

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11886 of 2023

Applicant :- Chand And 2 Others

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

Counsel for Applicant :- Amar Jeet Upadhyay

Counsel for Opposite Party :- G.A.,Amit Rana

Hon'ble Krishan Pahal,J.

1. Heard Sri Amar Jeet Upadhyay, learned counsel for the applicants and Sri Amit Rana, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and also perused the material available on record.
2. The present anticipatory bail application has been filed on behalf of the applicants in F.I.R./Case Crime No. 1132 of 2020, under Section 307 IPC, Police Station Kankarkhera, District Meerut, with a prayer to enlarge them on anticipatory bail.
3. As per prosecution story, the applicants alongwith the co-accused Imran is stated to have assaulted the brother of the informant with lathi, danda, fawda and sharp edged weapons on 1.12.2020 at about 4.30 pm, thereby causing grievous injuries to him.
4. Learned counsel for the applicants has stated that the applicants are maliciously being prosecuted in the present case due to ulterior motive and have the apprehension of their arrest. The applicants have nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the FIR is delayed by about one day and there is no explanation of the said delay caused. Learned counsel has further stated that there is evidence of a witness Mohd. Yameen, who has stated that the informant was present at Khekra, Baghpat, at the time of the alleged offence, as such, he is not an eye witness of the said incident. Learned counsel has also stated that the police was pleased to file a closure report in the present case twice against the applicants, as the injured person had given the statement against one accused i.e. Imran only, as such, the applicants were exonerated by the police.

5. Learned counsel has next stated that the injury report is also contradictory to the FIR, as it is alleged in it that he has sustained injuries on 1.12.2020 at 5.00 pm. It is also stated that the applicants have been summoned by the trial Judge by invoking the powers u/s 319 Cr.P.C. vide order dated 1.2.2023. It is further submitted that the applicants have no criminal antecedents. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

6. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail on the ground that the applicants had challenged the said summoning order by moving a criminal revision before this Court, which is still pending. The process u/s 82 Cr.P.C. has already been initiated against the applicants on 30.10.2023. The injuries were grievous in nature. The investigating officer had colluded with the applicants to file a closure report as the injured person has categorically reiterated the allegations made in the FIR in his statement recorded before him. Learned A.G.A. and learned counsel for the informant have stated that the applicants are not entitled for anticipatory bail.

7. In rebuttal, learned counsel for the applicant has stated that the said provision u/s 82 Cr.P.C. has been initiated after the applicants had moved the anticipatory application before this Court on 17.10.2023, as such, the applicants are entitled for anticipatory bail.

8. On due consideration to the arguments advanced by the learned counsel for the applicants that the applicants were exonerated by the investigating officer and have been summoned by the trial court on 1.2.2023, coupled with the fact that the applicants have no criminal history, and in view of the law laid down by the Apex Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98", the applicants are entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicants is allowed.

10. In the event of arrest of the applicants, Chand, Shakil and Yaseen involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court

Concerned, with the conditions that:-

- i. that the applicants shall make themselves available for interrogation by a police officer as and when required;
- ii. that the applicants 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- iii. that the applicants shall not leave India without previous permission of the court;
- iv. that the applicants shall not tamper with the evidence during the trial;
- v. that the applicants shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicants shall appear before the trial court on each date fixed unless personal presence are exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicants.

12. It is made clear that observations made in granting anticipatory bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 9.11.2023

Shalini