

Reserved On:- 22.01.2021

Delivered On:- 03.02.2021

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1235 of 2021

Applicant :- Afshan Ansari

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Srivastava, Gopal Swarup Chaturvedi
(Senior Adv.), Mohd. Farooq, Raghav Dev Garg

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Ajay Srivastava, Advocate, learned counsels for the applicant; Sri M.C. Chaturvedi, Additional Advocate General for the State assisted by Sri Ashwani Yadav, learned A.G.A for the State.

2. The instant Anticipatory Bail Application has been filed with a prayer to grant an anticipatory bail to the applicant, namely, **Afshan Ansari**, in Case Crime No.- 689 of 2020, under Sections- 420, 423, 465, 467, 468, 471, 474, 477-A and 120-B IPC, Police Station- Kotwali, District- Ghazipur.

3. Counsel for the applicant has submitted that FIR has been lodged by the Lekhpal Sadar, Ghazipur against accused persons alleging that a committee was constituted by the District Magistrate on 19.06.2020 and after inquiry, it has come to the light that plot no. 98 (0-18-18) and plot no. 99 (0-6-6) were recorded as '*Banjar*' and plot no. 98/2 (0-3-0) was recorded in the name of Ravindra Nath Sharma, Shri Kant and Nand Lal, in the revenue record on the basis of lease. However, the aforesaid order

granting lease was cancelled by the Collector on 22.08.2018 but the lease holders aforesaid executed a registered sale deed dated 29-4-2018 in favour of Abbas Ansari and Umar Ansari, minor sons of Mukhtar Ansari, represented through Smt. Afsan Ansari, wife of Mukhtar Ansari, their mother and natural guardian. Syed Kaisar Hussain, Zafar Abbas and Syed Sadik Hussain, executed sale deeds of plot no. 8/2 (0-1-0) and plot no. 99 (0-0-6) by means of registered sale deed dated 23.10.2005 in favour of the applicant. The aforesaid sale deeds were fabricated and void since the vendors aforesaid were not recorded owners of the aforesaid land. The Sub-Divisional Officer, Sadar, Ghazipur, by his order dated 30.06.2005 passed the order of mutation in favour of the aforesaid vendor. It is also alleged in the FIR that with regard to plot no. 100, two sale deeds were executed in favour of sons of the applicant when the vendor was not the owner thereof. Regarding plot no. 98/3 (0-3-7) name of Surendra Nath Sharma and on plot no. 98 (0-1-13) name of Shiv Nath Singh was fraudulently recorded.

4. Learned Senior Counsel for the applicant has submitted that the gist of the FIR is that the lands which were belonging to the State was transferred by certain vendors in favour of the applicant and her sons, hence, she has been implicated. Offences alleged against the applicant are not made out. He has relied upon the judgment of Apex Court in the case of **Mohammed Ibrahim vs. State of Bihar, 2009 LawSuit (SC) 1114**. The Apex Court has held in the aforesaid case that when a document is executed by a person regarding a property whereof he is not a owner in favour of someone, he executes a false document and not a forged document and therefore Sections 467/477 IPC are not attracted. The Apex Court has further held that the purchaser of such a property cannot be implicated for offences under Sections 417 and 420 IPC since the ingredients for constituting offence of cheating under Section 415 IPC

would not be constituted. The applicant is bona fide purchaser and she herself has become victim of the alleged deed of the vendors. He has further pointed to the judgment of the Civil Court in Original Suit No. 628 of 1988 wherein one of the vendor had instituted a suit against two private persons and has obtained decree of injunction regarding plot no. 98/2 (0-3-0).

5. Learned Senior Counsel has pointed out that the applicant had no prior criminal history and she has been implicated in 5 cases after the present implication which are as follows :-

(1) Crime No. 724 of 2019, Police Station- Kotwali, District- Ghazipur, under Sections- 447, 379 IPC, applicant was not named in the FIR but subsequently in supplementary charge sheet, she was made accused 03.09.2020.

(2) Crime No. 725 of 2019, Police Station- Kotwali, District- Ghazipur, under Sections- 447, 379 IPC, applicant was not named in the FIR but subsequently in supplementary charge sheet, she was made accused 03.09.2020.

(3) Crime No. 1370 of 2016, Police Station- Saidpur, District- Ghazipur, under Sections 406, 283 IPC, applicant was not named in the FIR but subsequently in charge sheet, she was made accused 10.07.2020.

(4) Crime No. 129 of 2020, Police Station- Dachin Tola, District- Mau, under Sections 419, 420, 433, 434, 447, 467, 468, 471 and $\frac{3}{4}$ Prevention of Damage to Public Property Act.

(5) Crime No. 667 of 2020, Police Station- Kotwali, District- Ghazipur, under Section 3(1) U.P. Gangster Act.

5. In Case Crime No. 667 of 2020, the arrest of the applicant was stayed; and in Case Crime No. 129 of 2020, she has been granted anticipatory bail. He has further submitted that the applicant has been implicated falsely in the case by filing the supplementary charge sheet on account of ulterior motives.

6. Learned Additional Advocate General has vehemently opposed arguments advanced on behalf of learned Senior Counsel for the applicant. He has submitted that the offences alleged are fully made out against the applicant. Even if the offences of cheating and fabrication of documents are not made out against her, she is still liable for punishment under Section 120-B IPC. The civil suit referred by the learned Senior Counsel for the applicant was between private parties and State was not impleaded as a party therein. Therefore, it will not affect the title of the land in dispute and the sale deed in favour of the applicant is void.

7. After hearing the rival contentions, this court finds that the offences alleged are not made out against the applicant, in view of the law laid down by the Apex Court in the case of *Mohammed Ibrahim vs. State of Bihar (Supra)*. At the time of implication in the present case, the applicant had no criminal history and subsequently, she has been implicated in 5 cases. The argument of the learned A.G.A that she is liable to be punished for offences under Section 120-B IPC will depend upon the evidence to be adduce before the trial court against the other co-accused persons. At this stage, it cannot be adjudicated. The offences alleged are triable by Magistrate.

8. Without expressing any opinion on the merits of the case and considering the nature of accusation and her antecedents, the applicant is entitled to be released on anticipatory bail for limited period in this case considering the exceptions considered by the Hon'ble Supreme Court in

the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*.

9. In the event of arrest, the applicant, **Afshan Ansari**, shall be released on anticipatory bail till cognizance is taken by the court on the police report, if any, under section 173 (2) Cr.P.C. before the competent Court on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned Court with the following conditions:-

(i) The applicant shall make herself available for interrogation by the police officer as and when required;

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any police officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. Concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

10. In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of

anticipatory bail granted to the applicant.

10. The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

11. The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is in progress who shall ensure the compliance of present order.

Order date:- 03.02.2021

Rohit