

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10942 of 2023

Applicant :- Mohd. Hanif And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinkesh Ojha, Pradeep Kumar, Sunita Chauhan

Counsel for Opposite Party :- G.A., Ashish Kumar Mishra

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. The present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicants- Mohd. Hanif and Taufik in Case Crime No.158 of 2023, under Sections 323 and 308 I.P.C., Police Station - Chhajlate, District- Moradabad.
3. Heard Sri Devraj Singh, Advocate holding brief of Ms. Sunita Chauhan, learned counsel for the applicants as well as Sri Anit Kumar Shukla, learned A.G.A. for the State and perused the material available on record. Learned counsel for the informant is not present.
4. It is submitted by the learned counsel for the applicants that the applicants are innocent and have no concern with the present matter. They have been falsely implicated in this matter. Allegations levelled against the applicants are false. Applicants' case is squarely covered under Section 438 Cr.P.C. It is further submitted that if the applicants are enlarged on bail, they will not misuse the liberty. The applicants have apprehension of their arrest any time.
5. Learned A.G.A. opposed the prayer and submitted that on the basis of instructions received, the police is not making any attempt to arrest the applicants, as the alleged offences are punishable with the imprisonment of maximum period of seven years.
6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. In this matter, as is evident from the record, offences levelled against the applicants are of Sections 323 and 308 I.P.C., which are punishable with the imprisonment upto seven years. Specific provisions under Section 41-A Cr.P.C. have been provided giving protection to the accused person from arrest for the offences punishable upto seven years' imprisonment and in ***Arnesh Kumar vs. State of Bihar and another, (2014) 8 SCC 273, the Hon'ble Apex Court*** has also emphasized upon the power of police to arrest without warrant and it has been clarified that a balance between individual liberty and societal order should be made while exercising power of arrest. It has also been directed that where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, the police officer shall not arrest the accused unnecessarily and Magistrate shall not authorize detention casually and mechanically. Even in Section 438 Cr.P.C., it has been promulgated that accused must have reason to believe that he may be arrested in cognizable offence by the police to get protection of anticipatory bail. Investigation in the matter is going on.

8. In the light of aforesaid provisions, the applicants have no reason to believe that they may be arrested. Hence, having regard to the entire facts and circumstances of the case, no indulgence is warranted in the matter. Prayer made in the application is refused.

9. The application stands **disposed of** accordingly.

Order Date :- 16.10.2023

Ravi Kant

(Krishan Pahal, J.)