

Mohd. Umar vs State Of U.P. on 23 August, 2023

Author: Shekhar Kumar Yadav

Bench: Shekhar Kumar Yadav

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:169715

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 9197 of 2023

Applicant :- Mohd. Umar

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Mr. Sushil Kumar Pandey, learned counsel for the applicant and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.648 of 2021, under Section 379 IPC, Police Station Nai Mandi, District Muzaffar Nagar.
3. In short the prosecution story is that on 12.07.2021 when the officials of Private Company known as Uronet Indian Services Private Limited were busy in routine inspection and audit of ATM Machine, it was found that on 04.07.2021 between 8.00 to 9.00 someone has committed theft of amount of Rs.14.60 lakh from the said ATM without damaging to the ATM.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case, in fact, no such incident has taken place. The applicants has never committed any offence as alleged in the impugned FIR even the applicant is not named in the FIR. As per allegation, Rs.14.60 lakh has been theft from the ATM Machine. The FIR has been lodged against unknown person. During investigation, the name of the applicant has been disclosed on the basis of confessional statement of co-accused Sageer after six month of the alleged incident. The applicant is earning his livelihood by working as private work. Except the confessional statement, there is no evidence against the applicant. Prima facie no offence is made out against the applicant. The applicant is having no previous criminal history as has been mentioned in paragraph 23 of the affidavit.

4. Learned counsel for the applicant further submits that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. vehemently opposed the prayer for anticipatory bail of the applicant and has prayed for rejection of the same by submitting that it is a matter of cyber crime. In the instant matter, recovery of certain ATM has been made from the possession of the applicant as well as co-accused Sageer in whose confessional statement, the complicity of the applicant has been shown in the present case. The applicant and other co-accused persons are involved in the present case. The allegations are very serious and keeping in view the seriousness of the allegations made against the applicant, applicant is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. Nowadays, cyber crime is spread all over the country. It is a matter of Cyber Fraud and the applicant with other co-accused persons by using computer technology has committed theft of Rs.14.60 lakh from the ATM Machine without damaging to the ATM. The co-accused Sageer in his statement has stated that he alongwith other co-accused persons, namely, Shahnawaj, Maharaj, Mohd. Umar (the applicant), Jameer Shekh and Pankaj Talwar have committed theft of Rs.14.60 from the alleged ATM and the said amount has been distributed between them. The co-accused Sageer has further stated that he alongwith other co-accused persons have also committed such type of offence in different districts like Ghaziabad, Agra, Mathura, Meerut and other places. He has further stated that in same type of cases, he has also committed theft at Indrapuram, Ghaziabad in the year 2021 in which he was arrested and send to the jail.

7. From perusal of record, prima facie offense is made out against the applicant.

8. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of applicant.

9. Accordingly, this application under Section 438 Cr.P.C. is dismissed.

Order Date :- 23.8.2023 Ajeet