Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 10762 of 2023

Applicant :- Sanjay @ Sanjay Prakash
Opposite Party :- State of U.P.
Counsel for Applicant :- Akash Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Sanjay @ Sanjay Prakash** seeking anticipatory bail in Case Crime No.287 of 2015, under Sections 307, 323, 427, 504, 506 IPC, Police Station Jaswant Nagar, District Etawah.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. As per F.I.R. of the case, three named accused persons and one unknown person made an assault upon the lady informant and also opened fire, which inflicted in the left leg of the grandson of the informant. F.I.R. was lodged and after investigation, final report was submitted upon which protest petition was filed by the informant and after making hearing on the same, the concerned Magistrate Court rejected the final report and straightway took cognizance against the present applicant under Sections 307, 323, 427, 504, 506 IPC vide order dated 27.5.2019.

4. It has been argued 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 them. He has been falsely implicated in this matter. Allegations levelled against the applicant are false. It is further submitted that only simple injuries have been caused to the injured of this case. It is also submitted that the doctor in his statement has stated that the injuries caused to the injured may be self-inflicted. It is also submitted that according to the allegations made in the F.I.R., total 5 fires were made upon the injured whereas he has received only one firearm injury, which makes the prosecution case highly improbable. It is also submitted that the firearm injury caused to the injured is not grievous or serious in nature. It is also submitted that the applicant has been cooperative during the course of investigation and as such the applicant is entitled for anticipatory bail.

5. Per contra, learned A.G.A. vehemently opposed the prayer for anticipatory bail and it has been submitted that the I.O. of the case did not investigate the matter in an impartial manner and in an arbitrary way he has submitted the final report in this

matter. It is also submitted that there is ample evidence on record that the present applicant fully participated in the commission of the crime. The injured has sustained firearm injury. His injury has been found grievous in nature by the doctor. There is no evidence at all on record that the firearm injury was a self-inflicted injury. It is also submitted that the learned Magistrate Court pointing out the irregularities and errors of the investigation, summoned the applicant to face trial. It is also submitted that the medical report in this way supports the prosecution version. The injured in his statement recorded u/s 161 Cr.P.C. has given the elaborate and true picture of the incident. It is also submitted that an Application u/s 482 Cr.P.C. No. - 3335 of 2023 was preferred by the present applicant, but however no protection was granted to him by this Court vide order dated 21.3.2023 and he was given liberty to move regular bail application before the court concerned which was directed to be decided in view of the law promulgated in Satender Kumar Antil vs. Central Bureau of Investigation and another, 2021 SCC Online SC 922. It is also submitted that keeping in view of the seriousness of the offence, applicant is not entitled for anticipatory bail.

6. 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, llikelihood 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.

7. 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 and also keeping in view the seriousness and gravity of the offence, 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 the trial.

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

Order Date :- 24.11.2023
ss

Digitally signed by :-
SANDEEP SHARMA
High Court of Judicature at Allahabad