

Court No. - 17

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 1012 of 2023

Applicant :- Devanand Alias Devanand Mishra

Opposite Party :- State Of U.P. Thru.Prin.Secy. Home Deptt.Lko.

Counsel for Applicant :- Ankit Srivastava,Rajneesh Maurya,Umaker
Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Sri Ankit Srivastava, learned counsel for the applicant as well as learned A.G.A. for the State.

2.By means of the present application the applicant has prayed that he may be enlarged on anticipatory bail in the event of his arrest in Case Crime No.0133/2021, under Sections 147, 148, 307 and 504 IPC, Police Station- Atariya, District Sitapur.

3. This is second anticipatory bail application preferred by the applicant the first having been rejected on 6.7.2021 on the ground that the applicant has approached this Court directly instead of first approaching the District Court.

4. Learned counsel for the applicant has submitted that according to the first information report the complainant had gone to Sidhauli for purchasing medicines and while returning when he reached near Daulatpur canal he saw in motor cycle's light that three known people namely Vipin Mishra armed with pistol, Nirmal Mishra armed with Lathi and Devanand Mishra armed with pistol and three unknown persons were standing. On seeing them the complainant increased his speed and tried to escape and at the moment he tried to cross the three individuals they opened fire upon him. Though the complainant did not receive any injury but in relation to the said incident a first information report was lodged under Sections-147, 148, 307 and 504 IPC.

5. It has been submitted by learned counsel for the petitioner that other co-accused, namely Vipin Mishra and Nirmal Mishra have already been enlarged on bail by this Court in Bail No.13827 of 2021 and Bail No.14083 of 2021 passed vide orders dated 30.11.2021 and 3.12.2021 respectively. It has been submitted by learned counsel for the petitioner the complainant did not receive any fire arm injury which fact has also been considered by this Court while granting bail to other co-

accused. It has further been submitted that subsequent to rejection of the first anticipatory bail application the petitioner had filed a writ petition under Article 226 of the Constitution bearing No.21396 of 2021 assailing the said first information and this Court by means of order dated 28.9.2021 stayed the arrest of the petitioner. It has been submitted that the investigation has been completed and charge sheet has been filed in the court of competent jurisdiction. It has further been submitted that the applicant had cooperated in the investigation and there are no chances of his either misusing the bail application or fleeing from justice.

6. Considering the aforesaid facts and the fact that no other allegation is found mentioned in the first information report which have been corroborated before the Court and without expressing any opinion on the merits of the case a case for interference under Section 438 Cr.P.C. is made out.

7. Learned A.G.A., on the other hand, opposes the application for anticipatory bail but does not dispute the aforesaid facts.

8. This Court vide its order dated 1.5.2023 has granted interim protection from arrest in favour of the petitioner. In the counter affidavit the facts have not been disputed.

9. The application is accordingly **allowed**. The order dated 1.5.2023 is confirmed. Accused-applicant, namely, Devanand Alias Devanand Mishra in the event of his arrest in connection with aforesaid case crime, shall forthwith be released on bail on furnishing a personal bond and two sureties in the like amount to the satisfaction of the Arresting officer/Investigating Officer/ S.H.O. concerned on the following conditions:-

(i) That the accused-applicant shall make himself available for interrogation by police authorities as and when required and will cooperate with the investigation;

(ii) That the accused-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) That the accused-applicant shall not leave India without the previous permission of the Court.

10. The papers regarding bail submitted to the police officer on behalf of the accused/applicant shall form part of the case diary and would be submitted to the court concerned along with same at the time of submission of report under Section 173(2) Cr.P.C.

11.Under Part-III, Chapter- XVIII, Rule-18[3(a)] of the Allahabad High Court Rules, 1952 (amended), a copy of the bail application along with its enclosures be provided to the learned A.G.A. by learned counsel for applicant, within two days from today, without fail.

(Alok Mathur, J.)

Order Date :- 13.12.2023

RKM.