

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11811 of 2023

Applicant :- Shiv Narayan Mishra And Another

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

Counsel for Applicant :- Shiv Kumar Pal, Kamlakar Pal

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicants **Shiv Narayan Mishra & Dileep Kumar alias Dileep Chandra Mishra** seeking anticipatory bail in Case Crime No. 76-A of 2002, under Sections 307, 323, 504, 506 IPC, Police Station Malwan, District Fatehpur.

3. It is alleged in the F.I.R. that four named accused persons including the present applicant made an assault upon the informant and his family members and fire was also made upon the informant with intention to kill but it missed and co-accused, Gangasagar, sustained fire arm injury. The informant also sustained grievous injuries in the incident. F.I.R. was lodged and now, charge sheet has been submitted in this matter.

4. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. The investigation of the case has been completed and charge sheet has been filed. It has been submitted that in case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

5. It is further submitted that as a matter of fact, the informant party was himself aggressor and the informant side itself had made an assault upon the accused side, who are the members of the S.C./S.T. committee with intention to kill them and F.I.R. as Case Crime No.76 of 2002, under Sections 307, 504, 506 I.P.C. and Section 3(2)(v) S.C./S.T. Act was lodged against the informant

side as well and charge sheet was filed in that matter. It is further submitted that it was a cross case of the present matter. It is next submitted that an application u/s 482 Cr.P.C. bearing No.385 of 2003 was filed by co-accused, Girish Chandra Mishra wherein stay order was passed by this Court vide order dated 23.01.2003 and in compliance of that, the proceedings of the case of the trial court were stayed but however subsequently, on 18.01.2020, the said application was dismissed for non-prosecution of which, the present applicant had no knowledge because they were not party to the said proceedings. It is also submitted that the injured persons in this case have received simple injuries. It is next submitted that the criminal history of the accused applicants have been sufficiently explained in the affidavit and they are cooperating with the investigation of the case and as such, they are entitled for anticipatory bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently submitted that the injured persons of this case has sustained injuries. They have been assaulted by the applicant and other co-accused persons with intention to kill injured, Mulayam Singh, who has sustained skull fracture in the right parietal bone and he has also sustained a number of injuries. It is further submitted that the role of the applicants is very much explicit on the basis of the evidence collected during investigation and as such, they are not entitled for anticipatory bail.

7. *Although the charge sheet has been submitted in this matter but 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.*

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.

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.

8. Hence, considering the settled principles of law regarding

anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants, all attending facts and circumstances of the case and the fact that allegations are serious in nature, 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.

9. The application is **disposed of**.

10. However, in the last, learned counsel for the applicants has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicants 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***.

11. Hence, it is observed that the bail application of the applicants, 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).

12. It is further directed that the Court concerned while considering the bail application of the applicants 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 :- 28.10.2023

Shivangi