

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11233 of 2023

Applicant :- Shahrukh And 4 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Zafeer Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affiadavit filed today is taken on record.
2. Heard Sri Zafeer Ahmad, learned counsel for the applicants and learned Additional Government Advocate for the State.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved by the applicants **Shahrukh, Buddha, Faheem, Israr** and **Sarfaraj** seeking bail in Case Crime No.135 of 2021, under Sections 147, 148, 149, 188, 323, 336, 307, 332, 353 IPC and Section 7 Criminal Law Amendment Act, Police Station-Mainather, District Moradabad.
4. Learned counsel for the applicants submitted that the applicants have been falsely implicated in the present case due to ulterior motive. Learned counsel for the applicants submitted that the allegation against the applicants are that they have fired upon the police but as per the FIR, there is no injured person. It is a no injury case. There are 25 named and 40 unnamed persons in the FIR. He submitted that earlier, the applicants had approached this Court in Criminal Misc. Anticipatory Bail Application No.14185 of 2021 and this Court vide order dated 02.08.2021 granted protection to the applicants till submission of charge sheet. Now charge sheet has been submitted on 02.08.2023 and the court below has taken cognizance on 13.10.2022, thereafter, the applicants approached the court below and moved anticipatory bail application and the same was rejected by the court below on 23.06.2023, hence, the present application. Learned counsel for the applicants submitted that the FIR was lodged by the police on 15.05.2021 where the incident took place on 14.05.2021 without any explanation of delay. He submitted that there is no specific allegation against the applicants, only general role has been assigned against all the accused persons. The applicant nos. 1,2 and 3 have no criminal history to their credit but the criminal history of the applicant nos. 4 and 5 has been explained by way of

supplementary affidavit filed today. Learned counsel for the applicants further submits that applicants have apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial. It is lastly submitted that co-accused Jumma, Mohammad Intekhab @ Intekhab, Mohd. Intezar and Mohd. Danish have been granted anticipatory bail by a coordinate Bench of this Court on 20.9.2023 vide Criminal Misc. Anticipatory Bail Application No. 9988 of 2023.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicants but could not dispute the submissions raised by learned counsel for the applicants.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants, they are directed to be enlarged on anticipatory bail till the end of trial, as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98**. The future contingencies regarding anticipatory bail being granted to applicants shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. The application is **allowed** accordingly.

8. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicants 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 applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

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

Order Date :- 18.10.2023 /safi