

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 11250 of 2023

**Applicant :-** Jahid Ali

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Mirza Ali Zulfaqar

**Counsel for Opposite Party :-** G.A., Karuna Nidhi Pandey

**Hon'ble Nalin Kumar Srivastava, J.**

1. This application has been moved on behalf of the applicant **Jahid Ali** seeking anticipatory bail in Case Crime No. 243 of 2023, under Sections 147, 323, 504, 506, 427, 307 IPC and 7 Criminal Law Amendment Act, Police Station Sikriganj, District Gorakhpur.

2. Heard learned counsel for the applicant, learned counsel for the informant as well as the 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 as a matter of fact it is a cross case and prior to the present F.I.R. one F.I.R. as case crime no. 242 of 2023 under Sections 147, 148, 323, 504, 506 IPC was lodged by the accused side. It is further submitted that only role of exhortation has been assigned to the present applicant. Injured persons from the informant side have sustained simple injuries except one injury to injured Jaynath Sharma. The investigation of the case is going on and the applicant is cooperating with the same. No specific role of assault has been assigned to the present applicant. Criminal history of the applicant has been explained sufficiently. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail and submitted that all the named accused persons including the present applicant surrounded the injured persons on the road and bitterly assaulted them and five

persons sustained injuries. Injured Jaynath Sharma has received serious and grievous injuries and the doctor, who medically examined him, has stated in his statement under Section 161 CrPC that the injury caused in the head of Jaynath Sharma was a fatal injury and it was grievous. Present applicant has actively participated in commission of the present offence. Ample and sufficient evidence has been collected against the applicant during investigation so far. At this stage the benefit of cross case may not be given to the applicant. It is also submitted that all the injured persons in their statements given to the I.O. under Section 161 CrPC have clearly stated that the present applicant was very well present on the spot at the time of commission of the offence.

5. In this matter, from the perusal of the record it reveals that on account of dispute of Tazia Procession, an altercation took place between two rival parties of the village and the applicant alongwith other co-accused persons made an assault upon the persons of informant side and some of them sustained injuries. F.I.R. was lodged for the offence under Sections 147, 323, 427, 504, 506 IPC but however, during investigation offences under Sections 307 IPC and 7 Criminal Law Amendment Act were also added. It also reveals from the perusal of the record that the injury caused in the head of Jaynath Sharma was a fatal injury.

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 :- 30.10.2023**

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