

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 8059 of 2023

Applicant :- Dr. Rajni Tripathi

Opposite Party :- State of U.P.

Counsel for Applicant :- Kanchan Sharma, Prashant Vyas, Sr. Advocate

Counsel for Opposite Party :- G.A., Shri Prakash Dwivedi

Hon'ble Shekhar Kumar Yadav, J.

1. Vakalatnama on behalf of applicant has been filed by Mr Virendra Singh, Advocate today, which is taken on record.
2. Heard Sri V. P. Srivastava, learned Senior counsel assisted by Mr Prashant Vyas and Mr Surendra Kumar, learned counsel for the applicant, Sree Prakash Dwivedi & Mr Amrendra Nath Singh, learned counsels for the informant and Mr Amrit Raj Chaurasiya, learned Additional Government Advocate for the State.
3. Supplementary affidavit filed today is taken on record.
4. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 676 of 2013, under sections 419, 420, 467, 468, 471 IPC, P.S. Civil Lines, District Prayagraj, during the pendency of trial.
5. In short, the prosecution allegation is that the applicant, who is said to be Principal of Prayag Mahila Vidyapeeth Degree College, was placed under suspension since February, 2013. It is alleged that a National Seminar on Hindi and Economics was organized on 21, 22 and 23 February 2009 in the College with funds received from University Grant Commission, New Delhi and other sources. Dr. Madhu Tandon was the co-ordinator of National Seminar and the applicant was its director. Dr. Madhu Tandon, through her complaint dated 20.04.2009 informed that she had spent Rs. 12,500/- in the printing of souvenirs in the said Economics Seminar at the behest of the Principal, but the payment has not been made by the Principal/applicant. It is further alleged that in the meeting of the Managing Committee dated 16.07.2009, the Principal assured to pay the expenses incurred by Dr. Madhu Tandon and to present the details of the income expenditure of the Seminar, but neither she made the expenditure incurred by Dr. Madhu Tandon nor presented the details of income-expenditure and kept on procrastinating the matter on one pretext or the other, due to which the matter is said to be pending since long. Meanwhile, Dr. Madhu Tandon is said to be transferred to DAV

College, Lucknow and from there she also sent several requests but the Principal did not reply. It is further alleged that in the audit from year 2008-09 up to year 2011-12, objection was raised that in the seminar held in the year 2008-09, money was withdrawn by opening a new account by Principal but neither the expenditure certificate nor the proceedings register were presented at the time of inspection/audit and the Principal is said to have withdrawn money from the annual festival fund in the year 2009, 2010 and 2011, but its expenditure certificates were not presented at the time of audit. Thereafter, the Principal informed the Managing Committee in its meeting on 05.10.2012 that she has received the bills / vouchers / documents of the Seminar 2009 and in compliance with the decision taken in the previous meeting of the Management Committee, she is presenting it to the Chairman. It is also alleged that after the meeting was over, the Managing Committee produced the photocopies of Bill Vouchers to the clerk in the college office. It is further alleged that again, in the meeting of the Management Committee dated 24.11.2012, Principal was directed to produce the original bill vouchers of Seminar 2009 then the Principal on 29.11.2012 is said to have produced the original bill vouchers of Seminar 2009 and Annual Festival year 2009 and 2011 in the college office. Thereafter, due to expenditure on items other than those prescribed by U.G.C. New Delhi and cash memos of more than Rs.20,000/-, the Management committee instructed the Manager to submit a report after preliminary investigation on the vouchers produced by Principal. After preliminary investigation, the Manager, found various vouchers suspicious, thereafter, a three-member inquiry committee was constituted by the Management Committee of the college to investigate the matter and the Principal was placed under suspension. It is also alleged that the Inquiry Committee issued the charge sheet to the Principal on 12.03.2013 which was replied by the applicant/Principal. The inquiry committee after conducting inquiry submitted its inquiry report dated 17.08.2013. In compliance of the decision taken in the meeting of the Managing Committee on 05.09.2013, a copy of the investigation report was sent to the applicant/Principal as well as the Vice Chancellor of Chhatrapati Sahu Ji Maharaj University, Kanpur for information. It is also alleged that the Principal submitted her written statement on 20.09.2013 in the office and also got her oral statement recorded in the meeting of the Management Committee dated 21.09.2013 and after considering the submissions of the applicant, the inquiry report was accepted. It is alleged that after investigation by the Inquiry Committee, it was duly found that the UGC account of the College has already been opened in UCO Bank Civil Line, but the

applicant/Principal voluntarily opened a new account in the same bank and deposited a sum of Rs. 90,000/- received from UGC, New Delhi and on 03.02.2009, without the consent/approval of the Management Committee, and in connivance with the Bank Officials is said to have withdrawn a sum of Rs.90,000/- and misappropriated it and also concealed the entry of payment received in the UGC Cash book. It is also alleged that the vouchers submitted by the applicant in the office for different sums were found forged and fabricated. It is thus alleged that the applicant/Principal by misusing her position grabbed the entire money.

6. Record would further reveal that applicant after filing of the FIR approached this Court by filing Criminal Misc Writ Petition (being CMWP No. 9412 of 2014), in which applicant has been granted interim protection till the submission of the charge sheet vide order dated 2.6.2014. Thereafter, charge sheet in the matter was submitted on 19.01.2015, whereupon the court below took cognizance on 7.2.2020 and summoned the applicant to face the trial. The applicant again approached this Court by way of filing Criminal Misc Application u/s 482 No. 10577 of 2023 challenging the charge sheet and the summoning order, which came to be disposed of vide order dated 6.4.2023 with the following observation:-

*".....However, this application stands **disposed of** with the direction that the court below would extend the benefit of interim bail (if the court concerned deems it fit according to the merit of each case) as contemplated in the law laid down by this Court in the case of **Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290** as well as judgement passed by Hon'ble Apex Court reported in **2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh Vs. State of U.P.** after the applicant surrenders within two weeks before the court and if her bail application is filed, the same shall be adjudicated and decided by the courts below with speaking and reasoned order, strictly in accordance with law, in the light of the judgment given by Hon'ble Apex Court in the case of **Hussain and another Vs. Union of India reported in (2017) 5 SCC Page-702**, relevant extract of which reads as under :-*

"?.....Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time"..... "Decision of cases of under-trials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial; vested interests or unscrupulous elements try to delay the

proceedings"..... "In spite of all odds, determined efforts are required at every level for success of the mission"..... "The Presiding Officer of a court cannot rest in a state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases."

To satiate speedy disposal of the cases, the courts below are issued following directions in accordance with the observations made in the case of Hussain and another (Supra):

- (i) Bail applications be disposed of normally within one week :
- (ii) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years.
- (iii).....
- ..;
- (iv).....
- .."

The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

For the period of two weeks from today, no coercive action shall be taken against the applicant in the aforementioned case.

It is made clear that no time extension application would be entertained for extending the period of two weeks.

The ratio mentioned above is the last word for every judicial officers for abiding with the directions of the Hon'ble Apex Court. In the aforesaid scenario, it would be pertinent to refer the case of **Brahm Singh and others Vs. State of U.P. and others** decided on 08.07.2016 in Criminal Misc. Writ Petition No.15609 of 2016 whereby co-ordinate Bench of this Court, while taking into account the concerns of most of the counsels with regard to the long pending bail applications at lower courts' stage has expressed their anguish and concern.

In the aforesaid backdrop, learned Sessions Judge/the concerned Trial Judge is directed to ensure that the guidelines given in the case of **Hussain and another (supra)** as well as in **Brahm Singh and others (Supra)** has to be carried out in its letter and spirit, failing which an adverse inference would be drawn against the erring officers and this Court would be compelled to take appropriate action against them, if found that there is laxity in adhering the above directions.

In the event, the bail application is not decided within seven days

as contemplated above, the learned Judge will have to spell out the justifiable reasons and record the same on the order sheet of such cases."

7. Thereafter, applicant is said to have approached the court below by filing anticipatory bail application, which came to be rejected vide order dated 31.05.2023, hence the present anticipatory bail application before this Court.

8. Learned senior counsel for the applicant submits that applicant has been falsely implicated in the present case. She is a lady and is aged about 61 years. It is also submitted that in the alleged matter a disciplinary proceeding was also initiated by the Management of the Institution and the matter went up to the Vice Chancellor of the Chhatrapati Sahu Ji Maharaj University, Kanpur wherein certain favourable observations were made with regard to the applicant. It is further submitted that the involvement of the applicant in the present false criminal case is nothing but just to harass the applicant at the fag end of her retirement, whereas prima facie the nature of dispute appears to be a 'Service Dispute.'

9. It is strenuously submitted by learned Senior counsel for the applicant that the applicant has joined the investigation as and when required by the Investigating Officer. He further submitted that there is not even an iota of admissible evidence against the applicant and she has been falsely implicated. He further submitted that now the charge sheet stands filed, so there is no requirement of any sort of custody or custodial interrogation of the applicant. It is further submitted by the learned Senior Counsel for the applicant that the applicant has also not misused the interim protection granted to her by the Court. There is definite apprehension that she might be arrested in the present case. In support of his argument, learned senior counsel relied upon the judgements of **Shri Gurbaksh Singh Sibbia and others Vs state of Punjab, AIR 1980 SC 1632; Sushila Aggarwal and others Vs State (NCT of Delhi) and another, (2020) 5 SCC 1.**

10. On the other hand, learned counsel for the informant as well as learned counsel for the State have vehemently opposed the prayer for bail by contending that applicant has been taken into custody in another case being Case Crime No. 158 of 2004, under Sections 468, 467, 471, 420, 379 IPC, and in Case Crime No. 38 of 2004, under Sections 204, 506 IPC, P.S. Civil Lines, District Prayagraj, therefore, the present anticipatory bail application is not maintainable. In this regard, learned counsels have placed reliance on the case of **Narinderjit Singh Sahni Vs Union of India, (2002)2 SCC 210; Sunil Kallani Vs State of Rajasthan, 2021 SCC Online Raj 1654 (Rajasthan High Court).** It is further

submitted by learned counsel for the informant and learned AGA for the State that while disposing of the application u/s 482 Cr.P.C., the applicant was directed to surrender and apply for bail before the court below within two weeks but the said order has not been complied with by the applicant.

11. Refuting the said contention, learned Senior counsel submitted that merely because it was directed by this Court while disposing of the application under Section 482 Cr.P.C. to the applicant to surrender and apply for bail does not dilute the applicant's right to file anticipatory bail under Section 438 Cr.P.C. In support of his argument learned counsel relied upon the case of **Vinod Kumar Sharma and Another Vs State of Uttar Pradesh and another, 2022 1 Crimes (SC) 193.**

12. In the case of **Vinod Kumar Sharma (supra)**, the Hon'ble Supreme Court observed that "Merely because it was kept open for the petitioners to surrender and apply for Regular Bail after filing of the charge sheet, the same does not preclude the petitioners to apply for anticipatory bail under Section 438 Cr.P.C. after filing of the charge sheet".

13. So far as the question of maintainability of the present anticipatory bail application is concerned, this issue has not been addressed by the Hon'ble Apex Court as yet although a co-ordinate Bench of this Court in **Rajesh Kumar Sharma Vs CBI, 2022 0 Supreme (All) 1331**, has examined the issue of maintainability of anticipatory bail where the accused was already arrested in another case and hold that the anticipatory bail would not lie and would not be maintainable, if a person is already arrested and is in custody of police or judicial custody in relation to another criminal case, which may be for similar offence or for different offences. Similar view has also been expressed in the case of **Sunil Kallani Vs State of Rajasthan, 2022 0 Cr. L.J. 1378** by the Rajasthan High Court.

14. Section 438 Cr.P.C. provides an opportunity to a person to move an application for direction that if he is to be arrested in a case and the said person has **reasons to believe** that he shall be arrested then he may be released on bail. It is cardinal principle of law that every law is designed to promote and further the ends of justice. Statutory interpretation, purpose and the spirit of the provision must be gathered from its intendment. A plain reading of the provision of Section 438 Cr.P.C. as amended in State of Uttar Pradesh would show that the only restriction provided is under Section 438 (6) of the Cr. PC, which says that the provision will not apply to accusations of offences which are stated in Section 438 (6) (a) & (b) of the Cr.P.C. and in absence of any specific

restrictions on the exercise of the power to grant anticipatory bail clearly indicates that the legislature intended to confer and has in fact conferred a very wide discretion on the High Court and the Court of Sessions to grant anticipatory bail. The Law Commission of India in the 41st Report reiterated the principles concerning bail. One of the relevant principles in this regard is that "bail is a matter of discretion if the offence is non-bailable". Discretion in Section 438 Cr.P.C. should not be exercised with regard to an offence punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge is false or groundless. Under Section 438, Cr.P.C., discretionary power has been conferred on the Court to grant pre-arrest bail. The judicial discretion vested in the Court requires it to be appropriately exercised with the proper application of mind in determining whether a case is a fit case for grant of anticipatory bail or not.

15. If the non-maintainability of the application for the grant of anticipatory bail is accepted as the correct position, then the element of discretion, which is available with the court, would be taken away. Even if there may be multiple FIRs against the accused, the court is very much within its competence to consider those factors within the existing statutory framework. Section 438(1) Cr.P.C., inter alia, provides the nature and gravity of the accusation read with the antecedents of the accused as factors that have to be taken into consideration by the court exercising its discretion to grant anticipatory bail. And as is true for any matter requiring the exercise of discretion, the same ought to be done not capriciously, but rather judiciously and within the well-accepted and well-established parameters.

16. In the case of **Shri Gurbaksh Singh Sibbia and others Vs state of Punjab, AIR 1980 SC 1632**, the Hon'ble Apex Court has made the following observation:-

"39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested"

17. As per the aforesaid decision of Hon'ble Apex Court it is very much clear that anticipatory bail will not be maintainable in case a person is in custody in the same offence for which pre-arrest bail is sought, the restriction, if any, upon maintainability of pre-arrest bail will be there only if a person is in custody in that particular

offence itself.

18. While going through the various pronouncements of the Hon'ble Apex Court as well as plain reading of the provision of Section 438 Cr.P.C., there is no such bar in Cr.P.C. or any statute which prohibits Session or the High Court from entertaining and deciding an anticipatory bail, when such person is already in judicial or police custody in some other offence. The restriction cannot be stretched to include arrest made in any other offence as that would be against the object and spirit of the provision.

19. In the present case, the applicant is in custody with respect to another case crime as afore-stated and she is yet to be arrested by police in the present case. As per the judgment of the Hon'ble Apex Court in the case of **Shri Gurbaksh Singh Sibbia and others (supra)**, the restriction is only when the pre-arrest bail is sought for the same offence in which arrest is already made.

20. The case of **Narinderjit Singh Sahni and Another (supra)** relied upon by the learned counsel for the State as well as informant was in respect of maintainability of Article 32 wherein relief in the nature of Section 438 was sought. Even, the said judgment does not hold in very clear terms that a person arrested in one offence cannot seek the relief provided under Section 438 Cr.P.C. in another offence merely on the ground that he has been taken into custody in another offence.

21. A person apprehending arrest on accusation of having committed a non bailable offence has every right, even if he is arrested in number of cases, to move in each of offence registered against him irrespective of the fact that he is already in custody but for different offence, for the reason that every such application will have to be heard and decided on merits independent of another crime in which he is already in custody. Thus, the stand taken by learned State counsel regarding non-maintainability of the application cannot be approved.

22. Learned Senior counsel has also drawn attention of the Court towards a recent judgement of Hon'ble Apex Court in the case of **Md Asfak Alam Vs The State of Jharkhand and another (Criminal Appeal Nos, 2207 of 2023 arising out of Special Leave Petition (Criminal) No. 3433 of 2023 decided on 31.07.2023**, wherein the Apex Court emphasizes the paramount importance of personal liberty and issued landmark guidelines regarding anticipatory bail. In the said case, the appellant, Md. Asfak Alam, had sought anticipatory bail after facing allegations under various sections of the Indian Penal Code and the Dowry Prohibition Act. However, his plea was dismissed by the High

Court, and further directed him to surrender before the Trial Court and seek regular bail. The Apex Court has held that arrest should not be made routinely, and the exercise of this power must be guided by the necessity of custodial investigation or preventing the accused from tampering with evidence or influencing witnesses. The Apex Court, referring to various cases, including **Arnesh Kumar v. State of Bihar and Another, (2014) 8 SCR 128**, to lay down the guidelines for granting anticipatory bail, emphasizes that such bail should be granted unless there are exceptional circumstances.

23. Having considered the arguments advanced by learned counsel for the parties, judgements relied upon by the learned counsel for the parties, and considering the nature of accusations and antecedents of applicant, since the charge sheet has been filed without the arrest of the applicant all the material evidence and documents have been collected, the applicant was also granted interim protection and there are no allegations that during the period of interim protection she ever tried to influence the witnesses or tamper with the evidence, in these circumstances, the bail application is allowed. She is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

24. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Dr. Rajni Tripathi, involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

- (1) 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; and
- (2) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.
- (3) The applicant shall surrender her passport, if any, to the concerned Court forthwith. Her passport will remain in custody of the concerned Court.
- (4) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this

condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(5) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.***

(6) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

25. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

26. With the aforesaid observations/ directions, the application stands **disposed of.**

Order Date :- 2.8.2023

RavindraKSingh