

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12013 of 2023

Applicant :- Sandeep Kumar Patel

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

Counsel for Applicant :- Kamlesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Kamlesh Kumar Singh, learned counsel for the applicant, Sri Deepak Kumar Singh, 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.04 of 2022, under Sections 323, 504, 506, 325, 308 I.P.C., Police Station- Chakarghatta, District Chandauli, during the pendency of trial.
4. This is the second anticipatory bail application on behalf of the applicant. The first anticipatory bail application was rejected vide order 19.5.2022.
5. As per prosecution story, the brother of the informant Sudama Maurya is stated to have gone to ease himself out on 29.1.2022 at about 07:00 a.m., whereby the applicant is stated to have exhorted the other co-accused persons to assault him as he was seated on wrong place. Subsequently, the applicant and other co-accused persons are stated to have assaulted the informant and his brother Sudama by *lathi*, *danda*, *fawada* and *gandasi*, thereby causing grievous injuries to them.
6. Learned counsel for the applicant has stated that the applicant has been falsely implicated in this case owing to political rivalry. The applicant lives in the adjoining village which is part of the same gram panchayat, as such, he has nothing to do with the said offence. Learned counsel has stated that initially the role of exhortation was assigned to the applicant. On the institution of FIR, the applicant had applied for anticipatory bail before this Court but he had withdrawn his prayer, as such, the order in the light of judgment of the Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another** reported in **2022 SCC OnLine SC 825** was passed

vide order dated 19.5.2022 in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.3450 of 2022.

7. Learned counsel for the applicant has further stated that the applicant could not comply with the aforesaid order of this Court as the closure report was filed by the Investigating Officer with respect to the applicant. Subsequent to it, the trial was taken up by the trial judge and the applicant has been summoned by invoking powers under Section 319 Cr.P.C. vide order dated 25.4.2023 passed in S.T. No.60 of 2023, pending before the Sessions Judge, Chandauli. Learned counsel has stated that subsequent to it, non-bailable warrants were issued against the applicant and he has every apprehension of his arrest. The applicant had challenged the said summoning order dated 25.4.2023 before this Court by filing Criminal Revision No.2499 of 2023 and the same was dismissed vide order dated 25.9.2023 of this Court.

8. Learned counsel for the applicant has further stated that the applicant has challenged the order dated 25.9.2023 of this Court before the Apex Court which has been registered as Diary No.44953 of 2023 and it has to be taken up yet. Learned counsel has stated that the injuries of both the injured persons are simple in nature as no fracture was observed by any of government doctors in their X-ray report. Subsequently, NCCT Scan of head was taken of both the injured persons at a private clinic, whereby soft tissue edema with subgaleal hematoma at right parietal region has been observed on the head of injured Satya Narayan. A linear fracture was seen at left parietal bone with overlying soft tissue edema at the head of injured Chandrama. Learned counsel has stated that the said injuries have been forged by the injured and informant in collusion with private radiologist.

9. Learned counsel for the applicant has further stated that the applicant has no criminal history except one case instituted by the injured in the present matter. Learned counsel has stated that the closure report has been filed in the said case which has been accepted by the court concerned. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

10. Per contra, learned AGA has vehemently opposed the anticipatory bail application on the ground that in the X-ray report taken up at Pandit Kamalapati Tripathi Govt. Hospital, Chandauli, a fracture of fifth metacarpal bone was seen by the radiologist, the same has not been highlighted by the counsel

for the applicant. Learned A.G.A. has further stated that there is no bar in getting one treated at private hospital and get facility of NCCT Scan, which is not available at government hospital.

11. Learned A.G.A. has further stated that the summoning order dated 25.4.2023 is a detailed order after appreciating and scanning the statement of three prosecution witnesses of fact recorded by the trial court. Even the criminal history of the applicant has not been properly explained as the order of acceptance of the closure report by the Magistrate in Case Crime No.75 of 2021 has not been filed. Learned A.G.A. has further stated that in addition to exhortation the applicant has been assigned the role of assaulting also, as such, he is not entitled for anticipatory bail.

12. After hearing the arguments tendered at Bar and taking into consideration the injuries sustained by the injured persons and also that applicant had filed a criminal revision before this Court and failed coupled with the fact that the criminal history has not been properly explained, I do not find it a fit case for grant of anticipatory bail to the applicant.

13. The present anticipatory bail application is hereby found devoid of merits and is accordingly ***rejected***.

14. 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 :- 2.11.2023

Vikas

[Krishan Pahal, J.]