

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11401 of 2023

Applicant :- Braham Narayan Dubey

Opposite Party :- State of U.P.

Counsel for Applicant :- Sarvesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Sarvesh Kumar Pandey, learned counsel for the applicant, Sri Anit Kumar Shukla, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.282 of 2022, under Sections 147, 149, 323, 504, 452, 506, 308 I.P.C., Police Station Manda, District Prayagraj, during the pendency of trial.
4. As per prosecution story, the FIR was instituted by the informant on 8.10.2022. The applicant alongwith four named and two unknown accused persons are stated to have assaulted the informant and his family members, thereby causing injuries to two persons on 7.10.2022 at about 02:00 p.m.
5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. There is a cross-version to the present case as an FIR was instituted by the co-accused person Vinay Kumar Dubey against the informant and other family members on 10.10.2022 regarding the same date and time of offence. Learned counsel has stated that only one injury can be said to be grievous to injured person Ashutosh. The medical examination report has been prepared on 13.10.2023, i.e., after delay of about six days. The applicant is aged about 78 years and has no criminal history to his credit. The applicant has apprehension of his arrest. Learned counsel has stated that the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.
6. Per contra, learned AGA has vehemently opposed the anticipatory bail application on the ground that the injured

person had sustained head injury, i.e. on vital part of the body and the applicant is not entitled for anticipatory bail in the light of paragraph-43 of the settled law of this Court in the case of **Shivam vs. State of U.P. and Another** reported in **AirOnline 2021 All 484**.

7. After hearing learned counsel for the applicant as well as learned A.G.A. for the State, and taking into consideration that there is cross-version, as such, it is an admitted fact that an altercation entered into between the parties and the case cannot be considered to be of false implication and also in the light of the judgment in **Shivam (supra)**, I do not find it a fit case for grant of anticipatory bail to the applicant.

8. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

9. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 28.10.2023

Vikas

[Krishan Pahal, J.]