

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12870 of 2023

Applicant :- Shabbir

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Shukla, Ramesh Kumar
Ojha, Vishnu Kant Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Shabbir** seeking anticipatory bail in Case No. 368 of 2020, arising out of Case Crime No. 77 of 2020, under Sections 147, 323, 324, 325, 308, 504, 506 IPC, Police Station Saiyan, District Agra.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false and as a matter of fact prior to the alleged occurrence, Sonu, a family member of the informant of this case, had tried to outrage the modesty of the minor daughter of the present applicant and F.I.R. in this regard was lodged on 5.5.2023 for the offence under Sections 323, 504, 506, 452, 354 IPC and 7/8 POCSO Act and after the said occurrence again an assault was made upon the present applicant and other accused persons by the informant side and again another F.I.R. was lodged in this regard by the accused side. It is also submitted that the applicant and other accused persons have been falsely implicated in this case due to the animosity of the previous criminal cases lodged against the informant side. All the seven injured persons, except one injury sustained by injured Raju Khan, have sustained only simple injuries. The investigation of the case has been completed and charge sheet has been filed. The applicant had been cooperative during investigation. Applicant has no criminal history to his credit. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that there is no any possibility of false implication of the applicant at this stage, as seven persons including the informant have sustained a number of injuries in the occurrence. It is also submitted that ample and sufficient evidence has been collected regarding the active role and participation of the present applicant in the alleged occurrence during investigation. The injured Raju Khan has also sustained fracture in his injuries and the doctor has opined the said injury as grievous and serious in nature. The number of the injuries sustained by the injured persons and the seriousness of the said injuries clearly show that it is not a case of false implication.

5. In this matter, from the perusal of the record it reveals that the named accused persons after entering into the house of the informant made an assault upon the informant and his family members with the aid of lathi, danda, iron pipe, hockey etc. and they sustained grievous injuries. F.I.R. was lodged on 23.5.2020 and investigation started, which culminated into charge sheet. It also reveals that the informant / injured Raju Khan has sustained fracture in his injuries and the doctor has opined the said injury as grievous and serious in nature. Ample and sufficient evidence has been collected during investigation regarding the active role and participation of the present applicant in the alleged occurrence.

6. 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.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

9. In the last, learned counsel has urged that direction for expeditious disposal of bail application of the applicant be given.

10. Hence, it is observed that in case applicant surrenders before the court below and applies for bail, the same shall be considered and decided in terms of the law laid down by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another**, 2022 SCC OnLine SC 825.

Order Date :- 23.11.2023

safi