

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12541 of 2023

Applicant :- Ashok Kumar @ Munna Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant and 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.67 of 1995, under sections 328, 304 I.P.C. Police Station- Karchana, District- Prayagraj during the pendency of investigation.

3. Initially, an FIR was lodged by the informant on 17.5.1995 against the applicant alleging therein that on 5.5.1995 at 7 O' Clock the applicant and Manik Chandra (brother of the informant) were sitting in a room back side of the shop where they were consuming liquor and subsequently, at about 8:15 p.m. brother of the informant became serious and started omitting and at about 02:00 a.m. in the night of 06.05.1995 he died.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. The incident took place on 5.5.1995 and FIR was lodged on 17.5.1995 after 12 days without any explanation. The applicant has no concern with the alleged incident. There is no independent witness of the alleged incident. He submitted that as per medical report, aluminum and Anthel alcohol was found. He submitted that there is major contradiction in the FIR as well as in the statements of the witnesses recorded under Section 161 Cr.P.C.. Learned counsel for the applicant further submitted that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. opposed the prayer for anticipatory bail of the applicant and has points out that F.I.R. was lodged in the year 1995

and charge sheet has already been submitted against the applicant and the court below has also taken cognizance. He further submitted that the applicant administered some poison or sedative or medicine to the brother of the informant due to which his health deteriorated and during treatment he died, therefore, keeping in view the seriousness of the allegations made against the applicant, he is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. From the perusal of material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant.

7. After having very carefully examined the submissions made by the learned counsel for the applicant and perused the material brought on record, there is no justification for granting anticipatory bail to the applicant. The prayer for grant of anticipatory bail is hereby **refused**.

8. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**.

Order Date :- 16.11.2023

Imtiyaz