

Neutral Citation No. - 2023:AHC:221452

Reserved

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 9806 of 2023

Applicant :- Awez Ahamad @ Golu

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

Counsel for Applicant :- Satya Dheer Singh Jadaun

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

Hon'ble Raj Beer Singh, J.

1. Heard Sri Satya Dheer Singh Jadaun, learned counsel for the applicant, Sri Ratnendu Kumar Singh, learned counsel for the informant and Sri P.C. Srivastava, learned Additional Advocate General, assisted by Sri J.K. Upadhyay, 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, 504, 506, 307, 308, 386, 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 named accused persons along with 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 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 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. There is delay of six hours in lodging of the first information report. The applicant is not named in the first information report nor he was named by the informant in his statement under Section 161 Cr.P.C. It was submitted that injured persons, namely, Abdul Fahad, Ali Zafar and Mohd. Gufran have also not named the applicant. It was submitted that the name of applicant has figured in the statement of informant, recorded under Section 164 Cr.P.C. Before that statement of informant under Section 164 Cr.P.C., the statement of informant was recorded twice and thus, there was absolutely no necessity for statement of informant under Section 164 Cr.P.C. The said statement was recorded after one and a half months of the incident. It was further submitted that prior to the lodging of the first information report, the same informant has also lodged a first information report on 31.07.2022, being crime no. 222 of 2022, under Section 147, 149, 504, 506, 307, 427, 120-B IPC, police station Puramufti, district Prayagraj regarding an incident which took place on 26.07.2022 and almost same story was set up in the first information report of this case. Earlier, one of the associate of Mohd. Zeeshan has also lodged a first information report against the applicant and others on 31.08.2022 regarding an incident dated 14.08.2022 being crime no. 274 of 2022, under Section 147, 148, 149, 323, 307, 386 IPC, police station Kareli, district Prayagraj, making similar allegations.

5. It is further submitted that during investigation, applicant was granted anticipatory bail by this Court in a similar case being case crime no. 222 of 2022, under Section 147, 149, 504, 506, 307, 427, 120-B IPC, police station Puramufti, district Prayagraj vide order dated 16.01.2023 [Criminal Misc. Anticipatory Bail Application No. 8661 of 2022]. Referring to the facts of the matter, it was submitted that applicant has been falsely implicated due to

business rivalry. The informant is a history-sheeter and land Mafia. Co-accused Imran @ Guddu and Sanjay Singh have already been granted anticipatory bail during investigation. 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. Regarding process under Section 82 Cr.P.C., it was submitted that in view of the facts of the matter, the same would not bar the grant of anticipatory bail to the applicant and in this connection, learned counsel has referred the cases of **State through CBI v. Dawood Ibrahim Kaskar & Ors.**, AIR 1997 SC 2494, **Siddharth v. The State of U.P. & Another**, 2021 0 Supreme (SC) 445, **Udit Arya v. State of U.P.**, [Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 4560 of 2023], decided on 03.05.2023 and **Suresh Babu v. State of U.P. & Another**, [Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 3532 of 2022], decided on 16.07.2022.

6. Learned Additional Advocate General for the State and learned counsel for the informant have opposed the application for anticipatory bail and submitted that during investigation, the name of applicant was revealed in the statement of informant under Section 164 Cr.P.C. 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. It was further submitted that applicant has been continuously absconding and process under Section 82 Cr.P.C. has also been issued against him. It was also submitted that in one of the similar case, being case crime no. 274 of 2022, the applicant has filed a Criminal Misc. Anticipatory Bail Application No. 10276 of 2022, wherein by order dated 09.11.2022 it was directed that the applicant shall surrender before the concerned court within one month from 09.11.2022 and he was granted interim protection for a period of one month but he did not comply with the said order and absconded. In support

of his contention, learned AAG has placed reliance upon the case of **State of Haryana v. Dharamraj**, 2023 LiveLaw (SC) 739 and **Prem Shankar Prasad v. State of Bihar & Anr.**, 2021 SCC Online SC 955.

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

8. It appears from the record that though the applicant-accused was not named in the first information report and his involvement was revealed during investigation but it appears that the applicant is continuously absconding and that the 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. From case laws cited by the learned counsel for applicant-accused, it appears that in appropriate cases anticipatory bail can be granted even if process under section 82 CrPC has been issued against an accused, particularly, when such process has been issued during pendency of the anticipatory bail application but nevertheless the conduct of accused is a relevant fact for consideration of anticipatory bail application. It was submitted on behalf of the prosecution that the applicant was continuously absconding and he has already been declared proclaimed offender in terms of Section 82 Cr.P.C. Further, there is criminal history of two cases against the applicant-accused. In one of the similar matter earlier he was refused anticipatory bail and was directed to surrender before the court concerned within a period of one month but the applicant-accused did not surrender before the Court.

9. Considering submissions of learned counsel for the parties, facts of the matter, particularly, the conduct of the applicant and the fact that he has been declared proclaimed offender, 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.

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

Order Date :-22.11.2023

Anand