

A.F.R.

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 9403 of 2022

Applicant :- Lakhan Singh And Another

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- P.K. Singh, Vijay Kumar Mishra

Counsel for Opposite Party :- G.A., Aman Kumar Dwivedi, Kamlesh
Kumar Dwivedi, Manoj Kumar Singh

Hon'ble Krishan Pahal, J.

1. Heard P.K. Singh, learned counsel for the applicants and Sri Kamlesh Kumar Dwivedi, learned counsel for the informant as well as Sri Vibhav Anand Singh, learned A.G.A. for the State.

2. The present anticipatory bail application has been filed on behalf of the applicants, **Lakhan Singh** and **Dinesh**, in F.I.R./Case Crime No. 258 of 2021, under Sections 420, 467, 468, 471, 386, 120B, 504, 506, 409, 34 of IPC, Police Station- Shamshabad, District- Agra, with a prayer to enlarge them on anticipatory bail.

PROSECUTION STORY

3. As per prosecution story, the informant is a farmer by profession and he is even involved in the cultivation of agricultural land of his brother-in-law Lokendra Singh and gets the benefit thereon. He also sows the land of other persons on contract. The informant is stated to have placed 713 bags of potatoes of his own and 1018 bags of potatoes of his brother-in-law Lokendra Singh in the cold storage owned by Bhagwan Singh and his family members. The main accused Bhagwan Singh, in collusion with the applicants, is stated to have been running the said cold storage without licence and they all are stated to have refused to return the said potatoes and the bags thereof to the informant. The applicants and other co-accused persons are stated to have illegally sold the said potatoes thereby defrauded the informant. The informant is stated to be having receipts of the said deposition of the potato bags.

RIVAL CONTENTIONS

4. Learned counsel for the applicants has stated that the applicants have been falsely implicated in the present case. The informant is the maternal uncle of Ravi Parihar son of Lokendra Singh who has registered another FIR No.192 of 2020 against the applicants on almost identical allegations. Learned counsel has further stated that the present FIR has been instituted against the applicants out of vengeance and the allegations in both the FIRs are in-verbatim of each other. The present FIR is hit by Section 300 Cr.P.C. as the applicants have been put to double jeopardy by the said FIR. He has further stated that the complainant at the instance of his nephew and brother-in-law has lodged this false and frivolous FIR.

5. Learned counsel has also placed much reliance upon an application sent by Lokendra Singh, brother-in-law of the informant to the Regional Manager of Canara Bank on 23.6.2020 wherein it has been stated that he is residing at Thane in Maharashtra and, as such, he is unable to come to the State of U.P. owing to lockdown imposed due to Covid-19 pandemic. He has further stated that the money being procured from the farmer by Bhagwan Singh may be deposited in the account for the payment of the CC Limit. The said letter is filed as Annexure-6 to the affidavit accompanying the instant anticipatory bail application. He has also stated that there is no whispering of the said letter in the instant FIR lodged by the informant.

6. Learned counsel has further stated that the matter is a civil dispute between the two directors and the brother-in-law of the informant has filed a case before the Company Law Tribunal on 30.9.2021 and just to harass the applicants, absolutely vague allegations have been levelled against them. The co-accused Gaurav and Banti @ Brijesh have already been enlarged on regular bail by another Bench of this Court passed in Criminal Misc. Bail Application Nos. 27619 of 2022 and 28072 of 2022 vide orders dated 21.7.2022 and 4.8.2022, respectively. The applicants have no concern whatsoever with the business transactions of the co-

accused Bhagwan Singh as they live separately and they are not a beneficiary to the business transactions conducted by him. They have been falsely implicated owing to their relationship with the co-accused Bhagwan Singh.

7. To buttress his arguments, learned counsel has placed much reliance upon the judgement of the Apex Court passed in **Upkar Singh Versus Ved Prakash and Others**¹, wherein it has been laid down that the legal right of an aggrieved person to file counter case is permissible.

8. Learned counsel for the applicants has next placed reliance upon the judgement of the Apex Court passed in **Amitbhai Anilchandra Shah Versus The Central Bureau of Investigation and Another**², wherein it has been stated that the second FIR on same set of facts is barred and it is clearly violative of fundamental rights enshrined under Article 14, 20 & 21 of the Constitution of India.

9. Learned counsel has next relied upon another judgement of the Apex Court passed in **T.T. Antony etc. Versus State of Kerala and Others**³, wherein it has categorically been stated that the second FIR with respect to the same offence is barred.

10. So far as the proceedings of Sections 82/83 Cr.P.C. are concerned, learned counsel for the applicants has also relied upon the judgement of this Court in **Suresh Babu Versus State of U.P. and Another**⁴, wherein it has been stated that when the investigation is going on against a Government Servant and the proceedings u/s 82 of Cr.P.C. have been undertaken, the accused person is entitled for anticipatory bail.

11. It is further submitted that the criminal history assigned to applicant no.1 is of 10 cases and the applicant no.2 is of 7 cases and the said criminal history of the applicants has been explained in the affidavit. They are not a previous convict. Therefore, the applicants are entitled for

1 (2004) 13 SCC 292

2 (2013) 6 SCC 348

3 (2001) 6 SCC 181

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anticipatory bail as they are the reputed persons in the locality. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

12. On the other hand, Sri Kamlesh Kumar Dwivedi, learned counsel for the informant as well as Sri Vibhav Anand Singh, learned A.G.A. have vehemently opposed the prayer for anticipatory bail on the ground that the instant FIR is not barred by Section 300 of Cr.P.C. as the informant and the allegation of cheating are entirely different in both the FIRs and even in both FIRs, the time of offence is altogether different. The co-accused Gaurav and Banti @ Brijesh have not been granted anticipatory bail rather they have been released on regular bail.

13. It is also argued on behalf of the informant that the applicants have not come with clean hands as they have not disclosed their entire criminal history as the applicant no.1 and applicant no.2 are having criminal history of 11 and 9 cases, respectively. The number of criminal antecedents of the applicants as disclosed by the learned counsel for the applicants which are 10 and 7, respectively, have also not been properly explained in the instant anticipatory bail application as no orders have been annexed thereon.

14. To add to it, learned counsels have further stated that the applicants are proclaimed offenders as the proceedings u/s 82/83 Cr.P.C. have been taken up against them.

15. In support of his submissions, learned counsel for the informant has relied upon the judgement of the Apex Court passed in **Lavesh versus State (NCT of Delhi)**⁵, wherein it has categorically been held that a proclaimed offender is not entitled to anticipatory bail as he has not cooperated with the investigation.

16. They have further argued that the applicants being proclaimed offenders and having long criminal antecedents, are not entitled for

5 (2012) 8 SCC 730

anticipatory bail. Granting of anticipatory bail would defeat the object of Section 438 Cr.P.C.

CONCLUSION

17. Considering the overall facts and circumstances of the case and upon hearing the learned counsel for the parties at length and also considering the judgements of the Apex Court referred above, this Court is of the view that first of all, the judgements of **Upkar Singh (supra)** and **T.T. Antony (supra)** do not help the applicants at all as the said judgements are not applicable to the present case wherein it has categorically been held that second FIR is not barred although, the said facts are different as it pertains to a cross-case.

18. So far as the applicability of the judgement of this Court passed in **Suresh Babu (supra)** in the present case is concerned, this Court is of the view that the said judgement also does not help the applicants at all as the accused person in the said case had no criminal history and was a Government Servant and, thus, he was granted anticipatory bail.

19. Now, coming to the judgement of **Lavesh (supra)**, the said case law holds good to-date and the applicants are proclaimed offenders as the proceedings u/s 82/83 Cr.P.C. are almost complete and also they are having criminal antecedents of 11 and 9 cases, respectively which has not been properly explained either.

20. Here, in the context of the present case, it would be proper to refer an excerpt of a renowned book “Nature of the Judicial Process” written by Justice Benjamin N. Cardozo as under:-

“Today, most judges are inclined to say that what was once thought to be the exception is the rule, and what was the rule is the exception..... There has been a new generalization which, applied to new particulars, yields results more in harmony with part particulars, and, what is still more important, more consistent with the social welfare. This work of modification is gradual. It goes on

inch by inch. Its effects must be measured by decades and even centuries. Thus measured, they are seen to have behind them the power and the pressure of the moving glacier.

Lord Halsbury said in Quinn v. Leathom, 1901, A.C. 495, 506: "A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

21. Thus, every judgement has to be seen to its own context and facts and the precedents cannot be applied universally to every case.
22. In view of the aforesaid facts and circumstances, I am not inclined to grant anticipatory bail to the applicants.
23. The anticipatory bail application is found devoid of merits and is, accordingly, rejected.
24. However, it is made clear that the observations made hereinabove in declining the anticipatory bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 30.9.2022

Siddhant

(Justice Krishan Pahal)