

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 764 of 2022

Applicant :- Neeraj Alias Chwani

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy.(Home)
Lko. And Another

Counsel for Applicant :- Kunwar Ravi Prakash

Counsel for Opposite Party :- G.A.,Devendra Pratap
Azad,Onkar Nath Pandey

Hon'ble Subhash Vidyarthi,J.

1. Case called out. Nobody is present to press the application.
Sri Virendra Kumar, the learned AGA is present.

2. The aforesaid case has been registered on the basis of an FIR
lodged on 07.01.2022 stating that some unknown person had
beaten up the informant's brother and he had to be admitted in
Trauma Centre, Lucknow in a serious condition.

3. The applicant was granted interim anticipatory bail by means
of the following order passed on 24.05.2022:-

*"Heard Sri Kunwar Ravi Prakash, learned counsel for the applicant,
learned AGA for the State and perused the material available on record.*

*The present anticipatory bail application has been filed on behalf of the
applicant in Case Crime No.12 of 2022, under Sections 324, 325 and 308
IPC, Police Station Kakori, District Lucknow, with a prayer to enlarge
him on anticipatory bail.*

*Learned counsel for the applicant has submitted that co-accused person,
Deepanshu Gautam, has already been granted anticipatory bail by Co-
ordinate Bench of this Court vide order dated 07.03.2022 passed in
Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.356 of
2022. Therefore, the present applicant is also entitled for anticipatory bail
on the ground of parity. Learned counsel for the applicant undertakes that
he will cooperate in the investigation failing which the State can move
appropriate application for cancellation of anticipatory bail.*

*The prayer for anticipatory bail has been vehemently opposed by the
learned A.G.A. However, the aforesaid factual aspect of the parity to the
co-accused has not been disputed by him.*

Matter requires consideration.

*Learned AGA is granted three weeks' time to file counter affidavit.
Rejoinder affidavit, if any, may be filed within a week thereafter.*

List this case on 21.07.2022 in the additional cause list.

On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant, as an interim measure, is liable to be enlarged on anticipatory bail on the ground of parity and in view of the Constitution Bench judgment of Supreme Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

In the event of arrest, the accused-applicant- Neeraj Alias Chwani shall be released forthwith in the aforesaid case crime (supra) on interim anticipatory bail on furnishing a personal bond of Rs.50,000/- and two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned on the following conditions:-

(i) the applicant shall make himself available for interrogation 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 from disclosing such facts to the Court or to any police officer; and

(iii) the applicant shall not leave India without the previous permission of the Court.

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

4. After passing of the aforesaid interim order, the State filed a counter affidavit on 07.07.2022 annexing therewith a copy of the statement of the injured person, who categorically stated about the applicant having committed the offence. It has been stated in the counter affidavit that the applicant had given an application to surrender before the trial court but thereafter he did not appear before the Court on the date fixed and he is absconding from the process of law.

5. The involvement of the applicant in commission of the offence is established by the statement of an independent witness also.

6. No rejoinder affidavit has been filed refuting the aforesaid allegations.

7. Keeping in view the fact that the applicant did not appear before the trial court even after filing an application for surrender, he has not cooperated with the investigation and he is

not cooperating even in the present proceedings. As neither any counter affidavit has been filed since 07.07.2022 nor any person is present to press the application, the aforesaid conduct dis-entitles the applicant to be granted anticipatory bail.

8. The application is accordingly ***rejected***.

Order Date :- 21.12.2023

Pradeep/-