

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 5340 of 2023

Applicant :- Mohd. Imran @ Guddu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sarwar Ali Siddique

Counsel for Opposite Party :- G.A., Chandra Kant Bharadwaj, Ratnendu
Kumar Singh

Hon'ble Raj Beer Singh, J.

1. Heard Sri Anil Tiwari, learned Senior Advocate, assisted by Sri Sarwar Ali Siddique, learned counsel for the applicant, Sri Ratnendu Kumar Singh, holding brief of Sri Chandra Kant Bharadwaj, learned counsel for the informant, Sri Manish Goyal, learned Additional Advocate General, assisted by Sri A.K. Sand, learned AGA for the State.

2. The present application has been moved seeking anticipatory bail in Case Crime no. 732 of 2021, under Sections 147, 148, 149, 323, 386, 504, 506, 307, 308, 427 I.P.C., Police Station Kareli, District Prayagraj with the prayer that in the event of arrest, applicant may be released on bail.

3. According to prosecution version, on 31.12.2021 at 03:45 PM the accused persons, including applicant and 15 unknown persons, came in three vehicles at the house of informant. Co-accused Ali put pistol at the temple of informant and asked him to talk with his father and when informant refused, accused persons threatened to kill the informant and demanded ransom of Rs. 5 crores or to transfer his land, situated at Ainuddinpur, in favour of mother of co-accused Ali. On resistance of informant, all the accused persons, including applicant and said unknown persons, have assaulted the informant and his relatives, namely, Gufran, Fahad and Ali Jafar with rifle, pistol and etc. Resultantly, they sustained injuries and they were sent to hospital. It was further alleged that the accused persons have demolished the office of the informant by Joseph Cyril Bramford (JCB) and that co-accused Ali and Ashad did firing pointing at informant, however, the informant

escaped by coming in the side of wall. Thereafter police reached at the spot and accused persons ran away by threatening the informant.

4. It has been argued by learned senior counsel for the applicant that applicant is innocent and he has an apprehension that he may be arrested in the above-mentioned case, whereas there is no credible evidence against him. Earlier during investigation, applicant has filed an application for anticipatory bail vide criminal misc. anticipatory bail application no. 2038 of 2022, wherein by order dated 31.03.2022 the applicant was granted anticipatory bail till the submission of report under Section 173(2) Cr.P.C. There is delay of five hours in lodging the first information report. Learned senior counsel submitted that the time of alleged incident has been shown of 03:45 PM on 31.12.2021, whereas on that day at 03:32 PM applicant was executing a sale-deed of his property in favour of Smt. Archana Patel and that the distance between the Registrar office, Kutchery and the house of informant is about 17-18 km and in between there remains heavy traffic on the road and thus, it is not possible that applicant might have been present at the spot at 03:45 PM. The presence of applicant at the Registrar office can be verified from the CCTV installed at the said office. In fact the said fact was verified by the Investigating Officer and it was found that applicant was present in the Registrar office at the time of alleged incident but it was alleged that CCTV footage was not installed in the said office. After investigation, the first charge-sheet was filed on 24.03.2022 against co-accused Mohd. Saif @ Maya and Fahad @ Basirurrahman, on the basis of some CCTV footage of the place of incident. There is no credible evidence that applicant was involved in the incident. The bio-metrics was not examined by the Investigating Officer. Despite the fact that at the time of alleged incident, applicant was present at the office of Registrar, the police have filed charge-sheet against the applicant on 29.07.2022. The prosecution version is not supported by any independent witness. In the alleged incident, no one has sustained any firearm injury. Except one case, applicant has no criminal history and in that case applicant has already been granted bail. Co-accused Sanjay Singh has already been granted anticipatory bail by this

Court vide order dated 17.11.2022. The informant himself is having long criminal history and he is abusing the process of law by continuously making false allegations against the applicant. Earlier, the informant has filed a case against the applicant vide crime no. 222 of 2022, police station Puramufti, Prayagraj on similar allegations and in that matter, applicant was granted anticipatory bail by this Court. The injured persons have sustained merely simple injuries and that no specific role or weapon has been assigned to the applicant-accused. The role of firing has been assigned to co-accused Ali and Asad. During investigation, applicant was granted anticipatory bail and he has never misused the liberty of that anticipatory bail. However, the anticipatory bail applications of co-accused Ali @ Ali Ahmad and Mohd. Arif @ Khachauli and bail applications of co-accused Mohd. Saif @ Maya, Mohd. Aman and Fahad @ Wasiurrahman were rejected by different Benches of this Court but the case of applicant is distinguished, as in this case applicant was on anticipatory bail granted by this Court and no specific role has been assigned to him. It was further submitted that investigation is complete and charge-sheet has already been filed. It was further submitted that if the process under Section 82 Cr.P.C. has been executed during pendency of the anticipatory bail application, the same would not bar the applicant from seeking anticipatory bail. In this connection, learned senior counsel has referred the case of **Udit Arya v. State of U.P.**, [Criminal Misc. Anticipatory Bail Application No. 4560 of 2023], decided on 03.05.2023, **Sanjay Pandey v. State of U.P.**, [Criminal Misc. Anticipatory Bail Application No. 7455 of 2023], decided on 10.08.2023 and **Subhash v. State of Haryana**, [CRM-M-485-2022], decided 08.02.2022. The applicant undertakes to co-operate during trial and he would appear as and when required by the Court. It has been stated that in case, the applicant is granted anticipatory bail, he shall not misuse the liberty of bail and will co-operate with the trial and would obey all conditions of bail.

5. Sri Manish Goyal, learned Additional Advocate General for the State and learned counsel for the informant have opposed the application for anticipatory bail and submitted that the applicant is named in the first

information report and that there are serious allegation against the applicant and co-accused persons. In the alleged incident, the informant was threatened to pay Rs. 5 crores or to transfer his land in favour of the mother of co-accused and that the office of informant was also demolished by JCB and three persons have sustained injuries. The alleged plea of alibi that the applicant was present at the office of Registrar is false and even otherwise the time of incident is very 03:45 PM to 4:30 PM and thus, it is possible on the part of the applicant to reach at the spot from the office of Sub-Registrar. During investigation, statement of informant was also recorded under Section 164 Cr.P.C. Applicant has absconded during investigation and non-bailable warrants were issued against him and that a reward of Rs. 25,000/- was announced for arrest of applicant and some of the co-accused persons. Eye witness Ram Bahadur Gupta and Smt. Geeta have also supported the prosecution version. After submission of charge-sheet, applicant is not appearing before the trial court and thus, non-bailable warrants were issued against him. Thereafter process under Section 82 Cr.P.C. has also been issued against the applicant but despite that applicant did not appear before the trial court. It was further submitted that as the process under Section 82 Cr.P.C. has already been issued against the applicant, thus, this application for anticipatory bail is not maintainable. Applicant was involved in assaulting the informant and his relatives and in causing injuries to them. Sufficient evidence has been collected during investigation and thereafter applicant has been charge-sheeted. Referring to the statement of informant, recorded under Section 164 Cr.P.C. and statements of injured witnesses, recorded during investigation, it was submitted that there is sufficient evidence to show the involvement of applicant in the incident. In support of his contentions, learned AAG has placed reliance upon the case of **State of M.P. v. Pradeep Sharma**, 2014 (2) SCC 171, **Lavesh v. State (NCT of Delhi)**, 2012 (8) SCC 730 and **Prem Shankar Prasad v. State of Bihar & Anr.**, 2021 SCC Online SC 955.

6. I have considered the rival submissions of learned counsel for the parties and perused the record.

7. It appears from the record that during investigation, applicant was granted anticipatory bail for the period till the submission of report under Section 173 (2) Cr.P.C. vide order dated 31.03.2022 subject to certain conditions but it was shown that after submission of report under Section 173 Cr.P.C. (charge-sheet), applicant did not appear before the trial court and thus, non-bailable warrants were issued against him. Thereafter process under Section 82 Cr.P.C. has also been issued against the applicant but despite that he did not appear before the trial court. It was submitted on behalf of the prosecution that the applicant has already been declared proclaimed offender in terms of Section 82 Cr.P.C.

8. Considering entire facts of the matter, particularly, the conduct of the applicant that after submission of charge-sheet, he did not appear before the trial court and absconded and that he has been declared proclaimed offender and also considering the law laid down in the case of **Lavesh v. State (supra)**, **Prem Shankar Prasad (supra)** and the case laws cited on behalf of the applicant, no case for anticipatory bail is made out. However, it is directed that in case applicant appears/surrenders before the court concerned within a period of two weeks from today and applies for bail, his bail application shall be considered and decided expeditiously in accordance with settled law.

9. With the aforesaid observations, the instant anticipatory bail application is hereby **rejected**.

Order Date :-16.11.2023

Anand