

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12574 of 2023**

Applicant :- Raghuni

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Singh, Prabhat Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant - **Raghuni** seeking anticipatory bail in Case Crime No. 529 of 2022, under Sections 147, 148, 149, 307, 354, 323, 504 and 506 IPC, Police Station- Souron, District- Kasganj.
3. The widow informant was assaulted by the named accused persons, co-accused Arendra threatened her with desi pistol and co-accused Chandrakesh opened fire upon the nephew of the informant with intention to kill but any how he rescued. FIR was lodged on 12.12.2022 and investigation started, which is going on.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Investigation is going on in the matter. It is further submitted that it is a no injury case, albeit in the FIR it is alleged that fire was made by co-accused Chandrakesh with intention to kill at the time of incident but as a matter of fact no fire arm injury has been caused to the informant. It is further submitted that no specific role of assault has been assigned to the present applicant and as per statement of the victim herself under Section 161 Cr.P.C. only the presence of the present applicant has been shown at the time of the incident without any active role in the commission of the crime. It is further submitted that the applicant has been cooperative during course of investigation. The applicant has no criminal history to his credit and he is entitled for anticipatory bail. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently argued that the present applicant was also participating in the commission of the crime along with the other co-accused persons and ample evidence to this effect has been collected by the I.O. during investigation. It is further submitted that the present applicant is a proclaimed offender and process under Section 82 Cr.P.C. has already been issued against him and as such, he is not entitled for anticipatory bail.

6. To meet out this argument, learned counsel for the applicant has submitted that the anticipatory bail application of the present applicant was rejected by the Sessions Court on 9.10.2023 and on account of Dushehra vacation, the High Court was closed and the application for anticipatory bail before this Court could be filed only on 30.10.2023 that too within one month from rejection order passed by the Sessions Court. In the meanwhile on 18.10.2023 process under Section 82 Cr.P.C. was issued against the applicant when he was trying to take legal recourse in this matter, therefore, he cannot be termed as a proclaimed offender.

7. In the facts and circumstances of the case, it is observed that process under Section 82 Cr.P.C. was issued after the rejection of anticipatory bail by the Sessions Court, which means that when the first bail application was heard and disposed of by the Sessions Court the applicant was not a proclaimed offender and during interregnum period when he approached the High Court the said process was issued. In this way, in my view, the present anticipatory bail application is maintainable and exceptional case is made out in favour of the present applicant. So far the facts of the case is concerned, it is a no injury case and investigation is going on.

8. 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.

9. 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.

10. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant 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 applicant till filing of police report under Section 173(2) Cr.P.C. before the competent Court.

11. The application is **allowed** accordingly.

12. In the event of arrest of the applicant, he shall be released on anticipatory bail on his 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 applicant shall make himself available for interrogation by a police officer as and when required.

(ii) The applicant 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 him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

13. 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 applicant.

Order Date :- 24.11.2023

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