

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 182 of 2023

Applicant :- Jugadi Alias Nijamuddin

Opposite Party :- State Of U.P. Thru. Secy. Home Civil Sect.
Lko And Another

Counsel for Applicant :- Narendra Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Heard Shri Dharmendra Kumar Gupta holding brief for Shri Narendra Gupta, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

The present anticipatory bail application has been moved by the accused/applicant- **Jugadi @ Nizamuddin** in Case Crime No. 310/2022, under Section 3/5/8 of Prevention of Cow Slaughter Act, Police Station Reusa, District Sitapur, with the prayer to enlarge him on anticipatory bail as he is apprehending arrest in the above-mentioned case.

Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of the instant case has been lodged by the Village Chaukidar at Police Station Reusa, District Sitapur against four named accused persons including the applicant alleging therein that on 16.8.2022 at 7.30 in the evening he got information that prohibited animal has been slaughtered in the sugarcane field of one Jamil and when he arrived at the spot he found a cord and semi digested *gobar* (cow dung) of the calf. It is also stated in the First Information Report that some villagers have seen the named accused persons carrying a calf towards the sugarcane field of Jamil.

It is vehemently submitted that interestingly no prohibited animal or any meat of progeny of cow has been recovered and the Investigating Officer has only collected the cow dung found on the spot and has sent the same for Forensic investigation and during the course of investigation a report has also been submitted by the Forensic Lab, Mahanagar, Lucknow that cow dung could not be examined by the Forensic Lab.

Highlighting the above fact, it is vehemently submitted that it is a case where neither any prohibited animals or its flesh was

VERDICTUM.IN

recovered. The applicant was granted interim protection, vide order dated 27.1.2023 and has not misused the liberty granted to him and he undertakes that he will remain present before the trial court as and when his presence would be required and he will not seek adjournments especially when prosecution witnesses would be in attendance. Charge sheet has already been filed without arresting him and the applicant is also not having any criminal history, thus protection from arrest be granted to him.

Learned AGA on the other had submits that the applicant is accused of committing heinous offence, therefore he is not entitled for any protection.

No one is present for opposite party no.2, however, service of notice on him is sufficient as per the report of the office dated 22.3.2023.

Having heard learned counsel for the parties and having perused the record, it is evident that in the instant case neither any prohibited animal or his flesh has been recovered and simply on the basis of apprehension and suspicion the First Information Report appears to have been lodged and the charge sheet has also been filed. So much so the Investigating Officer has collected remains of cow dung from the spot and has sent the same to Forensic Lab for analysis which has been returned by the Forensic Lab by stating that Forensic Lab is not meant to analysis the cow dung. The applicant is not having any criminal history. His presence may be secured before the trial court by placing adequate condition.

Thus, anticipatory bail application moved on behalf of the applicant- **Jugadi @ Nizamuddin** is *allowed* in terms that in the event of arrest of the applicant- **Jugadi @ Nizamuddin** within 20 days from today or on his surrender/ appearance before the trial court, where the case is pending, which ever is earlier, he shall be released forthwith on his executing a personal bond to the tune of Rs.50,000/- (Rupees Fifty Thousand) with two sureties in the like amount to the satisfaction of the trial court concerned/ SHO/ Investigating Officer/ Police Personnel of police station concerned, subject to the following conditions:

1. The applicant shall not leave India during the pendency of trial without prior permission from the concerned trial Court.
2. The applicant shall Cooperate in the investigation and will make himself available as and when required by the Investigating officer of the case, even for the recovery of any

VERDICTUM.IN

fact.

3. The applicant shall not make any attempt to influence the prosecution witnesses and will also not commit any crime during his release on anticipatory bail.

4. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and when the witnesses are present in court. In case of default of any of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

5. In case, the applicant misuses the liberty of bail, the trial Court concerned may take appropriate action in accordance with law.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and shall proceed against him in accordance with law.

It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not affect the trial proceedings in any manner.

It is also provided that in case of any default of any condition by the applicant or on his nonappearance before the trial court in the manner stipulated herein-above the trial court would be at liberty to issue any coercive process in order to secure his presence during the course of trial.

Before parting it is observed that instant case is an glaring example of misuse of penal law as neither the prohibited animal nor its flesh, has been recovered from the possession of any accused person or from the spot and only a rope and some amount of cow dung has been collected by the Investigating Officer and there are statement of some witnesses who have claimed to have seen the accused persons going towards the sugarcane field of Jamil along with a calf. Keeping cows and calf as pet animals is a common practice in the villages irrespective of caste, creed and religion. The duty of State is to ensure fair investigation which in the considered opinion of this Court has not been done in the instant case. Let a copy of this order be placed before the D.G.P. of Uttar Pradesh for

VERDICTUM.IN

taking necessary action in order to remind the investigating officers of their duty to ensure fair investigation in all the criminal cases in general and in the cases pertaining to cow slaughter in particular.

Order Date :- 28.3.2023

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