

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12643 of 2023

Applicant :- Mahendra Nishad And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashwani Kumar Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for applicants as well as Sri Anit Kumar Shukla, learned A.G.A. for State and also perused the material available on record. Learned counsel for the informant is not present.
3. The present application for anticipatory bail has been filed for protection in regard to FIR/Case Crime No. 797 of 2022 under Sections 323, 504, 506, 308 I.P.C., P.S.- Gulriha, District-Gorakhpur.
4. As per prosecution story, the applicants are stated to have assaulted the son and the wife of the informant on 22.12.2022 on their way to market.
5. Learned counsel for the applicants has stated that the applicants have been falsely implicated in the present case. Learned counsel has further stated that the FIR is delayed and there is no explanation of the said delay caused. It is stated that the injuries sustained by the injured persons are simple in nature and that only one injury sustained by Devendra Kumar is stated to be grievous in nature, whereby it was found later on in the supplementary report that an undisplaced fracture of right zygomatic crust bone is seen. It is stated that there are general allegations and no role has been assigned to any particular person of causing the said injury to the injured persons. The injuries sustained by the other injured persons are simple in nature. Learned counsel has also stated that the injuries sustained by Vijay Laxmi are simple in nature. In case, the anticipatory bail application of the applicants is allowed, he will not misuse the liberty and shall cooperate with trial.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for anticipatory bail on the ground that there is hair loss from right parietal top of head and occipital region of the injured person Vijay Laxmi and the fracture has been observed on the cranium of the injured Devendra Kumar Ojha.

7. Considering the rival submissions advanced by the learned counsel for the parties and also the fact that there are two injured persons and they have sustained injuries on their vital organs, I do not find it a fit case for grant of anticipatory bail to the applicants as the arguments advanced by learned counsel for the applicants pertain to regular bail application and cannot be agitated at this stage u/s 438 Cr.P.C.

8. In view of the above, the present anticipatory bail application of the applicants ***Mahendra Nishad and Jhinak @ Suraj*** is found devoid of merits and is, accordingly, **rejected**.

9. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case.

(Justice Krishan Pahal)

Order Date :- 20.11.2023

Shalini