

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12067 of 2023

Applicant :- Ashraf Ali And Another

Opposite Party :- State Of U.P. Another

Counsel for Applicant :- Rahul Shukla, Mahendra Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicants **Ashraf Ali** and **Kale @ Rafeeq Ahmad** seeking anticipatory bail in Case Crime No.170 of 2023, under Sections 147, 323, 504, 506, 452, 354, 148, 325, 307 IPC, P.S. Mursan, District Hathras.

2. Heard learned counsel for the applicants 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 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 applicants are not named in the F.I.R.. No grievous or serious injury has been caused to any of the injured person in this case. The injured / informant Om Prakash has sustained fracture in ulna bone whereas other injured Bhupendra has got no fracture, as per x-ray report. It is also submitted that no x-ray has been conducted for the injuries of injured Machhla Devi. It is also submitted that no specific role has been assigned to the present applicants. The applicants have no criminal history to their credit. The investigation of the case is going-on and the applicants are cooperating with the same. It has been submitted that in case applicants are granted anticipatory bail, they will not misuse the liberty of bail and will co-operate in the investigation and would obey all conditions of bail. It is lastly submitted that co-accused Bashir Khan and Saleem Fauzi @ Saleem Khan having identical role have been granted anticipatory bail by this Court on 26.9.2023 vide Criminal Misc. Anticipatory Bail Application No. 10519 of 2023.

4. Learned A.G.A. has opposed the prayer for anticipatory bail but however could not dispute this factual aspect that no specific role

has been assigned to the present applicants in the alleged crime.

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

6. The prosecution story, as unfolded in the F.I.R., is that on 11.8.2023 in the morning co-accused Buland tried to outrage the modesty of a girl of the family of the informant and when it was protested, the present applicants alongwith other named accused persons made an assault with danda and sariya and they also entered into the house of the informant and made assault upon him, his wife, his son Bhupendra and cousin Sanjay. They sustained injuries in the incident. F.I.R. was lodged on the same day and investigation started, which is still going on. It also reveals from the perusal of the record that no specific role has been assigned to the present applicants in the alleged crime. The applicants are cooperating in the investigation.

7. 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.

8. 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.

9. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on 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) CrPC before the Competent Court.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicants in the aforesaid case crime, 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 the Station House Officer concerned with the following conditions :-

1. The applicants shall make themselves available for interrogation by a police officer as and when required.

2. 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 officer or tamper with the evidence.

3. The applicants shall not pressurize/ intimidate the prosecution witness.

4. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

5. 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.

12. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of applicants in accordance with law.

Order Date :- 17.11.2023

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