

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10319 of 2023

Applicant :- Virju Nishad And Another

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

Counsel for Applicant :- Hari Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Supplementary affidavit has been filed today, is taken on record.
2. Heard Mr. Hari Narayan Singh, learned counsel for the applicants and learned Additional Government Advocate for the State.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.117 of 2023, under Sections 147, 149, 323, 504, 506, 307, 333, 427 IPC, Police Station Belipar, District Gorakhpur.
4. Learned counsel for the applicants submits that the applicants have been falsely implicated in the present case, in fact, no such incident has taken place. The applicants have never committed any offence as alleged in the impugned FIR. There is no direct or indirect evidence against the applicant. The applicant was not present on the spot even the applicant is not named in the FIR. During investigation, the complicity of the applicant has been shown on the basis of statement of co-accused persons as well as eye witnesses. He further submits that similarly placed co-accused persons, namely, Harikesh @ Bholu and Hariom @ Lallu have already been granted regular bail by the court below. Prima facie no alleged offence is made out against the applicants. The applicants are having no previous criminal history as has been mentioned in paragraph 21 of the affidavit. He further submits that applicants have apprehension of imminent arrest and in case, the applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.
5. Learned A.G.A. vehemently opposed the prayer for anticipatory bail of the applicants and has submitted that applicant and other co-accused persons were seen in the CCTV Footage while

committing maarpeet with the informant. As per injury report, the injured has sustained injured on his head. The allegations are very serious and keeping in view the seriousness of the allegations made against the applicants, applicants are not entitled to grant of anticipatory bail. The apprehension of the applicants is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicants as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of the applicants.

7. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**.

Order Date :- 17.11.2023

Ajeet