

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12106 of 2023

Applicant :- Zeeshan Saifi

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

Counsel for Applicant :- Meraj Ahmad Khan

Counsel for Opposite Party :- G.A., Prashant Ojha

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Meraj Ahmad Khan, learned counsel for the applicant, Sri Shriprakash Rai, Advocate holding brief of Sri Prashant Ojha, learned counsel for the informant, Sri S.P. Pandey, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.437 of 2023, under Section 306 I.P.C., Police Station Katghar, District Moradabad, during the pendency of trial.
4. As per prosecution story, the applicant alongwith other co-accused persons is stated to have abducted the brother of the informant from the vicinity of Hindu College, Moradabad on 29.8.2023, as such, they are stated to have taken him to the house of one of the accused persons Nawajis and are stated to have beaten him and after calling a barber get his head shaved and are even stated to have conducted several indecent activities with him. The accused persons are stated to have snatched his bag and mobile phone alongwith Rs.20,700/-.
5. It is further alleged that the father of the informant called at the mobile number of the deceased person, whereby he was asked to come and save the life of his son, as such, the brother-in-law (Behnoi) of the informant reached the said place of occurrence but he was also beaten up. The brother-in-law (Behnoi) and brother of the informant were sent off threatening them of dire consequences. Peeved by the said act and feeling humiliated, the brother of the informant is stated to have committed suicide by drowning.
6. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The

prosecution case stands falsified on the ground that the postmortem examination of the deceased person was conducted on 30.8.2023 and it mentions the time of death to be 2-3 days old. The cause of death has been found to be antemortem drowning. Learned counsel has stated that no mark of external injury has been seen by the doctor as observed in the postmortem report.

7. Learned counsel for the applicant has further stated that the applicant has *alibi* as he is a mechanic at Reno Car Workshop and was working at the said workshop. To buttress his arguments, learned counsel has placed reliance on the CCTV footage of the said workshop indicating his presence there which has been annexed as Annexure-4 to the affidavit filed with the anticipatory bail application. Learned counsel has stated that the live location of the applicant has ended at 07:18 p.m. The applicant has no criminal history to his credit.

8. Per contra, learned counsel for the informant and learned AGA have vehemently opposed the anticipatory bail application on the ground that the inquest report categorically corroborates the prosecution story as it mentions that the head of the deceased person was found shaved. They have also stated that the said inquest report indicates that there were external injuries all over the body of the deceased person. The said inquest report has not been filed with the anticipatory bail application.

9. Learned A.G.A. has stated that the postmortem report itself indicates that the face of the deceased person was bloated, penis and scrotum were swollen, abdomen distended and loose skin was present. It is further stated that loose skin itself indicates that some injuries might have been missed by the doctor conducting the postmortem examination and the swelling of penis and scrotum also indicates injuries. Learned counsel for the informant has further stated that the said CCTV footage are of 05:30 p.m. which is much after the time of offence as it took place during the day. As such, the applicant is not entitled for anticipatory bail.

10. After taking into consideration the rival contentions and the fact that the head of the deceased person was observed shaved by the Investigating Officer at the time of inquest proceedings coupled with the fact that the arguments tendered at Bar by learned counsel for the applicant pertains to regular bail which cannot be agitated under the provisions of Section 438 Cr.P.C., I do not find it a fit case for grant of anticipatory bail to the applicant.

11. The present anticipatory bail application is hereby found

devoid of merits and is accordingly ***rejected***.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 3.11.2023

Vikas

[Krishan Pahal, J.]