

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 9972 of 2023

Applicant :- Deepak

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

Counsel for Applicant :- Ajay Kumar Pandey

Counsel for Opposite Party :- G.A., Manish Kumar

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed on behalf of applicant is taken on record.
2. This application has been moved on behalf of the applicant - **Deepak**, seeking anticipatory bail in Case Crime No. 163 of 2017, under Sections 147, 323, 452, 307, 325 and 506 I.P.C., Police Station Chandinagar, District Baghpat.
3. Heard learned counsel for the applicant, Sri Manish Kumar, learned counsel for the informant as well as learned A.G.A. for the State and perused the record.
4. The police machinery came into action after filing of FIR by the informant, alleging therein that the informant and his family members were brutally assaulted by the accused persons with the aid of iron rod, sharp edged weapon, saria, axe and lathi-danda etc. After investigation chargesheet was submitted and the injured persons were medically examined.
5. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated in this case due to some ulterior motive. Allegations levelled against the applicant are false. It is further submitted that general role of assault has been assigned to all the accused persons in this case. He further submits that in the first information report it has been alleged that the present applicant caused injury upon the head of the injured Adesh with the aid of sword with intention to kill and he sustained a very serious head injury but however, the medical report does not corroborate the prosecution version. On this aspect the doctor has

found the injury caused by blunt object and not by sword. It is further submitted that all the injuries sustained by the injured persons are simple in nature. During investigation the applicant has been fully cooperative. He also submits that only general allegation has been leveled against all the accused persons. He further submits that witnesses of this case have given their affidavits to the I.O. of the case in favour of the applicant and other accused persons. It is further submitted that charge-sheet in this case has been submitted but not against the present applicant and he has been summoned by the trial court under section 319 Cr.P.C. to face trial under sections 147, 452, 307/149, 323/149, 325/149 and 506 I.P.C. It is also submitted that no evidence was found against the applicant by the Investigating Officer during investigation. He further submits that the witnesses of fact on the basis of whose deposition the applicant was summoned to face trial are not reliable witnesses as there are lot of contradictions in their testimonies. He lastly submits that the applicant is having no criminal history, hence he is entitled for anticipatory bail. In case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for bail and submitted that although in connivance with the present applicant the I.O. of this case did not submit chargesheet against the present applicant but during course of trial the witnesses of fact and particularly injured Adesh have corroborated the prosecution version and on the basis of their depositions the sessions court has rightly held that the present applicant had played an active role in the commission of crime and he was an active participant in the occurrence. He further submits that the injury caused to the injured Adesh and other injured persons are not simple but grievous in nature. There are so many injured persons in this case who have sustained a large number of injuries.

7. In this matter, as is evident from the record, offences levelled against the applicant are punishable with the imprisonment upto seven years. After completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and**

another, (2020) 5 SCC 1, the Hon'ble Apex Court has settled the controversy finally by holding 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.

9. 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, in my view, it is not a fit case for anticipatory bail to the applicant till the end of trial. The prayer made in the application is refused.

10. However, it is observed that the bail application of the applicants, 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**.

It is further directed that the learned court concerned, while considering the bail application of the applicants in the light of **Satender Kumar Antil case (supra)**, shall pass an order strictly in compliance of the directions given in the aforesaid judgment by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

11.The anticipatory bail application stands **disposed of** accordingly.

Order Date :- 30.10.2023

Faridul