

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11918 of 2023

Applicant :- Dharmendra Kumar Alias Diwari

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

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A., Ravesh Kumar Singh

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 **Dharmendra Kumar Alias Diwari** seeking anticipatory bail in Case Crime No. 144 of 2023, under Sections 323, 304 IPC, Police Station Malawan, District Etah.
3. The prosecution story as culled out in the F.I.R. is that an assault was made by the present applicant to the father of the informant, who sustained internal injuries and had seen under treatment at district hospital, Etah but subsequently on 12.08.2023, he died. An F.I.R. was lodged on 12.08.2023 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, he 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, no visible injury was caused to the injured deceased in this case. It is next submitted that in the post mortem report, only a lacerated wound has been found on the left scapular region but the cause of death has not been ascertained, hence viscera was preserved. It is further submitted that the viscera report is still awaited as per contents of the F.I.R. It is next submitted that there was no independent witness of the said incident. It is further submitted that no F.I.R.

was lodged by the informant regarding the assault in this case. It is also submitted that the accused applicant has been falsely implicated in this case. It is next submitted that he has been cooperative with the I.O. of the case during the course of investigation and he is having no criminal history to his credit and as such, he is entitled for anticipatory bail.

6. Per contra, learned A.G.A. for the State as well as learned counsel for the informant vehemently opposed the anticipatory bail application and it has been submitted that after the assault, the deceased was medically examined at CHS Sakeet, Etah. It was observed by the doctor that in the upper abdomen, there was swelling and the injury has been caused by the hard and blunt object. It is further submitted that the death of the deceased occurred after two days on account of the injury which was inflicted upon his body by the present applicant. It is further submitted that ample evidence has been collected against so far. It is further submitted that it is not a case of accident but is a case of culpable homicide not amounting to murder.

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

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, 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 **rejected**.

Order Date :- 28.11.2023

Shivangi