

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13459 of 2023

Applicant :- Nannu Alias Ratibhan And Another

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

Counsel for Applicant :- Arjun Singh Solanki

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant no. 2-Sheevam seeking anticipatory bail in Case Crime No. 133 of 2023, under Sections 147, 148, 149, 323, 506, 307 IPC, P.S. Amaupur, District Kasganj.

2. Heard Shri Arjun Singh Solanki, learned counsel for the applicants as well as the learned A.G.A. for the State and perused the record.

3. At the very outset, it has been submitted that applicant no. 1 Nannu @ Ratibhan has been arrested by the police and the present anticipatory bail is being prayed only for applicant no. 2-Sheevam.

4. The named accused persons are six in numbers made an assault upon the sons of the informant namely Dharmendra and Satyendra @ Sintoo, who sustained grievous injuries and fire was also made by the accused persons, however no fire arm injury was inflicted to any person. F.I.R. was lodged on 29.05.2023 and investigation started, which is going on.

5. It is submitted by learned counsel for the applicants that it is no injury case and in the F.I.R. itself it has been mentioned that when fire was opened, no person sustained fire arm injury. It is further submitted that although in the F.I.R. it has been mentioned that Dharmendra and Satyendra @ Sintoo were assaulted with lathi and danda but as a matter of fact there is no medical report of any of injured person on record and they also sustained no injury in this case. It is further submitted that applicant no. 2 has been cooperative during course of investigation. It is further submitted that co-accused-Raghuni has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. - 12574 of 2023 by order dated 24.11.2023. In case applicant no. 2 is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

6. Per contra, learned A.G.A. vehemently opposed the anticipatory bail application. It has been submitted that video footage of alleged incident has been collected by the Investigating Officer of this case, which corroborates the prosecution version. It is further submitted that present accused/applicant no. 2 has played role in commission of the crime and as such he is not entitled for anticipatory bail.

7. I have considered the rival submissions made by the learned counsel for the parties.

8. In the present case, no person has sustained any injury in the alleged incident. The video footage relied upon by the learned A.G.A. also does not clearly show any role of the present applicant and investigation of this case is going on.

9. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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.

10. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

11. Considering the settled principles of law regarding anticipatory

bail, nature of accusation, role of applicant no. 2-Sheevam and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant no. 2 till filing of police report under Section 173(2) Cr.P.C. before the Competent Court.

12. The application is allowed accordingly.

13. In the event of arrest of the applicant no. 2-Sheevam, he shall be released on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant no. 2-Sheevam shall make himself available for interrogation by a police officer as and when required.

(ii) The applicant no. 2-Sheevam 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant no. 2-Sheevam shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

14. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant no. 2-Sheevam.

Order Date :- 6.12.2023

Vibha