

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12428 of 2023

Applicant :- Rinku Patel @ Arvind And 2 Others

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

Counsel for Applicant :- Shiv Veer Singh, Rajiv Kumar Singh, Satya Veer Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Sri Rajiv Kumar Singh, learned counsel for the applicants and Sri Takur Azad Singh, learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.293 of 2023, under Sections 364, 307, 323, 427, 452, 147 I.P.C., P.S.- Saini, District- Kaushambi.

3. As per prosecution story, the complainant Prateek Maurya has stated that his younger brother Praveen Maurya is the director of the Prabha Hospital situated at Chak Saini, on 11.07.2023, the brother of the complainant went to meet the Medical Officer of the Community Health Centre Kada (Esmilepur) and when he was returning a women and two other persons stooped the vehicle of his brother and told that my patient is serious and referred we are not getting convenience so please help us, due to humanity Praveen has permitted the patient and her family members to sit in his vehicle and as per his saying the patient has been given treatment in Prabha Hospital where doctors advised to went in a big hospital then went to the Vandana Hospital in Sirathu were the patient has been died, and thereafter, some villagers namely Kamal Patel, Mohan, Dinesh and others forcefully kidnap by taking custody in Bolero to the Praveen which was owned by the Praveen and the role of Kamal Patel has been attributed for driving the vehicle with the dead body of the Pooja and went to Kamangalpur and beaten to the Praveen by trying to kill him by throttling with the help of chain of the cycle and looted Rs.8,000/- and a golden chain of 25 gram and also broken badly to the

vehicle Bolero and the local police reached there to give him free where they also committed maar peet with the police and supporters reached in Prabha Hospital and damaged the precious machine of the Prabha Hospital and committed loot.

4. Learned counsel for the applicants submitted that it is a counterblast case. Earlier, the applicants have filed an FIR against the Prabha Hospital, Kaushambi. The applicant no.1 is nephew, applicant no.2 and 3 are cousins of the deceased Pooja Devi, who died during the course of treatment by the doctor of the hospital of the first informant, namely, Prabha Hospital. He submitted that after lodging the FIR against the Director of Prabha Hospital, brother of the Director of Prabha Hospital became annoyed to the applicants and lodged a false FIR against the applicants. He submitted that during investigation, two persons were exonerated and charge sheet has been submitted against only one accused person. He submitted that the applicants are not named in the FIR and during investigation name of the applicants came into light. He submitted that investigation is going on and till date no charge sheet has been submitted against the applicants. Learned counsel for the applicants has drawn attention of this Court towards the notice of the Nodal Officer (Jholachaap) to the Prabha Hospital and after inspection, Chief Medical Officer, Kaushambi found that the alleged hospital is not registered and the doctors were not present while patient is admitted in the hospital. Learned counsel for the applicants further submitted that the alleged incident took place on 11.7.2023 and FIR was lodged on 13.7.2023 where the injured were examined on 13.7.2023. The applicants are having no previous criminal history as has been mentioned in paragraph 33 of the affidavit. Learned counsel for the applicants further submits that applicants have apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicants. He has submitted that in view of the seriousness of the allegations made against the applicants, they are not entitled to grant of anticipatory bail. The apprehension of the applicants are not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants, they are directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98**. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants- **Rinku Patel @ Arvind, Ravendra Patel** and **Sonelal**, involved in the aforesaid case crime be released on anticipatory bail on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) The applicants shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(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 him from disclosing such facts to the Court or to any police officer.

(iii) The applicants shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iv) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(v) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.

(vi) In case, the applicants misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of **Sushila**

Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.

(vii) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against them in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

9. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 9.11.2023

Krishna*