

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12266 of 2023

Applicant :- Arendra Urf Arendra Kumar And Another

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 applicants, learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicants- **1. Arendra @ Arendra Kumar, 2. Chandrakesh** 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, applicant no.1 Arendra threatened her with desi pistol and applicant no.2 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 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. It is further submitted that it is a no injury case, albeit in the FIR it is alleged that fire was made by applicant no.2 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 applicants. It is further submitted that the applicants have been cooperative during course of investigation. Criminal history of the applicants have been explained in the affidavit. It is further submitted that co-accused Raghuni has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 12574 of 2023 by order dated 24.11.2023. In case applicants are granted anticipatory bail, they shall 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 applicants 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 applicants are proclaimed offender and process under Section 82 Cr.P.C. has already been issued against them and as such, they are not entitled for anticipatory bail.

6. To meet out this argument, learned counsel for the applicants has submitted that the anticipatory bail application of the present applicants 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 applicants when they were trying to take legal recourse in this matter, therefore, they 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 applicants were not the proclaimed offender and during interregnum period when they 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 applicants. 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 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.

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 applicants.

Order Date :- 1.12.2023

Fhd