

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9584 of 2023

Applicant :- Manvendra Pratap Singh @ Anshul And 2 Others

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

Counsel for Applicant :- Ram Ashish Pandey, Shishir Tandon

Counsel for Opposite Party :- G.A., Shobhit Yadav

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned counsel for the informant as well as learned A.G.A. for the State and perused the material available on record.
3. At the very outset, it is brought to the notice of this Court that applicant no.1 has already been arrested. Hence, this anticipatory bail application is not being pressed for applicant no.1.
4. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicants -**Ajay Kumar & Ram Yadav** in Case Crime No.187 of 2022, under Sections 147, 148, 149, 307, 323, 325, 504, 506 IPC, Police Station - Jaswantnagar, District - Etawah.
5. It is alleged in the F.I.R. that the accused persons seven in number including the present applicants surrounded Mahaveer and Hari Om, the cousins of the informant and fire was made by co-accused, Prashant alias Bablu upon Mahaveer with intention to kill and the fire arm injury inflicted in his left thigh and he was further assaulted. The incident was caused on account of previous animosity regarding water and the accused persons had come on spot carrying deadly weapons and after forming unlawful assembly, an F.I.R. was lodged on 15.05.2022 and investigation started, which is still going on.
6. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. Investigation is going on in the matter. In case applicants are

granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

7. It is further submitted that no role has been assigned to the present applicants in the alleged incident. It is next submitted that even in the F.I.R. of the case nowhere it has been mentioned as to any fire was made by the present applicants during the incident. It is further submitted that the fire arm injury as per F.I.R. was inflicted upon the thigh of the injured, which is not a sensitive or vital part of the body. It is further that due to the animosity of Gram Pradhan election, the applicants have been falsely implicated in this case. It is further submitted that the anticipatory bail application before the Sessions Court was moved on 24.07.2023 and it was rejected by the sessions court vide order dated 26.07.2023 and subsequently, on 11.08.2023, an application for anticipatory bail was moved before this Court. It is also submitted that in the meanwhile, process under Sections 82 has been issued against the applicants but as a matter of fact, they were not declared as a proclaimed offenders because they were given certain time to appear before the Court before expiry of the said period, anticipatory bail application was moved before this Court. It is next submitted that charge sheet has been submitted in this matter against the main accused, Prashant alias Babloo and Sheshpal but investigation of the case is still going on in respect of the present applicants. It is also submitted that they are cooperating with the investigation of the case and the criminal history of the accused applicant has been sufficiently explained and as such, he is entitled for anticipatory bail.

8. Learned A.G.A. as well as learned counsel for the informant have opposed the prayer for anticipatory bail and it has been submitted that applicant no.2 is still threatening the informant of this case for dire consequences. It is further submitted that all the accused persons jointly by forming unlawful assembly had committed the offence. The injured of this case was admitted in the hospital after sustaining injuries and subsequently, he was admitted at PGI, Saifai as well and sustained very grievous injuries. It is also submitted that process under Section 82 Cr.P.C. has been issued against the applicants and they are not entitled for anticipatory bail.

9. In the present case, on the basis of material available on record, it appears that when the applicants were trying to take recourse of legal forum by way of anticipatory bail, process under Section 82 Cr.P.C. was issued against them. It was issued just after about 15 days after rejection of their application from the Sessions Judge

whereas after 16 days or 17 days of the rejection of their application by the sessions court, application for anticipatory bail was filed before this Court and in that way, the accused persons were not absconders in the sense that they were not cooperating with the court and were wilfully and deliberately avoiding the process issued by the court maintainable, hence their anticipatory bail application may be considered in view of law laid down by Hon'ble the Apex Court in case of State of **Haryana vs. Dharamraj, 2023 SCC Online SC 1085** as a rare and exceptional case. It also appears in the statement of the injured under Section 161 Cr.P.C. that no specific role of assault/firing has been assigned to the present applicants and investigation of the case is still going on.

10. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has 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, likelihood 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.

11. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

12. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till filing of police report under Section 173(2) Cr.P.C. in the matter.

13. The application is **allowed**.

14. In the event of arrest of the applicants, they shall be released on anticipatory bail on their furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicants shall make themselves available for interrogation by a police officer as and when required.

(ii) 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 office.

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

15. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicants.

Order Date :- 8.11.2023

Shivangi