

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 9705 of 2023

Applicant :- Tipu Atala @ Ehtesham Ali

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

Counsel for Applicant :- Mohammed Asif, Zain Abbas

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, Shri P.C. Srivastava, learned AAG assisted by Shri J.K. Upadhyay, learned A.G.A.-I for the State and perused the record.

2. This application has been moved on behalf of the applicant **Tipu Atala @ Ehtesham Ali** seeking anticipatory bail in Case Crime No. 0138 of 2023, under Sections 307, 504 IPC, Police Station - Kareili, District- Prayagraj.

3. Three named accused persons including the present applicant were alleged to make fire upon the informant with intention to kill him and he sustained fire arm injuries. FIR was lodged and investigation is started, which is 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 occurrence is said to be committed in the night in total darkness and the prosecution story as alleged in the FIR is not natural and probable. It is further submitted that independent witnesses of this case have not supported the prosecution version. It is further submitted that the fire arm injuries inflicted upon the informant are on non-vital parts. It is further submitted that the element of 'with intention to kill' is missing completely in this matter. Criminal history of the applicant is sufficiently explained in the affidavit. The applicant is cooperating with the investigation. Several other submissions has been made to demonstrate the prosecution story referring the unnatural conduct of the informant/ injured and also statements of witnesses at length. It is lastly submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions

of bail.

5. Learned A.A.G. opposed the prayer for anticipatory bail. It is further submitted that three fire arm injuries have been inflicted upon the body of the injured and the fire arm injuries was caused with intention to kill the informant. The informant in his statement given to the I.O. has categorically assigned the role of firing to all the three accused persons including the present applicant. It is further submitted that the doctor in his statement given to the I.O. has supported the prosecution version. It is also submitted that at this stage there is no reason for false implication and investigation is going on. It is further submitted that the injured has undergone surgery and at this stage it is not disputed that he has sustained fire arm injuries and specific role of firing has been assigned to the present applicant as well as to the other co-accused persons.

6. In the present matter the role of the present applicant is very much clear in the commission of the alleged crime, the informant/ injured have supported the prosecution case and specific role of firing has been made upon the body of the injured, as such the anticipatory bail application is liable to be rejected.

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, 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.

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.

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

Order Date :- 17.10.2023//Fhd