

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11646 of 2023**

Applicant :- Vipin Kumar

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Satyendra Narayan Singh, Pankaj Kumar Mishra

Counsel for Opposite Party :- G.A.

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 Vipin Kumar seeking anticipatory bail in Case Crime No. 200 of 2020, under Sections 504, 323, 308 IPC, Police Station Sahayal, District- Auraiya.
3. It is alleged that informant and her husband sustained injuries and they were assaulted by three named accused persons including the present applicant. FIR was lodged, which has now been culminated into charge sheet.
4. 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. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that the FIR of this case has been lodged very belatedly about 12 days after the incident without any plausible explanation of delay. It is further submitted that only general role has been assigned to all the accused persons in the matter and even in the statement of the injured/ informant herself no specific role of assault has been assigned to the present applicant. It is further submitted that the injuries sustained by the injured are not grievous but simple in nature. It is also submitted that an Application U/S 482 Cr.P.C. No. 21751 of 2021 was also moved by the applicant and another co-accused person before this Court wherein no relief was granted by this Court but it was directed that in case the applicants surrender and move their bail applications before the Court concerned within 45 days then it

shall be decided expeditiously in the light of the judgement of the Hon'ble Apex Court passed in *Satender Kumar Antil vs. Central Bureau of Investigation and another*, 2022 SCC OnLine SC 825 vide order dated 19.1.2022. It is further submitted that the applicant is not declared as proclaimed offender and no process under Section 82/83 Cr.P.C. has been issued against him so far. It is also submitted that during course of investigation he has been cooperative and he is having no criminal antecedent. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently submitted that the injured lady of this case has sustained greivous and serious injuries and she has been advised for x-ray and in the x-ray report fractures have been found. It is also submitted that the active role and active participation of the present applicant in the commission of the crime has been sufficiently found on the basis of the materials collected during course of investigation. It is also submitted that the applicant of this case is not entitled for anticipatory bail.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. In *Sushila Aggarwal and others vs. State (NCT of Delhi) and another*, (2020) 5 SCC 1, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

7. It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

8. It has been further held by the Hon'ble Apex Court 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.

9. Hence, considering the settled principles of law regarding

anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants.

10. The anticipatory bail application is rejected.

11. In the last, learned counsel for the applicant has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicant in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825.***

12. Hence, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil case*** (supra).

13. It is further directed that the Court concerned while considering the bail application of the applicant in the light of ***Satender Kumar Antil*** case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgement by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 26.10.2023

Fhd