

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2684 of 2023

Applicant :- Vipin Kumar @ Vipin Yadav

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

Counsel for Applicant :- Madhulika Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Ms. Madhulika Yadav, the learned counsel for the applicant as well as Sri Anant Pratap Singh, the learned Additional Government Advocate appearing on behalf of the State 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.291 of 2023, under Sections 323, 504, 308 IPC, Police Station Hargaon, District Sitapur.

3. The aforesaid case has been registered on the basis of an FIR lodged on 24.05.2023 against the applicant and one Jaswant, stating that on 01.04.2023, the accused persons had abused and assaulted the informant causing injuries on his head and fingers of right hand.

4. An NCR of the incident was lodged on the day of the occurrence itself. The medico legal examination report of the injured informant mentions several injuries suffered by him, including a linear fracture on head, which is grievous in nature.

5. The injured person and some witnesses have supported the FIR allegations. The injured stated that the co-accused Jaswant had caught hold of the informant and the applicant had hit on the informant's head with the butt of a kudal.

6. The learned counsel for the applicant has submitted that in ***Siddharth v. State of U.P. (2021) 1 SCC 676***, the Hon'ble Supreme Court has directed that where the offence alleged is not heinous in nature, there is no need to take the accused person in custody.

7. In Siddharth's case, the Hon'ble Supreme Court was dealing with an order passed by the trial court by which it had refused to take the charge sheet on record unless the accused person was taken into custody. In this factual backdrop, the Hon'ble Supreme Court had observed that in every non bailable and cognizable offence the police is not required to invariably arrest a person, even if it is not essential for the purpose of investigation. However, the provisions of Section 438 Cr.P.C. were not considered in the judgment of ***Siddharth***

(supra) and no observations were made in this regard.

8. An application for grant of anticipatory bail has to be granted keeping in view the factors mentioned in Section 438 Cr.P.C., which reads as follows:

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this Sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

9. In ***Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1**, the Hon'ble Supreme Court has laid down the following considerations to be kept in mind while deciding the anticipatory bail application.

"92.4. 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; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial."

10. When we consider the applicant's claim for grant of anticipatory bail in light of the provisions contained in Section 438 Cr.P.C., as elaborated in ***Sushila Aggarwal (supra)***, we find that the applicant is charged with commission of offence of attempt to commit culpable homicide. Although a report of the incident was lodged promptly, initially it was registered as a non cognizable report and subsequently it was converted to an FIR. The injured person has suffered several injuries, including a linear fracture on head, which is grievous in nature. The injured person and some independent witnesses have supported the allegations against the applicant. While deciding Criminal Misc. Anticipatory Bail Application No. 2679 of 2023 filed by the co-accused Jaswant, against whom the role of catching hold was assigned while the applicant assaulted him, this Court has held in its order dated 22.11.2023 that the aforesaid facts do not warrant grant of anticipatory bail to the aforesaid co-accused.

11. In **Satender Kumar Antil (2022) 10 SCC 51**, the Hon'ble Court has held as under:-

"98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

12. When the anticipatory bail application of a co-accused person, against whom the role of catching hold has been assigned, has been rejected after taking into consideration the facts and circumstances of the case, the anticipatory bail application of the applicant, against whom the allegation of assault has been levelled, cannot be allowed in view of the law laid down by the Hon'ble Supreme Court in case of Satender Kumar Antil.

13. In view of the aforesaid observations, the anticipatory bail application of the applicant is rejected.

Order Date :- 23.11.2023

Pradeep/-