

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 3000 of 2023

Applicant :- Majid Alias Mohammad Majid Khan

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

Counsel for Applicant :- Faisal Ahmad Khan, Mohd. Qasim Khan

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Sri Faisal Ahmad Khan learned counsel for the applicant and Sri Gyanendra Singh learned A.G.A. for the State.
3. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No.524 of 2023, under Sections 323, 504, 506, 147, 447, 457, 380 and 411 I.P.C., registered at Police Station. Kotwail Nagar, District Gonda.
4. The aforesaid case has been registered on the basis of an F.I.R. lodged on 27.06.2023 against the applicant and his brother Sajid, stating that when the informant had gone to open the lock of the shop at 10.00 a.m on 27.06.2023, he came to know that the accused persons had broken the lock of the informant's shop and had put their lock on it. The accused persons were standing at the shop and they abused and assault the informant and stated that now the shop belongs to the accused persons.
5. In the affidavit filed in support of the anticipatory bail-application, it has been contended that the applicant is innocent and he has been falsely implicated in the present case and he has no criminal history.
6. It has further been stated that the application under Section 21(1) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for eviction of the tenants from the shop owned by the applicant and other persons, had been rejected by means of the order dated 13.04.2017 passed by the prescribed authority. The Appeal no.05 of 2017 was filed against the aforesaid order, which was allowed by means of the order dated 15.09.2022, directing the tenant to vacate the shop in dispute and hand over its vacant possession to the appellant within 30 days. The judgment dated 15.09.2022 was an exparte

judgment and an application for setting aside the exparte order was filed which was allowed by means of the order dated 30.09.2023 and the exparte judgment and order dated 15.09.2022 passed in appeal was set aside.

7. During the pendency of the application for setting aside the order dated 15.09.2022, the informant has been dispossessed from the shop in question.

8. The applicant claims that negotiations were going on between the parties and the informant had himself handed over possession of the shop to the applicant.

9. The aforesaid submission of the learned counsel for the applicant appears to be against the natural course of conduct of litigants as the record reveals that the application under Section 21 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 filed by the applicant had been rejected. The appeal filed against that order had been allowed, but exparte. The informant had filed an application seeking setting aside of the exparte judgment in appeal, which was set aside at the instance of the informant.

10. Had the informant amicably handed over possession of the shop to the applicant; there was no occasion for him to press the application for setting aside the exparte judgment. It is an admitted case of the applicant that no settlement had been arrived at between the parties.

11. Learned counsel for the applicant has submitted that the FIR was lodged only under Section 323, 504, 506, IPC and Sections 147, 447, 457, 380 and 411 IPC have been added subsequently during investigation and he has submitted that Section 457 IPC contains provisions about lurking house-trespass or house-breaking by night whereas FIR indicates time of commission of offence to be about 10.00 a.m and Section 467 has been added maliciously.

12. The FIR merely states that when the informant had gone to the shop at 10.00 a.m, he found that the lock of the shop had been broken up and the accused persons had put their lock in place thereof. It merely reveals that the offence committed earlier, came to the knowledge of the applicant at 10.00 a.m and not that the offence itself was committed at 10.00 a.m. Therefore, the Court is unable to accept the aforesaid submission of the learned counsel for the applicant.

13. Having considered the aforesaid facts and circumstances of the case and keeping in view the conduct of the applicant who

has forcibly dispossessed the informant after having failed to get an eviction order in an application under Section 21 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and thereafter, having obtained an ex parte judgement and order in an appeal, which was ultimately set aside and without even filing an application for execution of the ex parte order passed in an appeal in their favour, I am of the view that this conduct disentitles him to receive discretion of this Court by granting pre-arrest bail to him.

14. Accordingly, the anticipatory bail application is **rejected**.

(Subhash Vidyarthi, J.)

Order Date :- 21.12.2023

Harshita