

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13828 of 2023

Applicant :- Mohd. Ateek @ Ateek

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

Counsel for Applicant :- Vinay Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, Shri Naseem Ahmad Siddiui, learned counsel for the informant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant Mohd. Ateek @ Ateek seeking anticipatory bail in Case Crime No. 360 of 1995 under Sections 307 IPC, Police Station Colonelganj, District- Prayagraj.
3. On the exhortation of present accused applicant to kill the informant co-accused Hasnain Ahmad opened fire upon him but it missed and the fire arm injury inflicted upon one Ramnath S/o Sukru, who was there for the pairvi of his case. The injured was admitted in the hospital and FIR was lodged on 16.5.1995. Investigation started and charge sheet and supplementary charge sheet were submitted in the year 1998 before the Court.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant 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 further submitted that no role of firing has been assigned to the present applicant in the FIR itself. The informant in his statement given to the I.O. has also narrated the same story and the role of firing has been given to the co-accused Hasnain Ahmad and only a role of exhortation has been assigned to the present applicant. It is further submitted that admittedly the informant Shakil Ahmad did not receive fire arm injury. It is also submitted that the factum of injuries caused to the informant are also suspicious as he has given contradictory statements in this regard

to the I.O. of the case. It is further submitted that after submission of the charge sheet an Application U/S 482 Cr.P.C. No. 37221 of 1999 was moved by the accused persons including the present applicant wherein the proceedings of the case were stayed for three months by this Court vide order dated 2.9.1999, which was further extended for one month on 17.12.1999. It is further submitted that thereafter no date was fixed for hearing in the application U/S 482 Cr.P.C. but the proceedings remained stayed before the Court concerned. It is also submitted that the matter was reopened by the Court on 23.5.2023 and an order was passed to issue non-bailable warrant against the applicant. It is further submitted that the applicant is not a proclaimed offender and no process under Section 82/83 Cr.P.C. has been issued against him. It is also submitted that as a matter of fact the injured of this case has given an affidavit before the trial court in favour of the present applicant which is part of the record. It is also submitted that no vital part of the body of the injured was affected by the gun shot injury. The applicant is an old aged person and suffering from several old age diseases. The criminal history of one solitary case has been explained. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail. It is vehemently argued that it is correct to say that the present applicant did not open fire to the the injured or the informant but it is an established fact that on his exhortation only the fire was opened by the co-accused. It is further submitted that in the present matter charge sheet was submitted in the year 1998 and there was no protection order in favour of the applicant since 1999. It is further submitted that the applicant has failed to explain as to why he did not appear before the trial Court when the record of application U/s 482 Cr.P.C. was not traced and further dates were fixed in the matter. It is further submitted that the applicant was very well known to the fact that no protection order is running in his favour despite that he did not appear before the trial Court and knowingly let the proceedings of this case go waste. It is also submitted that the applicant never cooperated with the trial Court and kept absconding and subsequently suddenly after a gap of almost 24 years he appeared and prayed for anticipatory bail. It is further submitted that anticipatory bail of co-accused Mohd. Laik has been rejected by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 11569 of 2023 by order dated 29.11.2023. It is lastly submitted that the applicant is not entitled for anticipatory bail.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. 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.

7. 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.

8. 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. In view of the law laid down by the Hon'ble Apex Court and also reminding that it is a daring case of firing in the Court room itself, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

10. The anticipatory bail application is rejected.

Order Date :- 14.12.2023

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