

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10627 of 2023

Applicant :- Hirday

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

Counsel for Applicant :- Yashwant Kumar,J.K.S. Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Second supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicant - **Hirday** seeking anticipatory bail in Case Crime No.0253 of 2022, under Sections 323, 307, 504, 506, 34 IPC, Police Station, Deogaon, District Azamgarh.
3. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.
4. An altercation took place between the informant side and the named accused persons in the F.I.R. and informant was assaulted with the aid of lathi and danda and was also stabbed in his abdomen. F.I.R. was lodged on 12.6.2023 under sections 323, 324, 504, 506, 34 IPC and investigation started. During investigation, in place of section 324 IPC, section 307 IPC was added in the matter.
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. Allegations levelled against the applicant are false. He has been falsely roped in this matter. It is further submitted that no specific role of assault has been assigned to the applicant. There was a village rivalry between the informant and other accused persons and the applicant had absolutely no concern with them. It is further submitted that investigation in this case is going on and the applicant is cooperating with the investigation. It is also submitted that after rejection of the anticipatory bail application by the Sessions Court, Azamgrah vide order dated 23.8.2023, present anticipatory bail was filed before this Court on 15.9.2023 and during pendency of the present application, a process u/s 82 Cr.P.C. was deliberately issued against the applicant whereas he

was not absconding and was engaged in taking legal protection. It is further submitted that the applicant has no criminal history to his credit and as such he is entitled for anticipatory bail in the matter.

6. Per contra, learned A.G.A. vehemently opposed the prayer for anticipatory bail and submitted that specific role of catching hold the injured has been assigned to the applicant and according to the statement of injured as well when he was caught hold by the present applicant, the other co-accused person Roshan inflicted stab injury in the abdomen of the injured. It is further submitted that serious and grievous injury has been sustained by the injured in the incident. He was admitted in the hospital for 15 days. Stabbed wound has been found on the abdomen of the injured, which is a vital part of the body and he was hit with an intention to kill. Active role and active participation in the commission of the crime has been found against the applicant during the investigation and his presence and participation both are proved by cogent evidence collected by the Investigating Officer. At this stage, no possibility of false implication of the applicant comes into light.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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. 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.

9. The anticipatory bail application is **rejected**.

Order Date :- 27.10.2023

SS