

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 10711 of 2023

**Applicant :-** Kusum Raghav And Another

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

**Counsel for Applicant :-** Hemant Sharma

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

**Hon'ble Nalin Kumar Srivastava,J.**

1. Apprehending their arrest in Case Crime No. 70 of 2013, under Sections 420, 467, 468, 471 IPC, Police Station - Anoopshahr, District - Bulandshahr, the present anticipatory bail application has been moved by the applicants - **Kusum Raghav** and **Asha Raghav**.

2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material available on record.

**SUBMISSIONS MADE ON BEHALF OF THE APPLICANTS:**

3. It is submitted by learned counsel for the applicants that the applicants are innocent and have no concern with the present matter. Allegations levelled against the applicants are false. It is further submitted that the applicants have been falsely implicated in this case. It is further submitted that the applicants have apprehension of their arrest by the police any time. It is also submitted that the applicants are ladies and they are the bonafide purchasers. They have purchased the land after payment of requisite consideration amount and they have not played any fraud with the informant at all.

4. It is further submitted that throughout the investigation they have been cooperative. It is also submitted that after investigation, final report was submitted in this matter, which was rejected by the Court concerned and cognizance was taken.

5. It is also submitted that thereafter an application U/S 482 No. 14954 of 2017 was preferred before this Court but no relief was granted by the Court and it was opined that the applicants have an

alternative remedy by way of filing an appropriate application before the Court concerned and subsequently discharge application was moved before the Magistrate Court which was rejected vide order dated 15.12.2018 and revision preferred against the said order was also dismissed on 5.9.2019 by the Sessions Court. Subsequently Criminal Misc. Writ Petition No. 6976 of 2019 was preferred which is still pending.

6. It is further submitted that as a matter of fact, a compromise took place between the parties and they settled their disputes amicably through compromise deed dated 21.11.2022 but meanwhile process under Sections 82/83 CrPC was issued against the applicants by the Court concerned on 3.2.2021. It is further submitted that the applicants had been cooperative throughout the investigation and with the trial court as well and they had been engaged in taking recourse of legal forums and in continuation of that discharge application was also filed by them. It is also submitted that without following the required procedure for issuance of process under Sections 82 and 83 CrPC, the punitive processes have been issued by the Magistrate against the applicants and such order is not tenable in the eyes of law. Applicants have no criminal history to their credit. In support of his submissions, learned counsel for the applicants has placed reliance upon a decision of this Court in **Application U/S 482 No. 1974 of 2023, Purushottam Chaudhary vs. Central Bureau of Investigation**, decided on 27.2.2023.

**SUBMISSIONS MADE ON BEHALF OF THE STATE :**

7. Per contra, the learned A.G.A. opposed the prayer and submitted that after rejection of discharge application moved by the applicants before the Court of Magistrate, revision filed against the said order was also dismissed on 5.9.2019 and thereafter Writ Petition No. 6976 of 2019 was preferred but no interim order was granted in the aforesaid proceeding in favour of the applicants. Since the applicants deliberately kept themselves absent from the proceedings of trial court, the trial court had no option but to issue punitive process against them.

8. It is also submitted that a perusal of the order sheets reflects that after issuance of the bailable warrant against the applicants, non-bailable warrants were also issued and when they remained absconding, process under Section 82 CrPC was issued and the applicants were declared as proclaimed offenders. It is also submitted that a compromise petition was filed by the informant before the Court concerned but the present applicants never

appeared before the trial court.

9. It is further submitted that mere filing a writ petition before the High Court wherein no order for interim protection or for stay of the proceedings of the case was passed, does not preclude the applicants to make their appearance in the proceedings before the trial court. It is also submitted that since the applicants have been declared proclaimed offenders, before entering into the merits of the case, at the very outset they are not entitled for anticipatory bail in view of the settled law on the subject on account of non-maintainability of the application for grant of anticipatory bail.

10. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

**FACTS OF THE CASE :**

11. The prosecution story as unfolded in the F.I.R. is that the landed properties of the informant were sold fraudulently by way of execution of six sale deeds by some of the named accused persons in favour of co-accused persons including the present applicants and thereby causing a huge monetary loss to the informant whereas the vendors had no title or authority to execute the sale deed in respect of the properties which belonged to the informant. F.I.R. was lodged on 27.1.2013 and after investigation final report was submitted which was rejected by the Court and cognizance of the case was taken.

**OBSERVATIONS :**

12. It reflects from the perusal of the record that after issuance of the bailable warrant against the applicants, non-bailable warrants were also issued and when they remained absconding, process under Section 82 CrPC was also issued and the applicants were declared as proclaimed offenders.

13. It also reveals from the perusal of the record that the applicants were well aware of the proceedings of the trial court as they had already moved discharge application before the Court concerned in the light of the order passed by this Court in application under section 482 CrPC No. 14954 of 2017. Hence, there was no need to issue fresh summons to them. Suffice it to say that after taking into account the deliberate absence of the applicants if non-bailable warrant was issued by the Court against them, there was no illegality in issuing the same. It reveals that the

applicants did not cooperate with the trial court and this fact finds support from the material placed on record.

14. The conduct of the applicants drags them under the umbrella of the law promulgated by the Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955**. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it revealed that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr.P.C, he is not entitled to relief of anticipatory bail."

15. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi) (2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding

or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

16. Further, the judgment passed in **Lavesh** (supra) was referred by the Hon'ble Apex Court in State of **Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of Lavesh (supra), in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

*"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."*

17. Hence, the law is discernible on the point that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court without offering any legal or plausible justification for his abscondence and consequently has been declared a proclaimed offender. Albeit a compromise petition was filed by the informant before the Court concerned but the present applicants never appeared before the Trial Court after rejection of discharge application and after adopting the lawful procedure, punitive processes were issued against them.

18. The ratio of law promulgated in **Purushottam Chaudhary case** (supra) relied upon by the learned counsel for the applicants is that the Courts while sending process to an accused to procure his presence before the Court must take into account that firstly summons should be sent which must be served in accordance with law, particularly in the light of Section 64 CrPC and after service of summons in case the accused fails to appear before the Court,ailable warrant and in that sequence non-ailable warrant and then punitive process under Section 82 CrPC may be issued by the Courts but the factual matrix of the matter in hand differs in the sense that the present is not a case where the accused persons were not at all aware about the case pending against them before the Court. They had already moved discharge application before the Court concerned in light of the order passed by this Court in application U/S 482 CrPC No. 14954 of 2017 and after rejection of the same, Criminal Revision was also preferred by them, hence, since the applicants before this Court were very well aware about the case pending against them before the Court, there was no need to issue summons against them to bring the fact of pendency of

case against them to their knowledge. The applicants, though having knowledge about the pendency of the case against them, deliberately avoided their presence before the Court, the Court concerned committed no legal error in issuing punitive process against them and therefore in these circumstances the law relied upon by the applicants in **Purushottam Chaudhary case** (supra) does not provide any help to them.

19. Further, in the recent pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (paragraph 17 of the said judgment):

*"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesh (supra) is the decision in State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v. State of Maharashtra, (2022) 8 SCC 282, this Court concluded:*

*'68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding*

*and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529, 2021 SCC OnLine SC 955] ..."*

20. The deliberate oblivion to the process issued by the Court on the part of the applicants denudes their claim to treat their application for grant of anticipatory bail as maintainable under the roof of a 'rare and exceptional case' and thereby to grant anticipatory bail to them.

21. In view of the above, declaring the present application for grant of anticipatory bail as not maintainable, I deem it not a fit case to grant anticipatory bail to the present applicants. The wilful defaulters, who do not cooperate with the trial court at all, are not entitled to get any relief from this Court by way of anticipatory bail.

22. The anticipatory bail application is, accordingly, **rejected**.

**Order Date :- 30.10.2023**

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