

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11810 of 2023

Applicant :- Najr Hussain

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

Counsel for Applicant :- Vinod Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant Najr Hussain seeking anticipatory bail in Case Crime No.395 of 2023, under Sections 342, 506, 307 IPC, P.S. Tanda, District Rampur.

2. Heard Shri Vinod Singh, learned counsel for the applicant as well as the learned A.G.A. for the State and perused the record.

3. Injured Dharmendra, son of the informant, was beaten in a cruel manner by the named accused- applicant with intention to kill him and sustained grievous injuries. However, only domestic treatment was given to the injured and some medicines were also administered from the medical store and FIR was lodged on 08.09.2023. Investigation started which is going on.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that as per story of the FIR the incident occurred six months prior to the filing of the FIR and in the FIR itself, it was mentioned that injured was not medically examined by any doctor. But surprisingly injury report has been prepared. It is further submitted that injury report submitted through supplementary affidavit indicates that only two injuries were found on the body of the injured and that too approximately one year before the medical examination. It is further submitted that the medical examination of the injured has been performed on 18.09.2023 but it has been mentioned in the injury report that the physical assault was made approximately one year before. It is further submitted that this incident makes the whole prosecution story highly doubtful. It is further submitted that no plausible explanation has been given by the prosecution regarding inordinate

delay in lodging the FIR, which was lodged six months after the incident. It is further submitted that the accused applicant has been cooperative with the investigation so far. Criminal history of the applicant has been well explained in the affidavit. The investigation of the case is going-on, he is cooperating with the same and is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and will co-operate in the investigation and would obey all conditions of bail.

5. Per contra, learned AGA has opposed the anticipatory bail application and vehemently argued that the injured is a boy of tender age, who was bitterly assaulted by the applicant and sustained serious injuries. The applicant is not entitled for anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. The applicant has been cooperative with the investigation so far and his criminal history has been explained.

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

9. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and

self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

10. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till filing of police report under Section 173(2) CrPC before the Competent Court.

11. The application is allowed accordingly.

12. In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

13. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 1.12.2023

Priya