

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11595 of 2023

Applicant :- Ahmad Ali

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

Counsel for Applicant :- Vishal Agarwal

Counsel for Opposite Party :- G.A.,Ashutosh Kumar Shukla

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Ahmad Ali** seeking anticipatory bail in Case Crime No. 202 of 2022, under Sections 323, 504, 506, 325, 326 IPC, Police Station Sevarai, District Kushinagar.
3. The prosecution story as culled out in the F.I.R. is that on the account of previous animosity, the present applicant along with other co-accused persons surrounded the informant/injured on road and on the exhortation of other co-accused persons, the present applicant with the aid of iron rod made an assault upon his neck but his right ear was amputated. The injured sustained grievous injuries in the incident and was referred to the hospital. An F.I.R. was lodged on 22.07.2022 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further submitted that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. 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.
5. It is further submitted that the accused applicant himself was admitted in the hospital at the relevant date and time in the hospital. It is also submitted that as a matter of fact, the informant side had already made an assault upon the accused side and the incident took place on 20.07.2022 and F.I.R in that case was

lodged on the Application under Section 156(3) Cr.P.C. as Case Crime No.221 of 2023. It is further submitted that earlier F.I.R. against the applicant was lodged under Sections 323, 504, 506, 325, 326 I.P.C. and a Criminal Misc. Writ Petition No.14894 of 2023 was preferred by the applicant and other co-accused persons but since the offence was punishable for a maximum period of seven years mentioning the legal position in this regard which already provides a protection to the accused in such type of cases, the aforesaid writ petition was disposed of by this Court vide order dated 12.10.2022. It is also submitted that on the basis of medical report, the I.O. added Section 326 I.P.C. in this matter in an arbitrary manner whereas there was no such injury to the injured which could bring the matter under the purview of the offence under Section 326 I.P.C. It is next submitted that the present matter is a counterblast of the F.I.R. lodged by the wife of the present applicant wherein the charge sheet has been submitted. It is also submitted that the investigation of the case is going on and the applicant has been cooperative with the I.O. of the case during the course of investigation and as such, the accused applicant is entitled for anticipatory bail.

6. Learned A.G.A. as well as learned counsel for the informant have opposed the prayer for anticipatory bail and it has been argued that the process under Section 82 Cr.P.C. had already been issued against the applicant under the instructions of the Court on 24.08.2023. It is further submitted that since the anticipatory bail application of the present applicant was rejected by the Sessions court on 27.09.2023, the accused applicant was already a proclaimed offender before the Sessions court itself and in the capability of a proclaimed offender, he has filed the present anticipatory bail before this Court on 10.10.2023. It is next submitted that during investigation, Section 326 I.P.C. was added to the matter. Hence order of the writ court does not provide any help to the applicant in this case.

7. To meet out the argument on the point of proclaimed offender, it has been vehemently submitted by the learned counsel for the applicant that the present applicant was earlier implicated in a case wherein the maximum period of imprisonment is upto seven years and subsequently he was informed by the I.O. that Section 326 I.P.C. has been added to the matter. It reflects from the perusal of the record that after adding the offence under Section 326 I.P.C. to the matter, notices were sent to the present applicant but he was not available so he could not appear before the I.O.

8. Since the offence under Section 326 I.P.C. was added to the

matter, the protection granted to the applicant by way of provisions of Section 41-A Cr.P.C. came to an end because the punishment provided under Section 326 I.P.C. may be extended with the imprisonment for life. A perusal of the record reflects that when the Criminal Misc. Writ Petition No.14894 of 2022 was disposed of offence under Section 326 I.P.C. had already been added to the matter but this fact was not brought to the knowledge of the writ court. It also reflects from the material placed on record that the I.O. made several efforts to procure the presence of the applicant during investigation after adding to Section 326 I.P.C. to the matter but he could not be traced and remained absconding and that is why, the process under Section 82 Cr.P.C. was issued against him. So far as the factual matrix of the matter is concerned, a specific role in the incident has been assigned to the present applicant and as per injury report, the right ear lobule is missing and he has suffered hearing loss from right ear and one of the injuries, out of four, has been found grievous in nature.

*9. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled 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.*

10. 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 the nature of the offence and role attributed to the present applicant, nature of the injury, abscondee of the present applicant, in my view, no reasonable and sufficient ground exist for grant of anticipatory bail to the present applicant, 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.

11. The application is **rejected**.

Order Date :- 28.11.2023

Shivangi