been filed on 22.12.2019. The applicant filed petition before this Court challenging the charge-sheet bearing U/S 482/378/407 No.699 of 2020; Rajesh Bansal & another vs. State of U.P. and another and that petition was disposed of vide order dated 06.02.2020 (Annexure No.11) giving liberty to the petitioner to approach the learned trial court by filing appropriate application. The petitioner filed discharge application which was rejected by the learned trial court. Thereafter, the petitioner filed revision before the learned Session Court which was also rejected vide order dated 04.09.2023 (Annexure No.12). After rejection of the aforesaid revision, the petitioner could not appear before the learned trial court and the bailable warrant has been issued against him.

8. Learned counsel for the applicant has stated that when the applicant was granted an anticipatory bail by the learned court of Sessions till completion of investigation and filing of the police report, the applicant duly participated in the investigation, thereafter the charge-sheet has been filed. Though his discharge application has been rejected but he is in apprehension that if he appears before the learned trial court he may be taken into judicial custody. However, the Hon'ble Apex Court in the case in re: Aman Preet Singh vs. C.B.I. through Director, Criminal Appeal No.929 of 2021 (arising out of SLP (Crl.) No.5234/2021) has held that if any accused person has not been arrested during investigation and has co-operated with the investigation, there is no need to arrest him after filing charge sheet unless there is a specific and cogent reason.

9. Learned counsel for the applicant has further submitted that the present applicant is ready to co-operate in the trial proceedings and shall not misuse the liberty of anticipatory bail, if granted, therefore, his liberty may be protected till conclusion of trial in view of the dictum of Apex Court rendered in re: Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98 wherein it has been observed that anticipatory bail may be extended till conclusion of trial. The present applicant is having no prior criminal history of any kind whatsoever.

10. Learned Additional Government Advocate has however opposed the prayer for anticipatory bail of the present applicant, but he could not dispute the aforesaid contentions of learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the material available on record and considering the fact that the applicant was granted interim bail by the learned court below upto the completion of investigation and filing of the police report; there is no criminal history against the present applicant and the undertaking that he shall not misuse the liberty of anticipatory bail and shall cooperate in the trial proceedings properly, I am of the considered view that liberty of the present applicant may be protected.

12. Accordingly, the application for interim relief is allowed.

13. Therefore, without entering into merits of the issue, it is directed that in the event of arrest, present applicant (Jamal Ahamad) shall be released on anticipatory bail in the aforesaid case crime number till conclusion of trial on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court/ court concerned with the following conditions:-

(i) that the applicant shall appear before the trial court on each date fixed unless his personal presence is exempted;

(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 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 prior permission of the court;

(iv) that the applicant shall not pressurize/ intimidate the prosecution witnesses and shall not tamper with evidence during trial;

(v) that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail;

(vi) that in default of any of the conditions mentioned above, the learned counsel for the State shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

14. Before parting with, it is expected that the trial shall be concluded with expedition, strictly in accordance with law, without adjourning the case for any unnecessary reason. Further, the learned trial court may take all coercive measures, as per law, if either of the parties do not co-operate in the trial proceedings properly."

5. From perusal of the order dated 22.11.2024, it transpires that State counsel has failed to demonstrate that there is any adversarial fact which are pleaded in the bail application. This Court finds that the applicant was enlarged on an interim anticipatory bail after thorough considering the merits of the case. The learned counsel for the State has also failed to substantiate that the present applicant is not cooperating with the investigation proceedings.

6. In view of the aforesaid, the present anticipatory bail application is hereby allowed while extending anticipatory bail to the applicant, namely, Jamal Ahamad 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 him 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.

7. In case of default, it would be open for the Investigating Agency to move application for vacation of this interim protection.

Order Date :- 4.2.2025 Mohd. Sharif