

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12190 of 2023

Applicant :- Jeelani Raza And Another

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

Counsel for Applicant :- Hasan Parvej

Counsel for Opposite Party :- G.A., Santosh Kumar Chaubey

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicants **Jeelani Raza** and **Mohd. Fazil** seeking anticipatory bail in Case Crime No. 98 of 2022, under Sections 452, 323, 324, 325, 504, 506, 307 IPC, Police Station Deorania, District Bareilly.

2. Heard learned counsel for the applicants, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.

3. It is 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. It is further submitted that the incident, as per the F.I.R., occurred in the house of the accused persons and as a matter of fact the informant side was assailant and assault was made to the accused side and they sustained injuries and an F.I.R. to this effect was also lodged by the accused side, which has been culminated into charge sheet. It is also submitted that during investigation the applicants had been granted protection by this Court. It is also submitted that only general role of assault has been assigned to the present applicants in the statement of the injured persons themselves. Applicants have no criminal history to their credit. 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.

4. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail and submitted that the injured Mohd. Qamar has sustained very grievous injury and as per the statement of the doctor it was a grievous and serious injury which

might be fatal to the life of the injured. It is also submitted that all the injured persons have sustained a number of injuries and in the x-ray report of injured Mohd. Qamar in the left side fronto parietal bone of skull multiple large fracture has been found.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. It reveals from the perusal of the record that the informant and his family members were bitterly assaulted by the named accused persons including the present applicants with the aid of lathi, danda, sharp edged weapon and deshi pistol and in the said incident three persons sustained serious injuries. F.I.R. was lodged on 8.4.2022 and after investigation charge sheet has been submitted. It also reveals from the perusal of the record that during investigation active participation and active role of the accused persons in commission of the crime is found. Injury caused to the injured persons are serious and grievous in nature.

7. 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

applicants. Prayer made in the application is refused.

9. The application is **rejected**.

10. In the last, learned counsel has urged that direction for expeditious disposal of bail application of the applicants be given.

11. Hence, it is observed that in case applicants surrender before the court below and apply for bail, the same shall be considered and decided 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**.

Order Date :- 17.11.2023

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