

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11003 of 2023

Applicant :- Anzar

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

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Criminal Misc. Exemption Application is allowed.
2. This application has been moved on behalf of the applicant - **Anzar** seeking anticipatory bail in Case Crime No. 408 of 2013, under Sections 323, 325, 326, 504 IPC, Police Station Nakhasa, District Sambhal.
3. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
4. It is submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of 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 the present anticipatory bail application has been moved in the added section of 326 IPC. As per the prosecution case, the injury was caused in the eye of the injured by screw whereas in the injury report a lacerated wound has been found, hence, the nature of the injury brings the matter in the purview of Section 325 IPC wherein the applicant has already been granted bail. After completion of investigation, charge sheet has been submitted in the matter. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. Applicant has no criminal history to his credit. 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. opposed the prayer for anticipatory bail and submitted that Section 326 IPC was added to the matter during investigation after collecting ample evidence for the said offence. Offence is serious in nature and the applicant is not entitled for

anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. It reveals from the perusal of the record that present applicant made an assault upon the son of the informant / injured of the case alongwith co-accused and he sustained injuries in his eye. F.I.R. was lodged under Sections 323 and 504 IPC wherein the present applicant was granted bail. Since the matter was converted into the offence under Section 325 IPC, he was again granted bail and later on charge sheet in the matter was submitted for the offence under Section 326 IPC. It also appears that applicant has been cooperative during investigation and after submission of charge sheet no custodial interrogation appears to be required.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that 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.

9. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant **till the end of trial**.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicant, he shall be released on

anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The applicant shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 19.10.2023

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