

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13395 of 2023

Applicant :- Ashok Kumar Gupta

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

Counsel for Applicant :- Rajkumar Verma, Rajesh Kumar Rakesh

Counsel for Opposite Party :- G.A., Narendra Deo Upadhyay, Vinay
Bhushan Upadhyay

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Rajkumar Verma, learned counsel for the applicant and Sri Vinay Bhushan Upadhyay, learned counsel for the informant as well as Sri R.P. Patel, learned A.G.A. for the State and also perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 0419 of 2023, under Sections 354(kha), 323, 504, 506, 452 & 427 of IPC, Police Station Robertsganj, District Sonbhadra, with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant along with other named co-accused persons is stated to have barged into the house of the informant on 12.07.2023 at about 09:30 AM and are stated to have caused injuries to three persons including the informant.
5. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has apprehension of his arrest. He has nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the case of the applicant is at par with the co-accused person Deepak Kumar, who has already been enlarged on anticipatory bail by Sessions Judge, Sonbhadra vide order dated 10.10.2023 passed in Anticipatory Bail Application No.2158 of 2023. The matter was regarding the dispute of conducting last rites of the second wife of injured Raj Nath Gupta. Learned counsel has further stated that the allegation of outraging the modesty of Lalti Devi has been inflated just to add color to the prosecution story. The anticipatory bail application of the applicant was rejected by the court concerned only on the ground of outraging the modesty of Lalti Devi. The allegation is *per se* false.
6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant has criminal history of one case i.e. Case Crime No.521 of 2023, u/s 323, 504, 506 IPC which is bailable. He has no other criminal history. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for grant of anticipatory bail on the ground that the applicant has snatched the mobile phone from the informant and torn her clothes, as such, outraged her modesty. The applicant has also a criminal history and, as such, he is not entitled for anticipatory bail.

8. Considering the arguments advanced by the learned counsel for the parties, the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**" and also the fact that criminal history of one case assigned to the applicant stands explained as the said offence is bailable coupled with the fact that the co-accused person has been enlarged on anticipatory bail by the court concerned, I find it a fit case to enlarge the applicant on anticipatory bail.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Ashok Kumar Gupta** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicant shall make himself available for interrogation by a police officer as and when required;
- ii. that the applicant 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- iii. that the applicant shall not leave India without previous permission of the court;
- iv. that the applicant shall not tamper with the evidence during the trial;
- v. that the applicant shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 12.12.2023
Siddhant