

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11656 of 2023

Applicant :- Alok Bhardwaj

Opposite Party :- State of U.P.

Counsel for Applicant :- Prashant Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for applicant as well as Sri V.K.S. Parmar, learned A.G.A. for State and also perused the material available on record.
3. The present application for anticipatory bail has been filed for protection in regard to Complaint Case No. 3152 of 2020, under Sections 323, 504, 506, 392 I.P.C., P.S.- Bhojpur, District-Moradabad.
4. As per prosecution story, the complaint case was instituted against the applicant and the co-accused persons alleging that on 13.9.2020 at about 8.00 pm, they are stated to have barged into his house by breaking open his gate, armed with saria, knife and pistol and are stated to have assaulted him, in addition to hurling abuses and threatening him. The said knife is stated to have hit the hand of the complainant. There are other allegations against the applicant and other co-accused persons regarding the firing at him, which did not hit him, rather, it passed touching his head.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. Learned counsel has next stated that the said complaint case is a counterblast to the petition filed against the complainant u/s 138 Negotiable Instruments Act, which is pending as complaint case no. 4444 of 2019 before the Court of A.C.J.M. Kashipur, District Udham Singh Nagar. The applicant and the complainant had business relations. The complainant had usurped an amount of Rs. 99,62,207/- of the applicant and as such, has instituted the present complaint case. The said summoning order dated 28.7.2022 is cryptic and without application of mind.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for anticipatory bail on the ground that the applicant had filed a petition u/s 482 Cr.P.C. and failed, as such, he is not entitled for any protection under Section 438 Cr.P.C., in light of the judgement of this Court passed in *Shivam Vs. State of U.P. and Another*, reported in *AIROnline 2021 All 484*, as he has not surrendered in light of the judgement of the said order passed in the said petition u/s 482 Cr.P.C.

7. Considering the rival submissions advanced by the learned counsel for the parties and also the fact that the applicant has agitated the provisions u/s 482 Cr.P.C. in light of the judgement of *Shivam (supra)* and failed, I do not find it a fit case for grant of anticipatory bail to the applicant.

8. In view of the above, the present anticipatory bail application is found devoid of merits and is, accordingly, **rejected**.

(Justice Krishan Pahal)

Order Date :- 6.11.2023

Shalini