

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11479 of 2023

Applicant :- Rupesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Vikram Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Rupesh** seeking anticipatory bail in Case Crime No.1025 of 2022, under Sections 147, 148, 323, 307, 342, 506 IPC, Police Station Koshi Kalan, District Mathura.

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

3. As per prosecution version, 3 named and 5 to 6 unknown persons were made accused in the F.I.R. wherein it was alleged that the injured was assaulted by them and on exhortation of co-accused Dharmendra, the present applicant opened fire upon the injured and he sustained injuries in his chest. F.I.R. was lodged on 4.12.2022 and investigation started, which is going on.

4. It is 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 them. He has been falsely implicated in this matter. Allegations levelled against the applicant are false. It is further submitted that although, in the F.I.R., specific role of firing has been assigned to the present applicant, but the injured Pankaj in his statement u/s 161 Cr.P.C. has not assigned any specific role of firing to the applicant and a general role has been assigned to all the accused persons. It is further submitted that in this matter, the F.I.R. has been lodged delayed without any plausible explanation. Applicant is cooperating with the investigation of the case so far. He is having no criminal antecedents to his credit and as such he is entitled for anticipatory bail.

5. Per contra, learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail and

it has been submitted that in the F.I.R., specific role of firing has been assigned to the present applicant. Injured of this case has stated before the I.O. that the applicant was very well present at the time of occurrence. In the medical report, gunshot injury has been found on the chest of the injured, which is a vital part of the body. It is further submitted that the doctor has opined that the gunshot injury is grievous in nature.

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. Injured received gunshot injury on his chest, which is a vital part of the body. The injury was dangerous to life and caused by firearm. There is no possibility of false implication of the accused at this stage.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant till the end of the trial.

9. The anticipatory bail application is **rejected**.

Order Date :- 17.10.2023

SS