

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10188 of 2023

Applicant :- Bhurey And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Tripathi, Vinod Kumar
Tirpathi

Counsel for Opposite Party :- G.A., Amit Rai

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicants - **Bhurey** and **Sonu** seeking anticipatory bail in Case Crime No.216 of 2018, under Sections 307, 506 IPC, Police Station Kiratpur, District Bijnor.
2. Heard learned counsel for the applicants, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.
3. It is 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. They have been falsely implicated in this case due to animosity. Civil dispute is pending between the parties. No specific role has been assigned to the applicants in the F.I.R.. No process under Sections 82 and 83 CrPC has been issued against the applicants and the applicants have not been declared absconder. In case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.
4. Learned A.G.A. and the learned counsel for the informant opposed the prayer for anticipatory bail and submitted that the injured Gaurav has received four firearm injuries upon his body, which are in the nature of lacerated wound on his left shoulder, left elbow joint, left side of chest and front of the left side of abdomen. It is also submitted that the injured in his statement under Section 161 CrPC has assigned specific role of causing firearm arm injuries to applicant no.2 Sonu and other co-accused Arun. It is also submitted that the doctor in his statement has also stated that firearm injuries have been sustained by the injured Gaurav.

Applicants have played active role in commission of the alleged crime.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. In this matter, it has been alleged that applicants and other co-accused made an assault upon the brother of the informant with the aid of firearm and he sustained injuries. F.I.R. was lodged and investigation started which culminated into final report. A protest petition was filed which was rejected and the applicants were summoned by the Court concerned to face trial for the offence under Sections 307, 506 IPC vide order dated 30.8.2022. From the perusal of the record it also reveals that the injured Gaurav has received four firearm injuries, out of which two are on left side of chest and abdomen, i.e. on the vital part of the body. It also reveals that specific role of causing firearm injury has been assigned to applicant no.2 Sonu.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant no.2 and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant no.2 **Sonu**. The anticipatory bail

application in his respect is **rejected**. However, it is observed that the bail application of the applicant no.2 Sonu, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825**.

9. So far as the prayer for anticipatory bail to the applicant no.1 Bhurey is concerned, considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant no.1 Bhurey and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant no.1 **Bhurey** till the end of trial.

10. In the event of arrest of the applicant no.1 Bhurey, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The applicant no.1 shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicant no.1 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 him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant no.1 shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

11. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicants no.1 Bhurey.

12. With the aforesaid observations, the anticipatory bail application is **disposed of** accordingly.

Order Date :- 12.10.2023

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