

Harikesh Nishad vs State Of U.P. on 18 February, 2021

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 3132 of 2021

Applicant :- Harikesh Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Certified copy of FIR has been filed by learned counsel for the applicant by way of supplementary affidavit, which is taken on record.

Heard learned counsel for the applicant and learned AGA for the State.

The instant Anticipatory Bail Application has been filed with a prayer to grant an anticipatory bail to the applicant, namely, Harikesh Nishad, in Case Crime No.- 281 of 2020, under Sections- 60 Excise Act and Section 269, 272, 273 IPC, Police Station- Maharajganj, District- Azamgarh.

Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P., hence, this anticipatory bail application is being

heard. Grant of further time to the learned A.G.A as per Section 438 (3) Cr.P.C. (U.P. Amendment) is not required.

The applicant has been implicated for offence under Sections 272, 273 I.P.C., which is non-bailable offence. Along with the aforesaid section the applicant has also been implicated for offences under Sections 60 of Excise Act.

It has been submitted that implication under Section 272 IPC is unjustified since there is a special Act holding the field, i.e., Food Safety and Standards Act 2006. False recovery has been made against the applicant. The applicant is regularly making efforts to arrest the applicant. The offence under sections 60/72 of Excise Act is bailable and triable by Magistrate.

Learned AGA has opposed the prayer for anticipatory bail of the applicant. He has submitted that in view of the seriousness of the allegations made against the applicant, he 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.

After considering the rival submissions this court finds that there is a case registered/about to be registered against the applicant. It cannot be definitely said when the police may apprehend him. After the lodging of FIR the arrest can be made by the police at will. There is no definite period fixed for the police to arrest an accused against whom an FIR has been lodged. The courts have repeatedly held that arrest should be the last option for the police and it should be restricted to those exceptional cases where arresting the accused is imperative or his custodial interrogation is required. Irrational and indiscriminate arrests are gross violation of human rights. In the case of *Joginder Kumar v. State of Uttar Pradesh* AIR 1994 SC 1349 the Apex Court has referred to the third report of National Police Commission wherein it is mentioned that arrests by the police in India is one of the chief source of corruption in the police. The report suggested that, by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 percent of expenditure of the jails. Personal liberty is a very precious fundamental rights and it should be curtailed only when it becomes imperative. According to the peculiar facts and circumstances of the peculiar case the arrest of an accused should be made.

Without expressing any opinion on the merits of the case and considering the nature of accusation and his antecedents, the applicant is entitled to be released on anticipatory bail for limited period in this case considering the exceptions considered by the Hon'ble Supreme Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)*- 2020 SCC Online SC 98.

In the event of arrest, the applicant shall be released on anticipatory bail till the submission of police report, if any, under section 173 (2) Cr.P.C. before the competent Court on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer/ Court of the police station concerned Court with the following conditions:-

- (i) The applicant shall make himself available for interrogation by the police officer as and when required;

(ii) 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;

(iii) 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 S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

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.

The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is pending who shall ensure the compliance of present order.

Order Date :- 18.2.2021 Ruchi Agrahari