

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12490 of 2023

Applicant :- Dhiraj Kumar @ Dhiraj Marka

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

Counsel for Applicant :- Chandrabhan, Ajai Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicant **Dhiraj Kumar @ Dhiraj Marka** seeking anticipatory bail in Case Crime No.155 of 2023, (SST No.780 of 2023) under Sections 34, 147, 148, 307, 504, 506 IPC and 7 Criminal Law Amendment Act, P.S. Obra, District Sonbhadra.
3. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
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. It is further submitted that the applicant is not named in the F.I.R. and on the basis of confessional statement of co-accused Vinay Kumar Singh made in the custody of the police his name has come into light. It is also submitted that the confessional statement of the said Vinay Kumar Singh is a bogus statement as in the said statement it is stated that 35 persons were involved in the present occurrence and he has named the all, which is not a natural situation. No injury was caused by the present applicant to the injured of this case and he has not been identified by anyone on the spot and even in the statement of the injured name of the present applicant does not find place. Criminal history of the applicant has been explained sufficiently. The investigation of the case is going-on in respect of the applicant and applicant is cooperating with the same. It has been submitted that in case applicant is granted anticipatory bail, he 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 Prince Goud has been granted

anticipatory bail by this Court on 9.11.2023 vide Criminal Misc. Anticipatory Bail Application No. 12037 of 2023.

5. Learned A.G.A. has opposed the prayer for anticipatory bail and submitted that the injured has sustained grievous injuries which are stabbed wound on his chest and the assault was made with intention to kill him. It is also submitted that the eye witness of the case has also named the present applicant as involved in the present occurrence, but however, he could not explain at this stage that though the assault was made by more than 30 persons but the injuries sustained by the injured are not in consonance with the number of the assailants.

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

7. From the perusal of the record it reveals that some unknown persons made assault upon the son of the informant while he was walking near Gandhi Maidan. The assault was made with sharp edged weapon and he sustained injuries. F.I.R. was lodged and charge sheet has been submitted against some of the accused persons but investigation is still pending in respect of the present applicant. It also reveals that the applicant is not named in the F.I.R. and his name came into light during investigation in the confessional statement of co-accused. It further reveals that though the assault is said to be made by more than 30 persons but the injuries sustained by the injured are not in consonance with the number of the accused persons, at all.

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, nature of accusation, role of applicant 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 applicant till filing of police report under Section 173(2) CrPC 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 protection granted to the applicant.

Order Date :- 30.11.2023

safi