

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10943 of 2023**

Applicant :- Varun Kumar

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

**Counsel for Applicant :- Narendra Deo Upadhyay, Vinay
Bhushan Upadhyay**

**Counsel for Opposite Party :- G.A., Rajjan Kumar, Sandeep
Kumar Sharma**

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned counsel for the informant, learned A.G.A. for the State and perused the record. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicant Varun Kumar seeking anticipatory bail in Criminal Case No. 4255 of 2022 arising out of Case Crime No. 238 of 2021, under Sections 147, 148, 452, 323, 308, 504, 506 IPC, Police Station Chopan, District- Sonbhadra.
3. Five named accused persons after entering into the house of informant made an assault upon him by kicking, fisting and iron rod. The informant sustained serious injuries. FIR was lodged on 4.9.2021 after investigation now the charge sheet has been submitted.
4. It has been submitted by the learned counsel for the applicant that 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. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. It is further submitted that although specific role of assault has been assigned to the present applicant but the injured/ brother of the informant Govind Sharma has sustained only simple injuries. The x-ray report reveals that no adversity has been discovered and the CT scan report also reflects that no significant abnormality detected. It is further submitted that the applicant has explained his criminal history of one solitary case. It is further submitted that notice under Section 41-A Cr.P.C. has been given to

the applicant during investigation and the said liberty has never been misused. He has been cooperative throughout the investigation and now after submission of the charge sheet he is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail. It is vehemently submitted that a number of 25 stitches were affixed in the skull area of the informant and he has also sustained injuries on the other parts of the body. It is further submitted that the injured has been admitted in the hospital in unconscious condition. He has been bitterly assaulted by the named accused persons and specific role of assault has been assigned to the present applicant. It is also submitted that the applicant is not entitled for anticipatory bail.

6. In the present case the injured has sustained a number of injuries, which is evident from the perusal of the record and the applicant is the main accused.

7. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. 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.

8. 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.

9. 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.

10. In view of the law laid down by the Hon'ble Apex Court, I

deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

11. The anticipatory bail application is rejected.

12. In the last, learned counsel for the applicant has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicant 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.***

13. Hence, it is observed that the bail application of the applicant, 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 case*** (supra).

14. It is further directed that the Court concerned while considering the bail application of the applicant in the light of ***Satender Kumar Antil*** case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgement 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.

Order Date :- 28.11.2023

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