

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11412 of 2023

Applicant :- Kuldeep And Another

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

Counsel for Applicant :- Muktesh Kumar Singh, Kamendra Singh

Counsel for Opposite Party :- G.A., Dinesh Kumar Yadav

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicants, learned Additional Government Advocate for the State and Mr. Dinesh Kumar Yadav, learned counsel for the informant.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.227 of 2020, under Sections 304, 504, 506 IPC, Police Station Sarsawa, District Saharanpur.

3. In short, the prosecution story is that on 18.01.2020 at about 2.30 pm the accused persons forcibly cutting the popular tree, which was existed in the courtyard of the opposite party no.2, the wife of informant restrained them, then the accused persons abuse her and also beaten her by kicks & fists as well as lathi danda, as a result of which, she sustained grievous injuries in her chest and ultimately she was admitted in hospital and during treatment she was died.

4. Learned counsel for the applicants submits that the applicants have been falsely implicated in the present case, in fact, no such incident has taken place. The applicants have never committed any offence as alleged in the impugned FIR. The incident is alleged to have taken place on 18.02.2020 whereas the impugned FIR has been lodged on 17.07.2020 through an application under Section 156 (3) Cr.P.C., which was filed on 28.02.2020. He further submits that there is delay of about six months in lodging the FIR for which no plausible explanation has been mentioned. He further submits that during investigation, the investigating officer has not found any credible evidence against the applicants, therefore, submitted final report in favour of the applicants. Being aggrieved, the informant has filed protest petition in which the court below has summoned the applicants to face trial. He further submits that

none of the witnesses, namely, Rishipal Singh, Premlata, Bheer Singh have supported the prosecution story and have stated in their statements that allegations made in the FIR are false in fact the wife of informant slipped in the bathroom due to which she received injuries and later on she died due to injuries. He further submits that prima facie no offence is made out against the applicants. The applicants are having no previous criminal history as has been mentioned in paragraph 25 of the affidavit.

5. 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.

6. On the other hand, learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail of the applicants and have submitted that earlier the applicants have approached this Court by filing Criminal Misc. Writ Petition No.11385 of 2020 challenging the FIR and a Division Bench of this Court vide order dated 09.11.2020 dismissed the same. Thereafter, the applicants have filed Matter Under Article 227 No.7221 of 2022, which was dismissed as withdrawn with liberty to file fresh better application, thereafter, the applicants have filed Matter Under Article 227 No.8478 of 2022, which was dismissed on 18.11.2022. Being aggrieved, the applicants have filed Application u/s 482 No.2321 of 2023 challenging the summoning order, which was also dismissed as not pressed vide order dated 20.03.2023. Applicants have also approached before Hon'ble Apex Court which was also dismissed on 28.07.2023. They have further submitted that applicants have availed all remedy available to them but no court has given relief keeping in view the seriousness of the allegation levelled against the applicants. The allegations are very serious and in view the seriousness of the allegations made against the applicants, applicants are not entitled to grant of anticipatory bail, hence, the same is liable to be rejected.

7. As per postmortem report, the deceased suffered traumatic swelling 9cm x 7 cm on mid and front of chest with underling fracture of ribs meaning thereby the injuries have been inflicted by several persons as the underlying ribs are fractured. Court below while rejecting the anticipatory bail application of the applicants has also given categorical finding that due to the injuries sustained by the accused persons, the injured was died. Prima facie the offence is made out against the applicants.

8. In the light of above, looking to the facts and circumstances of

this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicants as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of the applicants.

9. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**.

Order Date :- 27.10.2023

Ajeet