

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11038 of 2023

Applicant :- Monu

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

Counsel for Applicant :- J.B. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Monu** seeking anticipatory bail in Case Crime No. 214 of 2023, under Sections 325, 326, 307 IPC, Police Station Dibai, District Bulandshahr.

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

3. 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. It is further submitted that initially F.I.R. in this matter was lodged for the offence under Sections 452, 323, 504 and 506 IPC and the present applicant has been granted anticipatory bail by the Sessions Court itself in the said sections and now the sections have been altered. The investigation of the case is going on and the applicant is cooperating with the same. It is also submitted that the medical report does not corroborate the prosecution version. No specific role of assault has been assigned to any of the accused persons and only general role has been assigned not only in the F.I.R. but in the statement of injured also. Criminal history of the applicant has been explained sufficiently. 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.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that injured Mahendra has sustained very serious and grievous injury and his face has been disfigured. The doctor has opined that the injuries are serious and the blood vessel has been totally cut and damaged. It is also submitted that the injured Mahendra in his statement has specifically named the present

applicant alongwith other co-accused persons and there are eye witnesses also. Applicant has actively participated in commission of the crime. Ample and sufficient evidence has been collected so far against the applicant during investigation.

5. In this matter, it appears from the perusal of the record that four accused persons including the present applicant made an assault after entering into his house with the aid of lathi, danda, knife and iron rod and the informant, his father, brother and other family members sustained grievous injuries. F.I.R. was lodged for the offence under Sections 452, 323, 504 and 506 IPC but during investigation Sections 325, 326 and 307 were also added to the matter. It also reveals from the perusal of the record that injured Mahandra has received serious and grievous injuries. Applicant has actively participated in commission of the crime.

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, 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**.

9. However, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in accordance with law.

Order Date :- 1.11.2023

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