

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12653 of 2023

Applicant :- Sohil And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Arshad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material available on record.
3. This application for anticipatory bail has been filed by applicants - **Sohil and Tauhid** in connection with Case Crime No.28 of 2023, under Sections 147, 452, 323, 504, 506, 325, 34 IPC, Police Station Chandaus, District Aligarh.
4. As per allegations contained in the F.I.R., present applicants along with co-accused persons came to the house of the informant and made an assault upon him with intention to kill and he sustained grievous injuries. F.I.R. was lodged under Sections 147, 452, 323, 325, 307, 506 IPC and investigation started and now charge-sheet has been submitted against the applicants under sections 147, 452, 323, 506, 325, 34 IPC.
5. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicants are false. They have been falsely implicated in this matter due to political rivalry. It is further submitted that initially F.I.R. was lodged under section 307 IPC, but during course of investigation, no offence under section 307 IPC was made out against the applicants. It is further submitted that specific role of grievous assault has not been assigned to any of the present applicants. It is further submitted that only simple injuries have been found on the body of the injured. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that the applicants have no criminal antecedents. They have been

cooperative during investigation. It is further submitted that the anticipatory bail was granted to the co-accused applicants, namely, Badalu Khan, Brakat Ali & Fahimuddin @ Fahim by this Court vide order dated 17.08.2023 till end of trial in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.7796 of 2023 and the same has not been misused by him so far, therefore, the accused applicants are also entitled for anticipatory bail as the case of the accused applicants is similar to that of co-accused persons. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail.

7. Charge-sheet has been submitted in the matter. The alleged offences are punishable with the imprisonment for a maximum period of seven years. No custodial interrogation appears to be required in this matter. No criminal history has been brought to the notice of the Court.

8. Although the charge sheet has been submitted in this matter but in ***Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1***, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till end of the trial in the matter.

10. The anticipatory bail application is **allowed**.

11. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicants shall make themselves available before the court concerned on the date fixed in the matter;

(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 / her from disclosing such facts to the Court or to any police officer;

(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.

12. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 11.12.2023

Shivangi