

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2357 of 2023

Applicant :- Balram Tiwari @ Shiv Kumar Tiwari

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

Counsel for Applicant :- Dharm Raj Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Dharm Raj Mishra, the learned counsel for the applicant as well as Smt Parul Kant, the learned Additional Government Advocate appearing on behalf of the State, Sri Sandeep Kumar Shukla, learned counsel for the informant and Sri Anil K Tripathi, learned counsel on behalf of one Ankit, who is mentioned to be a witness of the present case and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No.233 of 2023, under Sections 147, 149, 323, 504, 506, 304, 427, 120B I.P.C., registered at Police Station Itiyathok, District Gonda.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 13.05.2023 against six persons, not including the applicant, alleging that the accused were plucking a jack-fruit and when the informant's father-in-law opposed, they assaulted him causing his death in the hospital.

4. In the affidavit filed in support of the anticipatory bail-application, it has been contended that the applicant is innocent, he has no criminal history and he has falsely been implicated in the present case. The applicant has been implicated in the present case on the basis of statement of the witnesses.

5. Learned counsel for the applicant has submitted that numerous

family members of the victim have submitted affidavits before the Inspector in-charge wherein they categorically stated that the name of the applicant has wrongly been added by the investigating officer whereas he is innocent.

6. The learned A.G.A. and learned counsel for the complainant have opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

7. Sri Anil K Tripathi, learned counsel for the witness-Ankit has submitted that the applicant has long criminal history, he is not cooperating with the investigation and a non bailable warrant has been issued against him.

8. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant is not named in the FIR and the family members of the deceased have given affidavits stating that the applicant is innocent and he is being falsely implicated by the investigating officer, and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

9. In view of the above, the anticipatory bail application of the applicant is allowed. In the event of arrest/ appearance of **applicant-Balram Tiwari @ Shiv Kumar Tiwari** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i). That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(ii). That 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 or tamper with the evidence;

(iii). That the applicant shall not pressurize/ intimidate the prosecution witness;

(Subhash Vidyarthi, J.)

Order Date :- 19.10.2023
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