

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 8837 of 2023**

Applicant :- Fajil

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Fajil** seeking anticipatory bail in Case Crime No. 333 of 2023, under Sections 307, 323, 458, 504 IPC, Police Station Chandausi, District- Sambhal.
3. The present applicant and 3-4 unknown accused persons after entering into the house of the informant made an assault upon Alfase aged about 3 years with intention to kill and also inflicted injuries upon his family members. FIR was lodged on 20.06.2023 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It is further submitted that the injured persons in this case have sustained only simple injuries and no specific role of assault has been assigned to the present applicant. It is further submitted that even in the x-ray report of injured Alfase no adversity has been discovered. It is further submitted that the applicant is cooperating with the investigation of the case. Although he has a criminal history of one solitary case pertaining to gambling act but however he has no details of the aforesaid case as it is said to be very old. It is lastly submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.
5. Learned A.G.A. opposed the prayer for anticipatory bail. It has been vehemently submitted that although the x-ray report shows

NAD in the injury of injured Alfase but since a little child about 3-4 years has ben sustained a lacerated wound over his right forehead wherein clotted blood was also found and also upon the lid of eye he has also sustained an injury and the injury was inflicted with intention to kill and the witnesses and injured witnesses of the case have supported the prosecution version in their statements given to the I.O., it is not a fit case for anticipatory bail. It is further submitted that the present applicant is named in the FIR and he has been assigned main role of assault along with some other unknown co-accused persons.

6. In the present case specific role of assault has been assigned to the present accused and injury has been inflicted upon injured Alfaze, a boy of tender age.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, llikelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

8. The anticipatory bail application is **rejected**.

9. However, on the request of counsel of the applicant it is directed that if the accused applicant appears before the Court concerned and applies for bail his bail application shall be disposed of expeditiously in accordance with law.

Order Date :- 16.10.2023

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