

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12983 of 2023**

Applicant :- Muhammad Arfi

Opposite Party :- State Of U.P. .And Another

Counsel for Applicant :- Zia Uddin Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Muhammad Arfi** seeking anticipatory bail in Case Crime No.366 of 2018, under Section 307 IPC, Police Station Kydganj, District Prayagraj.

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

3. On the exhortation of co-accused Maqsood and Mahboob, the present applicant opened fire upon the informant. One fire was also made by co-accused Mabood Alam which missed. F.I.R. was lodged on 25.9.2018 and after investigation, final report was submitted, but a protest petition was filed by the informant and the and the court while rejecting the final report straightway summoned the accused persons including the present applicant to face trial under section 307 IPC.

4. It has been argued 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. He has been falsely implicated in this matter. It is further submitted that the injury report of the injured is a concocted piece of evidence. Blackening has been found in the firearm injury whereas injured has stated that the fire was made from a distance of 30 - 32 feet. It is further submitted that the applicant was not present on spot. The I.O. did not find any evidence against the applicant and that is why final report was submitted in the matter. It is also submitted that due to previous enmity, the applicant has been falsely implicated in this case. It is further submitted that the medical evidence does not corroborate the prosecution version. The injury caused to the injured is simple in nature. It is also

submitted that the applicant has been cooperative during investigation and as such he is entitled for anticipatory bail. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently argued that the injured in his statement has assigned specific role of firing to the present applicant. It is also submitted that the medical report reveals that the firearm injury has been inflicted in the lower abdomen of the informant. Fire was made with intention to kill. The other points raised by the learned counsel for the applicant relate to the merit of the case, which cannot be ascertained at this stage. It is also submitted that the co-accused Maqsood Alam and Mahboob Alam were sent to jail in this matter. The main assailant in this case is the present applicant who made fire upon the injured with intention to kill.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. 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.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the

parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant till the end of trial. The prayer made in the application is refused.

9. The anticipatory bail application is **rejected**.

10. In the last, learned counsel for the applicant has urged that direction for expeditious disposal of the bail application of the applicant be given in the light of the decision of the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825**.

11. However, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in Satender Kumar Antil case (supra).

It is further directed that the learned court concerned, while considering the bail application of the applicant in the light of Satender Kumar Antil case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgment by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 24.11.2023

SS