

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13390 of 2023**

Applicant :- Mohit Kumar

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

Counsel for Applicant :- Upendra Kumar Pushkar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail by the applicant **Mohit Kumar** in Case Crime No. 63 of 2023, under sections 147, 323, 326 IPC, P.S.Gandhi Park, District Aligarh during the pendency of application.
3. The informant, who is student was bitterly beaten by 8 named and 10-15 unknown persons in the college with kicking, fisting and bat and he sustained grievous injuries and subsequently he was pressurized to sign a compromise in the matter. FIR was lodged on 4.2.2023 and investigation started, which is still going on.
4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. Learned counsel for the applicant submits that F.I.R. has been lodged against 8 named persons and 10-15 unknown persons. In the FIR, false allegation has been levelled against the applicant. He further submits that allegations made against the aforesaid applicant are fake and general in nature. No specific role of assault has been assigned to the present applicant in this matter in the FIR and even in the statement and additional statement of the informant/ injured of this case. It is further submitted that the co-accused namely, Rohit Rana and Saimi Pradhan @ Pushpendra have already been granted bail by the courts below. It is further submitted that co-accused Raman @ Charchit Pratap Singh has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 6530 of 2023 by order dated 4.7.2023. In case applicant is granted anticipatory bail, he shall not

misuse the liberty of bail and would obey all conditions of bail.

5. Learned AGA has opposed the prayer for bail, but could not dispute the said facts.

6. 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.

7. 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.

8. 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 a fit case for anticipatory bail to the applicant till filing of police report under Section 173(2) Cr.P.C. before the competent Court.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, 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 shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant 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.

11. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 12.12.2023

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