

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11732 of 2023

Applicant :- Akash Chaudhary And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Dwivedi

Counsel for Opposite Party :- G.A., Satyendra Pandey

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Second supplementary affidavit filed today is taken on record.
3. Heard Sri Manoj Kumar Dwivedi, learned counsel for the applicants, Sri Satyendra Pandey, learned counsel for the informant, Sri Anit Kumar Shukla, learned A.G.A. for the State and perused the material placed on record.
4. The present application for anticipatory bail has been filed on behalf of the applicants- **Akash Chaudhary** and **Suraj Chaudhary** for anticipatory bail in Criminal Case No.26464 of 2022 (State vs. Pankaj Chaudhary and Others) arising out of Case Crime No.133 of 2022, under Sections 323, 324, 326, 504 and 506 I.P.C., Police Station Gola, District Gorakhpur, during the pendency of trial.
5. As per prosecution story, the applicants along with two other co-accused persons, namely, Pankaj Chaudhary and Jayant Chaudhary, are stated to have assaulted the informant on 19.05.2022 in an inebriated state, thereby causing grievous injury to him. The FIR was instituted by the informant on 20.05.2022.
6. Learned counsel for the applicants has submitted that the applicants have been falsely implicated in the present case. Initially the FIR was instituted under Sections 323, 504 and 506 I.P.C. only, which are bailable, but subsequent to it, final report (charge-sheet) was submitted in the added Section of 324 I.P.C. also, but at the stage of taking of cognizance by the Magistrate concerned, he has added Section 320 I.P.C. as well. The said adding of Section at the stage of taking of cognizance is barred by law as at the stage of taking of cognizance, the Magistrate concerned has to only take note of the final report submitted

and nothing more than that. It is not a matter of application of mind. The injuries are simple in nature.

7. Learned counsel for the applicant has further stated that the applicants have one more criminal history but the said offence is of under Sections 323, 325 and 504 I.P.C. only and the applicants could not apply for bail in it. Except the said FIR, the applicants have no previous criminal history to their credit. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length.

8. Learned counsel for the applicants has placed much reliance on the judgment of Apex Court passed in **State of Gujarat vs. Girish Radhakrishnan Varde (2014) 3 SCC 659**, whereby the learned Apex Court has categorically stated that Sections can be added or deleted at the stage of framing of charge only and not at the stage of taking of cognizance.

9. Learned counsel has also placed reliance on Section 320 I.P.C., whereby the word 'grievous hurt' has been defined. Section 320 I.P.C. reads as under:-

"320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—

(First) — Emasculation.

(Secondly) —Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) —Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

10. Learned counsel for the applicant has stated that there is no permanent privation of either of the ear, as such the present case is not hit by the definition provided in Section 320 I.P.C., as such the case under Section 326 I.P.C. is not made out.

11. Per contra, learned counsel for the informant has vehemently opposed the anticipatory bail application on the ground that the said law laid down by the Apex Court passed in **Girish Radhakrishnan Varde (supra)** is not correct law as much before the said judgment, the very same Apex Court has passed the judgment in **Dharm Pal & Others vs. State of**

Haryana and Another, (2014) 3 SCC 306, whereby it has been stated that the Magistrate concerned is not a post office that he shall act so and not apply his mind, as such even taking of cognizance against other persons or even adding or deleting of Sections is permissible. Learned counsel has also placed reliance on the judgment of this Court passed in **Sadab vs. State of U.P. & Another (Application U/s 482 No.29523 of 2022)** decided on 28.01.2023, whereby this Court has reiterated the said law enunciated in **Dharm Pal (supra)**.

12. Learned counsel for the informant has further stated that the present case falls within the category of Section 326 I.P.C. as both the pinnas were found missing of the injured person, as such the injuries are grievous in nature. The present case is squarely covered by Section 320 I.P.C. thirdly, whereby both the pinnas of the injured person were found missing.

13. Learned A.G.A. has also opposed the anticipatory bail application.

14. After hearing learned counsel for the parties and taking into consideration the judgment of the Apex Court passed in **Dharm Pal (supra)** and the judgment of this Court passed in **Sadab (supra)** and also the injury sustained by the injured person coupled by the fact that there is criminal history of one case assigned to the applicants of the year 2018, which has not been explained, I do not find it a fit case for grant of anticipatory bail to the applicants. The arguments tendered at Bar pertain to regular bail application. They cannot be agitated at the stage of 438 Cr.P.C.

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

16. 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 :- 6.11.2023
Ravi Kant

(Krishan Pahal, J.)