

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10237 of 2023**

Applicant :- Kamlesh @ Sonu And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Nanhe Lal Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicants, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicants- **1. Kamlesh @ Sonu, 2. Hiralal Kushwaha, 3. Govindas** in connection with Case Crime No. 210 of 2022, under sections 323, 504, 506, 308 IPC, P.S. jakhaura, District- Lalitpur.

3. As per FIR four named accused persons made an assault upon Smt. Kamla, the mother of the informant with the aid of lathi and danda and when the informant intervened he was also beaten. Both have sustained injuries. FIR was lodged on 19.11.2022 and now the charge sheet has been submitted.

4. It has been 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. After investigation charge sheet has been submitted in the matter. It is further submitted that only general role of assault has been assigned to all the applicants in this case and even in the statement of both the injured persons no specific role of assault has been assigned to any of the present applicants. It is further submitted that the injured Chandrabhan has sustained only simple injuries according to the medical report and so far as another injured Smt. Kamla is concerned no bony injury has been found in her x-ray report. Although in the CT scan report linear undisplaced fracture of right temporal parietal bone has been found but the doctor has stated in his statement under Section 161 Cr.P.C. that the injured Kamla was having a minor injury in her head, she was even not hospitalized as per the report of the I.O. It is further submitted that no serious or grievous injuries have been caused to any of the

injured persons of the case. During course of investigation the I.O. has given notice under Section 41-A Cr.P.C. to the applicants and they never misused the liberty. Applicant no.1 and 3 are having no criminal history to their credit and applicant no.2 has a criminal history of one solitary case, that has been explained. In case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail but could not dispute the factual aspect of the matter as submitted by the learned counsel for the applicants.

6. In this matter the applicant is cooperative during course of investigation and after filing of the charge sheet no custodial interrogation is required.

7. Although the charge sheet has been submitted in this matter but 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.

8. 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 applicants and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till conclusion of trial in the matter.

10. The anticipatory bail application is **allowed** accordingly.

11. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail on their 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 applicants 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence
- ii. The applicants shall not pressurize/ intimidate the prosecution witness.
- iii. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.
- iv. The applicants shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. concerned.

12. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicants in accordance with law.

Order Date :- 7.11.2023

Fhd