

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9892 of 2023

Applicant :- Irshad

Opposite Party :- State of U.P.

Counsel for Applicant :- Ambreen Masroor, Sadrul Islam Jafri, Sr.
Advocate

Counsel for Opposite Party :- G.A., Sunil Kumar Tiwari

Hon'ble Krishan Pahal, J.

1. List has been revised. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard Sri N.I. Jafri, learned Senior Counsel assisted by Sri Sadrul Islam Jafri, learned counsel for the applicant and Sri Sunil Kumar Tiwari, learned counsel for the injured person as well as Sri Sunil Kumar, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 303 of 2023, under Sections 147, 148, 149, 352, 336, 338, 307 of IPC and Section 7 of Criminal Law Amendment Act, Police Station- Mawana, District- Meerut, with a prayer to enlarge him on anticipatory bail.
4. As per the prosecution story, the FIR was instituted by the police alleging that two groups were found firing at each other including arsoning on 23.07.2023 by police and in the said incident, one person Saif Ali has sustained grievous injuries.
5. Learned Senior counsel for the applicant has stated that no FIR has been instituted by either parties. There are general allegations against all the accused person. The injured person Saif Ali is stated to have sustained one lacerated wound over right scapular region, size 3 cm X 3 cm circular whereby 9 foreign body pellets were recovered; 5 were superficial and 4 were 1 cm deep. Learned

Senior Counsel has further stated that it was the time of marriage of the daughter of the applicant and the same has been ruined by the said incident. The applicant has nothing to do with the said offence. He was busy in making arrangements of the said marriage. The criminal history of three cases assigned to the applicant has been explained in the supplementary affidavit filed today. In one case, he is on bail; in the second case, he has been exonerated by police and in the third case, final report has been filed before the court concerned and in this regard, a questionnaire obtained from the said court has been annexed as Annexure No.3 to the supplementary affidavit.

6. Per contra, learned counsel for the injured person has vehemently opposed the prayer for anticipatory bail on the ground that the arguments tendered at Bar pertain to regular bail application and it cannot be agitated u/s 438 Cr.P.C. The father of the injured person had gone to the police station but his FIR was not instituted as already the FIR was lodged by the police itself. The injured Saif Ali has sustained grievous injuries which is at the vital part of his body and could have caused his death.

7. Learned AGA has also opposed the anticipatory bail application on account of the criminal history of the applicant.

8. Considering the facts and circumstances of the case and also the arguments advanced by the learned counsel for the parties, this Court is of the view that since the injured Saif Ali has sustained one lacerated wound whereby 9 foreign body pellets were recovered, I do not find it a fit case to enlarge the applicant on anticipatory bail. The arguments tendered at bar pertain to regular bail application and cannot be agitated u/s 438 Cr.P.C.

9. In view of the above, the present anticipatory bail application is rejected.

(Justice Krishan Pahal)

Order Date :- 8.12.2023
Siddhant