

A.F.R.

Neutral Citation No. - 2023:AHC-LKO:50394

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 57 of 2023

Applicant :- Vijay Pal Prajapati

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Purnendu Chakravarty,Pranjal Jain

Counsel for Opposite Party :- G.A.,Digvijay Nath Dubey

Hon'ble Subhash Vidyarathi J.

1. Heard Sri Purnendu Chakravarty Advocate, the learned counsel for the applicant, Sri Arvind Kumar Pandey, the learned AGA for the State and Sri Digvijay Nath Dubey, the learned counsel for the informant.
2. By means of the present application, the applicant is seeking anticipatory bail in case crime No. 363/2021, under Sections 323/504/506/406/420/467/468/471 I.P.C., P.S. Vibhuti Khand, District Lucknow.
3. The aforesaid case has been registered on the basis of an FIR lodged by the informant Deepak Sharma on 23.07.2021 against four named persons, including the applicant, and an unknown person, alleging that in December, 2018, co-accused Anand Kumar Singh alias Baba Trikaldarshi met the informant at Mumbai and projected that he had a good understanding of mining of sand and had a sound grip on the market in Banda. The informant visited Lucknow thrice in December, 2018, January, 2019 and February, 2019 where the co-accused Anand Kumar Singh met him in a hospital and at the residence of co-accused Rajiv Porwal and the applicant and the co-accused Navneet Singh Bhadauria also used to sit in the meetings and they claimed themselves to be established businessmen of Morang (a minor mineral used in construction activities). Co-accused Anand Kumar Singh demanded Rs. 1 crore from the informant for a government tender and

he asked the informant to sign some documents which had been prepared by the applicant. The applicant had shown some documents purportedly relating to registration of the company in the tender process but the documents turned out to be forged. On 11.02.2019, a notice inviting tenders for excavation of sand was published wherein the applicant had made a bid without knowledge of the informant and co-accused Anand Kumar Singh had told the informant that only the applicant's name will be used and the actual control of the work will be given to the informant. The informant alleged that he had transferred a sum of Rs. 1,60,00,000/- in the account of M/s V. P. Constructions towards earnest money for the tender. On 08.03.2019, another contract was allotted to M/s V. P. Constructions, which is a firm of the applicant. The informant claims that it was mutually settled between him and the accused persons that the investments and profit in the tender allotted to M/s V. P. Constructions will be distributed amongst all the persons and on 05.12.2020, a joint venture agreement was executed between the informant, the applicant and one Pramod Tiwari. On the same day, another agreement for sale and marketing was executed between the informant and the applicant but after sometime, the accused persons started sale and marketing of excavated sand through M/s V. P. Constructions and they committed a breach of the agreement dated 05.12.2020. The informant alleged that when he objected against it, the accused persons abused and threatened him.

4. The applicant was granted interim anticipatory bail by means of an order dated 16.01.2023, after taking into consideration the fact that co-accused namely Rajiv Lochan Paliwal has been granted interim protection vide order dated 20.10.2022 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 1750/2022 "Rajiv Lochan Paliwal Vs. State of U.P. and others". Another co-accused Navneet Bhadauria has also been granted bail by the coordinate Bench of this Court passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 1841/2022 "Navneet Bhadauria Vs. State of U.P. and others".

5. The State and the informant have filed counter affidavits opposing the anticipatory bail application.
6. The learned counsel for the informant has vehemently opposed the application and he has submitted that while granting anticipatory bail to the co-accused Navneet Bhadauria, it was specifically recorded in the order dated 18.11.2022 passed by this Court in Anticipatory Bail Application No. 1841 of 2022 that the case of the aforesaid co-accused is distinguishable from the case of Anand Kumar Singh @ Baba Trikaldarshi and Vijay Pal Prajapati (the applicant) and he has submitted that the applicant is not entitled to be granted anticipatory bail on the ground of parity.
7. The learned counsel for the informant has next submitted that the applicant had earlier filed an application under Section 482 Cr.P.C. No. 6044 of 2022 and in the order passed on 06.09.2022, this Court had noted the submission of the learned counsel for the applicant that the applicant intended to pay the entire amount to the informant to show his bona fide and it was recorded in the order that the learned counsel for the applicant would bring a bank draft of Rs. 2 crores on the next date. In the order passed in the aforesaid case on 14.09.2022, it was recorded that the applicant made excuses from which the Court gathered that the applicant had no intention to pay any amount to the respondent no. 2 whose money was admittedly taken. In view of the aforesaid conduct of the applicant, the application under Section 482 Cr.P.C. was dismissed. Sri. Dubey has submitted that the aforesaid conduct of the applicant disentitles him to be granted anticipatory bail.
8. Replying to the aforesaid submission, Sri. Purnendu Chakravarty, the learned Counsel for the applicant submitted that the applicant had challenged the order dated 14.09.2022 dismissing the application under Section 482 Cr.P.C. by filing Special Leave Petition (Crl.) No. 9397 of 2022, which was dismissed as withdrawn by means of an order dated 10.10.2022, but the Hon'ble Supreme Court had clarified that the trial court may not be influenced by the observations made by the High Court while dismissing the application under Section 482 Cr.P.C.

9. Therefore, it is clear that the application under Section 482 Cr.P.C. was not dismissed on merits and it was dismissed for the mere reason that the applicant had not returned the money to the informant. The complaint of the informant is that non-payment of money is in breach of an agreement. The learned counsel for the applicant has pointed out that the informant has already initiated proceedings before the Commercial Court, Gwalior for recovery of the money, which proceedings are pending. Therefore, the issue of payment of money to the applicant and the informant's entitlement for recovery thereof will be decided in those proceedings and it will not be appropriate for this Court to make any observation in this regard. However, mere non-payment of money cannot be a ground for initiation of criminal proceedings and it certainly cannot be a ground for rejection of the application for grant of anticipatory bail.
10. In **Kamlesh and another versus State of Rajasthan and another**, 2019 SCC OnLine SC 1822, the Hon'ble Supreme Court was deciding a Criminal Appeal filed against an order passed by Rajasthan High Court whereby an application for grant of anticipatory bail was rejected by the High Court only on the ground that petition under Section 482 Cr.P.C. praying for quashing of FIR, has already been rejected. The Hon'ble Supreme Court held that: -
- “5. We are of the view that the order of the High Court cannot be sustained. High Court ought to have considered the application on merits. The fact that petition under Section 482 Cr.P.C. was dismissed for quashing was not conclusive and could not be the reason for rejecting the application.”*
11. Therefore, the law is clear that the dismissal of the applicant's application under Section 482 Cr.P.C. would not be a bar against consideration of the merits of his application for anticipatory bail.
12. The learned counsel for the applicant has submitted that the FIR alleges that the informant was induced into entering into a joint venture agreement on the basis of a letter of intent dated 08.03.2019 purportedly issued by the Additional District Magistrate (Finance & Revenue), on behalf of the District Magistrate, Banda, which letter was forged. However, there is no categorical assertion as to who had

forged the letter and, in any case, there is no allegation that the letter had been forged by the applicant.

13. The Investigating Officer has already submitted a charge-sheet and besides the informant, all the witnesses mentioned in the charge sheet are police personnel. No officer or official from the office of the District Magistrate, Banda has been mentioned to be a witness in the charge-sheet.
14. The learned counsel for the applicant has submitted that even the specimen of the applicant's handwriting has not been taken for comparing the same with the signatures made on the letter in question, which could have been used as an evidence to prove commission of forgery by the applicant.
15. Sri Digvijay Nath Dubey, the learned counsel for the informant has next submitted that the money has admittedly been transferred to the applicant's bank account and he is the beneficiary of the offence committed.
16. In this regard, firstly it is to be seen that the applicant has not been charged with commission of offence under Section 120 B I.P.C. and merely because the applicant is the beneficiary of an offence will not ipso facto make the applicant guilty of the offence of forgery, when there is no allegation of commission of the offence by him.
17. Secondly, the money was transferred to the applicant in furtherance of an agreement to carry out business of mining of minor minerals and the informant claims that the accused persons have committed a breach of the agreement, which dispute prima facie appears to be a dispute which is inherently of the civil nature.
18. Nowadays it is becoming a general practice to set the criminal law into motion for putting pressure on the parties to commercial transactions. Instead of initiating civil proceedings for specific performance of contracts, accounting or recovery of money, where the plaintiff / claimant has to pay Court fee and where the decision of the dispute consumes a very long time, F.I.Rs. are filed with the object of

getting the other party incarcerated to put pressure on him so as to make him redress the grievances of the informant. However, the Courts cannot shut their eyes in such matters so as not to ascertain whether there is sufficient material to warrant incarceration of the accused person and to examine whether the criminal proceedings are being used for prosecution of a person who has committed an offence or the same are being misused for persecution of a person who has committed a breach of an agreement by giving the disputes a color of criminality.

19. As proceedings between the parties for recovery of the money paid under the agreement are pending before the Commercial Court, Gwalior, the issue of the informant's entitlement for recovery thereof will be decided in those proceedings and it will not be appropriate for this Court to make any observation in this regard.
20. The learned counsel for the informant has next submitted that the bail application of co-accused Anand Kumar Singh Alias Baba Trikaldarshi has been rejected by means of an order dated 03.03.2023 passed by this Court. In this regard, suffice it to say that parity is a relevant consideration while granting bail to persons accused of similar charges but the principle of parity is not attracted to rejection of bail applications.
21. Moreover, the order dated 03.03.2023 rejecting the bail application of co-accused Anand Kumar Singh merely mentions that the bail application was being rejected keeping in view the submission of the learned counsel for the informant that a complaint was made to the District Magistrate as well as the Mining Officer where the accused persons had assured that they would refund the money to the informant but still they have not refunded the same.
22. As has already been stated in the preceding paragraphs, mere non-payment of money paid under a contract cannot be a ground for criminal prosecution of a party to the agreement and, in any case, that cannot be a ground for rejection of the anticipatory bail application of the accused person. Therefore, I am of the view that the application

for grant of anticipatory bail to the applicant cannot be rejected on this ground.

23. Regarding the applicant, it is mentioned in the F.I.R. that co-accused Anand Kumar Singh alias Baba Trikaldarshi had asked the informant to put his signature on some documents which documents had been prepared by the applicant. Obviously, the informant would not be required to sign the letter dated 08.03.2019 issued by the Additional District Magistrate on behalf of the District Magistrate and, therefore, the aforesaid allegation would not lead to an inference that the applicant had forged the letter dated 08.03.2019. The F.I.R. contains no allegation that the letter dated 08.03.2019 had been forged or fabricated by the applicant.
24. The learned Counsel for the applicant has informed that the applicant has submitted bail bonds in terms of the order dated 16.01.2023 passed by this Court. The learned A.G.A. could not point out any violation of the conditions of anticipatory bail or misuse thereof by the applicant.
25. In the aforesaid circumstances, I find no good ground to take a view different from the view taken by this Court while passing the order dated 16.01.2023. Therefore, the order dated 16.01.2023 is made absolute and the application is **allowed** in terms of the aforesaid order.

(Subhash Vidyarthi J)

Order Date - 31.07.2023

Pradeep/-