

**Court No. - 77**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 4724 of 2023

**Applicant :-** Gulam Mustafa Khan And Another

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

**Counsel for Applicant :-** Vibhu Rai, Abhinav Gaur, Sr. Advocate

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

**Hon'ble Mrs. Jyotsna Sharma, J.**

1. This is **second anticipatory bail application** moved on behalf of the applicants. The first anticipatory bail application was dismissed by this court on merits vide order dated 02.03.2023 (copy whereof is paper no. 18 on record).

2. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Abhinav Gaur, learned counsel for the applicant and Sri Pranav Krishna, learned AGA-I.

3. The present application has been moved seeking anticipatory bail in Case Crime no. 257 of 2022, under Sections 3/7 of Essential Commodities Act and under Sections 420, 465, 468, 120-B IPC, P.S. Chandauli, District Chandauli.

4. It is vehemently contended on behalf of the applicants that their first anticipatory bail application was dismissed on the basis of the Petroleum Rules, 1976 which stand repealed by the Petroleum Rules, 2002. The Petroleum Rules, 2002 came into effect on 13th March, 2002; it is argued that citing of repealed law by the State entitled him for reconsideration of his anticipatory bail; Besides above it is submitted on behalf of the applicant that a license to transport petroleum class A and class B in bulk was issued/renewed in their favour and was valid up to 25.04.2025 (paper no. 102) in respect of vehicle registrations no. JH 05 CY 4823; their vehicle was authorized to carry 22 kiloliters of diesel; papers were not available with them earlier; it was perfectly within their rights to transport the diesel.

5. It is admitted by learned AGA that the the Petroleum Rules, 1976 stands repealed and the new Rules have come into effect; Simultaneously it is argued that the position of law was merely one of the basis on which earlier anticipatory bail application was dismissed and even if new Rules are taken into consideration, the applicants are not entitled for anticipatory bail for a number of other reasons.

6. During the arguments following points were raised by the rival sides as below. The applicants have not made it clear that whether they were the owner of the vehicle in question or dealer or supplier of petroleum products etc; No license with regard to the second vehicle is on record; The case was registered against persons in 2022 and they have not made it clear that how they still apprehended their arrest; The defence taken by them is absolutely bogus as they have tried to divert the attention of this court by referring to unrelated facts of having enmity with some person.

On the other hand, it is contended by the applicants that the State has failed to point out any evidence to show any case against them under Sections 3/7 of Essential Commodities Act and under Sections 420, 465,

468, 120-B IPC. It was for the State to prima facie show their role and that burden cannot be shifted on them.

7. In view of the fact that one of the main grounds for rejection of anticipatory bail was mistake of law; the applicants-**Gulam Mustafa Khan** and **Ezaz Ahmad** are granted interim protection till next date of hearing only on furnishing a personal bond with two sureties each of same amount to the satisfaction of the Court concerned, subject to the following condition:-

*(i) that the applicants shall appear before the investigating officer within 15 days from today and get their statement under section 161 Cr.P.C. recorded. This condition shall apply in case the matter is still under investigation. And in case chargesheet has been filed and cognizance has been taken they shall be in attendance and shall continue to appear as per the directions of the court concerned ;*

(ii) **further**, that the applicants shall make themselves available for interrogation by the police officer as and when required and fully cooperate in the investigation;

(iii) that the applicants 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 them from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iv) that the applicants shall not leave India without previous permission of the court.

**8. It is made clear that any default in meeting the aforesaid conditions may entail vacation of interim protection and dismissal of this anticipatory bail application.**

**9. It is made clear that there shall not be deemed any extension of interim protection, without an unambiguous extension order of this Court and that any attempt to delay the disposal of this application may result in discontinuation of the interim protection.**

10. List on **11.08.2023** in the **additional cause list** for disposal of this anticipatory bail application.

11. The State is expected to place before this court the crystal clear position of law as well as on facts relating to unanswered queries of this court. A counter affidavit may be filed within 3 weeks and a rejoinder within a week thereafter. Meanwhile the applicants may file papers with regard to the other vehicle allegedly involved in this case.

**Order Date :- 12.7.2023**

#Vikram/-