

**A.F.R.**

Neutral Citation No. - 2024:AHC:24501

**Court No. - 75**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 872 of 2024

**Applicant :-** Ranjeet

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Naveen Tiwari,Ritik Raj

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal,J.**

1. List has been revised.
2. Heard Sri Harsh Vardhan Singh, learned counsel for applicant as well as Sri Ram Mohit Yadav, learned A.G.A. for State and also perused the material available on record.
3. The present application for anticipatory bail has been filed for protection in regard to FIR/Case Crime No. 444 of 2023, under Sections 419, 420, 467, 468, 471 I.P.C. and 12 of Passport Act, 1967, P.S.- Barhalganj, District- Gorakhpur.

**PROSECUTION STORY:**

4. The FIR was instituted by the SI Gyan Prakash Shukla PS Barhalganj, Distt. Gorakhpur on 26.06.2023 with the allegations that it has come to his knowledge that RANJEET s/o Ram Bahadur has procured three passports i.e. No. K3464309 as Ranjeet Sahani s/o Ram Bahadur Sahani, No. P4364782 as Ranjeet Nishad s/o Bahadur Nishad and No. W8305151 as Ranjeet Nishad s/o Bahadur Nishad.

**RIVAL CONTENTIONS:**

**Arguments for Applicant:**

5. Learned counsel for the applicant has stated that the he is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the informant is the Sub Inspector and he has not divulged the person from whom he had received the said information. The applicant is an illiterate and rustic person and for the sake of employment he had got his passport applications filed through broker and the discrepancy, if any, is due to his negligence.

6. Learned counsel for the applicant has further argued that the passports have been issued after due enquiry and investigation. The police had demanded bribe from him and after the refusal to grease their palm, the instant FIR has been instituted.

7. It is also argued by the counsel for the applicant that after getting the knowledge of the said multiplicity of applications for passport, he had given an application for the closure of the File on 10.04.2023. The same is filed as Annexure-4 to the affidavit filed with the anticipatory bail application. The instant FIR has been lodged two months thereafter. The files of the applicant have been closed and the same have been filed as Annexure-5 to the affidavit filed with the bail application, as such nothing remains against the applicant.

8. It is further argued that a letter for apology has been sent by the applicant to the Regional Passport Officer, Lucknow on 04.07.2023 which is filed as annexure-7 to the affidavit filed with the anticipatory bail application.

9. Learned Counsel for the applicant has vehemently argued that the instant FIR has no legs to stand as it has been lodged without mandatory previous sanction of the Central government as provided under Section 15 of the Passports Act, 1967. The said provision is as under:

*15. Previous sanction of Central Government necessary.— No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf.*

10. Learned counsel for the applicant has further specified that the applicant had filed a criminal Miscellaneous Writ No. 17320 of 2023 which was dismissed for want of prosecution and not on merits. There is no iota of evidence against him and he has no criminal antecedents.

**Arguments for State:**

11. Learned AGA Shri. Ram Mohit Yadav has stated that the applicant is an imposter as he has procured three passports by altering his name and parentage altogether bearing No.'s K3464309 as Ranjeet Sahani s/o Ram Bahadur Sahani, P4364782 as Ranjeet Nishad s/o Bahadur Nishad and W8305151 as Ranjeet Nishad s/o Bahadur Nishad while his Aadhar card reveals his name to be RANJEET s/o Ram Bahadur. The applicant has obtained the passports by not only suppressing the information but has produced fake and doctored documents and got them issued.

12. It is further argued by learned AGA that there is no plausible or proper explanation to the fact of applying for a passport thrice. It is an open and shut case, although he could not dispute the fact that the applicant has no criminal antecedents.

**CONCLUSION:**

13. The argument of learned counsel for the applicant as to whether FIR can be lodged without previous sanction of the Central government as provided under Section 15 of the Passports Act, 1967 requires further exploration.

14. The word used in section 15 of the Passports Act, 1967 is 'prosecution' and not the 'FIR.' As per the **sixth edition** of the **BLACK'S LAW DICTIONARY** the word 'prosecution' is defined as:

*'a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime.'*

15. Thus, the proper interpretation of the provision would be that for institution of a First Information Report (FIR) and investigation thereupon, there is no obligatory requirement to secure prior sanction, even against a public servant, as per the mandate of Section 197 of the Code of Criminal Procedure, 1973. It shall equally apply to the persons charged under The Passports Act, 1967. When obtaining sanction is a prerequisite for initiating legal proceedings, it must be secured at the stage of presentation of charge sheet before the magistrate and taking of the cognizance thereupon.

16. In *P. Prathapachandran Vs. Central Bureau of Investigation, Ernakula*<sup>1</sup>, it was opined by the High Court that the point of time relevant for the competent authority to accord sanction to prosecute under Section 19(1)(c) of the Act is the time when the Court is called upon to take cognizance of the offence. Therefore, the contention raised by the petitioner against the validity of the sanction accorded under Section 19(I)(c) of the Act and the competency of the officer who granted the sanction are untenable.

17. In *R.S. Nayak Vs. A.R. Antulay*<sup>2</sup>, the five-Judges Bench of the Supreme Court has observed that existence of a valid sanction is a prerequisite to the taking of cognizance of the enumerated offences alleged to have been committed. Thus, the said argument of non-availability of sanction to prosecute at the stage of FIR or investigation does not carry any force. Therefore, no sanction is required to investigate the instant matter.

18. **Eminent jurist Benjamin N. Cardozo** in his book '*Nature of the Judicial Process*' at page 70 has stated "The general framework furnished by the statute is to be filled in for each case by means of interpretation, that is, by following out the principles of the statute. In every case, without exception, it is the business of the court to supply what the statute omits, but always by means of an interpretative function."

1. *1999 CrLJ 2002 (Ker)*

2. *(1984) 2 SCC 183*

19. Learned counsel has failed to highlight the animosity carried by the police against the applicant. The applicant has applied for Passport thrice by altering his name and parentage in them.

20. The satisfaction of the court for granting protection under Section 438 Cr.P.C. is different from the one under Section 439 Cr.P.C. while considering regular bail as settled by the Apex Court in *Satpal Singh Vs. State of Punjab*<sup>3</sup>.

21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest as laid down in the latest judgement of the Supreme Court in *Pratibha Manchanda and another Vs. State of Haryana and another*<sup>4</sup>.

22. In view of the above, the present anticipatory bail application is found devoid of merits and is, accordingly, **rejected**.

23. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case.

**Order Date :- 13.2.2024**

Shalini

**(Justice Krishan Pahal)**

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3. (2018) 13 SCC 813

4. (2023) 8 SCC 181