

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10957 of 2023

Applicant :- Sadique Hussain And 5 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Punit Kumar Gupta, Pankaj Kumar Shukla, Syed Ahmed Faizan

Counsel for Opposite Party :- G.A., Syed Ahmed Faizan

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This bail application has been filed by the applicants - **Sadik Hasnain, Tahzeeb Haidar, Shama Haider, Asgar Mehandi @ Mohd. Sazzad, Mathar Hasnain and Rashid** involved in case crime no.209 of 2023 under Sections 147, 148, 308, 323, 504, 506 IPC, Police Station Chandpur, District Bijnor.
3. The incident of the case was disclosed in the F.I.R. according to which, on 31.3.2023 at about 6:00 p.m., all the accused persons made an assault upon the informant with the aid of some sharp edged weapon iron and heavy object and lathi and danda and he fell down on the ground. F.I.R. was lodged and investigation started. Now charge sheet has been submitted in this matter under Sections 147, 148, 323, 308, 504, 506 I.P.C.
4. It is submitted by the learned counsel for the applicants that the applicant are innocent and have been falsely implicated in this matter. They have no concern with the present matter. Allegations levelled against the applicants are false. It is further submitted that no specific role has been assigned to the applicants except two accused persons. No injury of any sharp edged weapon has been found upon the injured Mohd. Nasir in the medical examination. Except one injury, all the injuries have been found simple in nature. It is further submitted that there is a cross case of the matter and F.I.R. as case crime no.246 of 2023 was also lodged from the applicants' side against the informant and other persons wherein two injured persons have sustained grievous injuries. It is further submitted that anticipatory bail application of the applicants moved during investigation before this Court as

Criminal Misc. Anticipatory Bail Application No.4775 of 2023. It was rejected after hearing as it was moved under Section 307 I.P.C. and after submission of the charge sheet, the matter has been altered under Section 308 I.P.C. It is further submitted that the applicants are cooperating with the investigation. They have no criminal history to their credit. It has been submitted that in case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

4. On the other hand, learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail and submitted that all the accused applicants have actively participated in the commission of the crime. Very serious injuries have been sustained by the injured of this case. Specific role of assault has been assigned to some of the accused persons. It is further submitted that the informant / injured has sustained as many as 10 injuries in the incident upon various parts of the body. It is further submitted that fracture in the head of the injured has also been found by the doctor.

6. Although the charge sheet has been submitted in this matter but 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.

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.

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.

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, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

Order Date :- 26.10.2023

Shivangi