

Court No. - 72

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13176 of 2023**

Applicant :- Shiv Kumar @ Kallu And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sandeep Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Sandeep Tripathi, learned counsel for the applicants and Sri S.P. Pandey, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicants in Case Crime No.130 of 2022, registered under Section 307 I.P.C. at Police Station- Chhapar, District- Muzaffarnagar with a prayer to enlarge them on anticipatory bail.
4. As per prosecution story, the applicant and other co-accused person are stated to have assaulted the brother of the informant Devendra in the mid night on 17.6.2022.
5. Learned counsel for the applicant has stated that he has been falsely implicated in this case. The FIR is delayed by about four hours and there is no proper explanation of the said delay caused. Learned counsel has stated that earlier on the FIR was instituted under Sections 323, 324, 325, 504, 506 I.P.C. and the applicant was granted bail by the A.C.J.M., Court No.1, Muzaffarnagar vide order dated 8.2.2023. Learned counsel has stated that during trial statement of PW-1 was recorded, and subsequent to it, an application under Section 216 Cr.P.C. was moved by the informant and the concerned Magistrate has added Section 307 I.P.C. to it and has fixed the date 9.11.2023 to be committed to the court of sessions by invoking power under Section 323 Cr.P.C.
6. Learned counsel for the applicant has further stated that there is no criminal antecedent of the applicant. The applicant has not misused the said liberty granted to him earlier on. Learned counsel has placed much reliance on the judgments of the Apex Court passed in case of **Bhadresh Bipinbhai Sheth vs. State of**

Gujarat & Another reported in **2016 (1) SCC (Cri) 240** and **Manoj Suresh Jadhav & Ors. vs. The State of Maharashtra**, reported in **2018 SCC OnLine SC 3428**, wherein the applicant therein was enlarged on anticipatory bail in the added sections U/S 438 Cr.P.C. after being enlarged on regular bail U/S 439 Cr.P.C.

7. 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. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicants.

9. On due consideration to the arguments advanced by learned counsel for the applicants as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicants, the applicants are liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)**, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicants shall also be taken care of as per the aforesaid judgment of the Apex Court.

10. In view of the above, the anticipatory bail application of the applicants is allowed. Let the accused-applicants- **Shiv Kumar @ Kallu** and **Mahak Pal @ Kallu** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicants shall make themselves available for interrogation by a police officer as and when required;
- (ii). that the applicants 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 them from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicants shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicants shall not tamper with the evidence during the trial;
- (v). that the applicants shall not pressurize/ intimidate the prosecution witness;

(vi). that the applicants shall appear before the trial court on each date fixed unless personal presence is exempted;
(vii). that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail.

11. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 30.11.2023
Vikas

[Krishan Pahal, J.]