

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12023 of 2023

Applicant :- Omveer And 2 Others

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

Counsel for Applicant :- Ronak Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the material available on record.
3. Present Anticipatory Bail Applications have been filed with the prayer to grant anticipatory bail to the applicants -**Omveer, Chintu alias Princ & Aashu** in Case Crime No.96 of 2023, under Sections 147, 148, 149, 307, 506 IPC, Police Station - Khair, District - Aligarh.
4. It is alleged in the F.I.R. that the named accused persons opened fire upon the informant in several rounds with intention to kill him. However, no fire hit upon the informant by the accused persons. F.I.R. was lodged on 15.02.2023 and investigation started, which is still going on.
5. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. Investigation is going on in the matter. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.
6. It is further submitted that in the F.I.R., there is no eye witnesses of the alleged offence and it is no injury case. It is also submitted that the prosecution story is totally improbable and natural. It is further submitted that several persons have been indulged but no fire arm injury has been inflicted upon the body of the informant. It is also submitted that the parties entered into compromise and wanted to settle their dispute amicably, for that purpose, order has

been passed by the coordinate Bench of this Court vide order dated 21.07.2023, which was disposed of, granting liberty to the parties to file alleged compromise before the I.O. and the I.O. was directed to examine the same and proceed in accordance with law. It is further submitted that the said compromise has been submitted before the I.O. and the investigation of the case is still going on. It is next submitted that the criminal history of the accused applicants has been sufficiently explained and as such they are entitled for anticipatory bail.

7. Learned A.G.A. opposed the prayer and it has been submitted that several round fire has been opened by the present applicants with intention to kill the informant.

8. The present case is a no injury case and the applicants have been cooperative with the I.O. of the case during the course of investigation.

9. *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.

10. *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.

11. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail

to the applicants till filing of police report under Section 173(2) Cr.P.C. in the matter.

12. The application is **allowed**.

13. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available for interrogation by a police officer as and when required.

(ii) 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 them from disclosing such facts to the Court or to any police office.

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

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

Order Date :- 2.11.2023

Shivangi