

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13121 of 2023

Applicant :- Kayam Singh And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Singh Yadav, Sanjay Yadav

Counsel for Opposite Party :- G.A., Indra Raj

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicants - **Kayam Singh** and **Netrapal Singh** seeking anticipatory bail in Case Crime No.379 of 2023, under Sections 308, 323, 325, 504, 506 IPC, Police Station Kurawali, District Mainpuri.
3. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for informant and perused the record.
4. Both the accused applicants along with other co-accused persons, with intention to kill, made an assault upon the father of the informant with the aid of lathi, danda, saria and country made pistol and when the informant intervened, she was also bitterly assaulted by them. F.I.R. was lodged on 14.5.2023 and after investigation now charge-sheet has been submitted in the matter.
5. It has been argued 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 them. They have been falsely implicated in this matter. They were not present on spot at the time of alleged incident. Allegations levelled against the applicants are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. It is also submitted that actually it is a cross case and an assault was made by the informant side upon the applicants side and an F.I.R. as case crime no.382 of 2023 was lodged on 15.5.2023 against the informant side and injuries were sustained by the persons from the applicants side. It is also submitted that earlier an F.I.R. of this matter was lodged under sections 323, 504, 506 IPC,

but subsequently sections 308 and 325 IPC were added in the matter. It is also submitted that only due to the village animosity, the applicants have been falsely roped in this matter. In fact, no serious or grievous injury has been caused to any of the injured person from the informant side. It is also submitted that during investigation, the applicants have been fully cooperative and now after submission of charge-sheet, they are entitled for anticipatory bail. It is further submitted that the criminal history of one solitary case in respect of applicant no.2 has been explained through supplementary affidavit.

6. Per contra, learned A.G.A. as well as learned counsel for informant opposed the prayer for anticipatory bail and it has been brought to the notice of this Court that serious and grievous injuries have been found upon injured Angrej Singh, the father of the informant and fracture of acromion process of left scapula and fracture in rib have been found and the doctor has opined that the condition of patient was grievous and serious. The informant has also sustained three injuries.

It is also submitted that keeping in view the factual aspect of the matter and the injuries sustained by the injured Angrej Singh, the present applicants, who have actively participated in the commission of crime, are not entitled for anticipatory bail. It is also submitted that since the injured Angrej Singh, the father of the informant was very seriously injured, it was not possible for him that he might cause injuries to the applicants' side, as narrated in the F.I.R. of case crime no.382 of 2023 just one hour after the incident after sustaining injuries by him.

7. In this matter, specific role of assault has been assigned to the applicants who have also actively participated in the commission of the crime and ample evidence has been collected by the I.O. during investigation. The injured of the case has received serious and grievous injuries in the incident and as per opinion of the doctor, the injuries sustained by the injured are dangerous to life. As is evident from the record after completion of investigation, charge sheet has been submitted in the matter.

8. 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 not a fit case for anticipatory bail to the applicants. The prayer made in the application is refused.

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

10. In the last, learned counsel for the applicants has urged that direction for expeditious disposal of the bail application of the applicants 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 applicants, 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 applicants 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 :- 5.12.2023

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