

A.F.R.

Neutral Citation No. - 2023:AHC:209396

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 11952 of 2023

Applicant :- Banti Sharma Alias Brahm Prakash Sharma

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ravi Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ravi Pandey, learned counsel for the applicant, Sri Pranshu Kumar, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.02 of 2019, under Sections 420, 406 I.P.C., Police Station Harduaganj, District Aligarh, during the pendency of trial.

PROSECUTION STORY:

4. As per prosecution story, the applicant, who happens to be the Supervisor in the company, alongwith other co-accused persons is stated to have usurped the money of several persons who had deposited their money in the company as policy bond.

RIVAL CONTENTIONS:

(Arguments on behalf of applicant)

5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The applicant is not named in the FIR and his name has come up later on during investigation, although it is referred in the FIR that unknown Supervisor was also involved in the said crime. Learned counsel has stated that the applicant is

a *bona fide* person and has cooperated during investigation and complied with the provisions of Section 41-A Cr.P.C. Learned counsel has further stated that subsequently the final report (charge-sheet) was submitted against the applicant and he had challenged the same before this Court by filing an Application U/S 482 Cr.P.C. No.20556 of 2022, which was disposed of vide order dated 31.8.2022 and the applicant was directed to file discharge application before the court concerned under Section 239 Cr.P.C. The order dated 31.8.2022 is reproduced herein as under:-

"Heard learned counsel for applicant and learned A.G.A. representing opposite party No. 1.

This application under section 482 Cr. P. C. has been filed to quash the charge-sheet dated 9.7.2020 arising out of Case Crime No.02 of 2019 under Sections 420, 406 IPC, P.S.-Harduaganj, District-Aligarh and also the cognizance and summoning order passed by ACJM, Court No.6 in Case No.1167 of 2021 (State vs. Deshraj).

It is well settled that charge sheet can be challenged only on limited grounds namely criminal proceedings are not maintainable before the Court concerned or Court has no jurisdiction to entertain the same. Grounds urged by learned counsel for applicant in challenging to the impugned charge sheet relate to disputed defence of applicant, which cannot be taken into consideration in proceedings under Section 482 Cr. P. C.

In view of above, no case for interference is made out. Consequently, prayer for quashing the charge sheet is refused.

So far as direction to Court below to consider the discharge application of applicant in terms of Section 239 Cr. P. C. is concerned, it is provided that in case any discharge application is filed by applicant before Court below, same shall be considered in accordance with law.

With the aforesaid direction, the application is finally disposed of."

6. Learned counsel for the applicant has further stated that the said discharge application was rejected vide order dated 13.9.2022 by the trial court, as such, the applicant had challenged the said order before this Court by filing Criminal Revision No.4149 of 2022, which was dismissed vide order dated 6.4.2023 by this Court. Subsequent to it, the applicant had filed another petition under Section 482 Cr.P.C. for quashing the entire proceedings and the orders dated 1.5.2023 and 12.4.2023, which was also disposed of vide order dated 11.7.2023 of this Court passed in

Application U/S 482 Cr.P.C. No.22332 of 2023. The order dated 11.7.2023 is reproduced herein as under:-

"Heard learned counsel for the applicant, learned A.G.A. for the State-opposite party and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the orders dated 01.05.2023 and 12.04.2023 as well as entire proceedings of Case No. 1167 of 2021, (State v. Deshraj and others) arising out of Case Crime No. 02 of 2019, under Sections 406, 420 I.P.C., Police Station Hardua Ganj, District Aligarh.

After arguing the matter at some length, learned counsel for the applicant prays for withdrawal of this application with liberty to the applicant to file bail application before the court of competent jurisdiction.

Learned A.G.A. has no objection to such request.

*In view of the above, the instant application is **disposed of** as withdrawn with liberty to the applicant to appear before court concerned and file appropriate application for bail, which shall be decided in the light of the judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another, Special Leave to Appeal (Crl.) No (s) 5191 of 2021**, decided on **07.10.2021**.*

For a period of three weeks no coercive action shall be taken against the applicant."

7. Learned counsel for the applicant has further stated that subsequent to it in compliance of the aforesaid order dated 11.7.2023 of this Court, the applicant had filed regular bail application on 28.7.2023 but the same has not been decided by the court concerned. In the meantime, the said regular bail application being pending the applicant had filed anticipatory bail application before the Sessions Judge, Aligarh on 1.8.2023 which has been rejected by the Special Judge (EC Act)/Additional Session Judge, Aligarh vide order dated 28.8.2023, as such, the applicant has applied for anticipatory bail before this Court. Learned counsel has further stated that the applicant has no criminal history to his credit and is entitled for anticipatory bail.

(Arguments on behalf of opposite party)

8. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application on the ground that the applicant had twice agitated the provisions of Section 482 of Cr.P.C. and once the provisions of Section

397 Cr.P.C. before this Court by filing criminal revision and failed in it, and subsequently, filed anticipatory bail application pending regular bail application filed in the court concerned on 28.7.2023, as such, the matter tantamounts to forum shopping.

9. Learned A.G.A. has also placed reliance on the judgment of the Apex Court passed in the case of ***K. Jayaram vs. BDA, (2022) 12 SCC 815***, whereby it has been held as follows:-

"In order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law."

10. Learned A.G.A. has further stated that NBW has been issued against the applicant on 18.11.2022 and he is not appearing before the court concerned. The present application is just misuse of process of Court and law. Learned A.G.A. has further stated that the applicant is not entitled for anticipatory bail in the light of paragraph-43 of the settled law of this Court in the case of ***Shivam vs. State of U.P. and Another reported in AirOnline 2021 All 484***.

CONCLUSION:

11. Filing of an anticipatory bail application, while there being a regular bail application pending, is misuse of process of Court. The applicant is used to filing multiple applications and petitions at various forums including the High Court. These acts are a classic example of forum shopping and it cannot be permitted to keep on going so eternally.

12. After taking into consideration the rival contentions, the fact that applicant had filed several petitions before this Court thrice and failed and

there is pending regular bail application of the applicant before the court concerned and coupled with the said arguments tendered at Bar in the light of the judgment in *Shivam (supra)*, I do not find it a fit case for grant of anticipatory bail to the applicant.

13. The present anticipatory bail application is hereby found devoid of merits and is accordingly *rejected*.

14. 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 during trial.

Order Date :- 1.11.2023

Vikas

[Krishan Pahal, J.]