

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 713 of 2023

Applicant :- Gaurav Mishra @ Prachand

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

Counsel for Applicant :- Hemant Tripathi, Ram Lakhan Yadav, Ravindra
Kumar Singh, Yogendra Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. The applicant has moved the present application under Section 438 of Cr.P.C. praying for grant of anticipatory bail in F.I.R./Case Crime No. 0446 of 2022, under Sections 34, 147, 148, 149, 323, 504, 506, 307 I.P.C. and Section 27/30 Arms Act, Police Station Vibhuti Khand, District Lucknow East (Commissionerate Lucknow)

2. Case called out in revised list, however, none responded on behalf of the applicant. Heard A.G.A. for the State and perused the record.

3. This Court while giving interim protection has passed the following order on 22.3.2023:

"Heard Shri Hemant Tripathi, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

The instant application has been moved by the accused-applicant- Gaurav Mishra @ Prachand, in F.I.R./Case Crime No. 0446 of 2022, under Sections 34, 147, 148, 149, 323, 504, 506, 307 I.P.C. and Section 27/30 Arms Act, Police Station Vibhuti Khand, District Lucknow East (Commissionerate Lucknow) with the prayer to enlarge him on anticipatory bail, as he is apprehending arrest in the above-mentioned case.

Learned counsel for the applicant while pressing the anticipatory bail application submits that the applicant has been falsely implicated in this case and he was not named in the F.I.R. However, during the course of dispute which was going on at the relevant point of time, one of the accused had urged the Manager of the 'Bar' to have telephonic talk with the instant applicant who is a practicing Advocate and it is only on account of this his name has been taken by the Manager of the 'Bar' as well as the other persons who are shown to have been injured in the incident.

Elaborating further, it is vehemently submitted that the name of the applicant has not surfaced in the F.I.R. and the role of assault has been specifically assigned to the three persons namely, Ranveer Singh, Vivek Singh and Sunil Singh and thereafter, according to the F.I.R., when the accused persons and the Manager of the 'Bar' came out of the Bar, the role of taking out pistol from the car has been assigned to the co-accused Ranveer Singh and it is further stated that it was on the instigation/exhortation given by accused Vivek Singh and Sunil Singh, Ranveer Singh had fired gun shots from his pistol. Thus, in the incident which is shown to have occurred outside the Bar, even in that incident no role has been assigned to the instant applicant, which shows that even if the contention of the

prosecution is believed, the applicant may only be termed as a silent spectator and by any stretch of imagination he could not be accused of either having common intention or common object.

It is also submitted that identically placed co-accused person, namely, Vijay Kumar Singh has been granted the facility of interim bail during the course of trial by a co-ordinate Bench of this Court, vide order dated 14.02.2023 passed in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. 280 of 2023. The applicant is not having any criminal antecedents. He is ready to co-operate in the investigation and undertakes that he will remain present before the investigating officer as and when required. Thus, protection from arrest may be granted to him.

Learned A.G.A. on the other hand submits that having regard to the manner in which the incident has been caused, the applicant is not entitled for any discretion.

In rebuttal, learned counsel for the applicant submits that apart from the grant of anticipatory bail, identically placed co-accused namely Vijay Kumar Singh, the other co-accused persons of the crime including the main accused Ranveer Singh has been granted regular bail by the competent criminal Courts.

Having heard learned counsel for the parties and having perused the record, it is evident that the applicant was not named in the F.I.R. and his name has surfaced in the statement of the injured persons recorded on the same day. Identically placed co-accused person, namely, Vijay Kumar Singh has been granted interim bail during the course of trial by a co-ordinate Bench of this Court. In the first information report, which appears to be prompt, in the facts and circumstances of the case, apart from the three accused persons, no active role has been assigned to any of the accused person. The applicant is not having any previous criminal history. Thus, protection from arrest may be granted to the applicant on the principle of parity.

Issue notice to the informant of the case, namely, Sanjay Shukla S/o Shri Shiv Gopal Shukla R/o Big Boss Club Bar, Vibhuti Khand, Lucknow East (Commissionerate Lucknow), Uttar Pradesh, returnable till the next date of listing.

Steps in this regard be taken by learned counsel for the applicant within 02 working days from today.

List this case on 10th April, 2023, on which date this application shall be finally disposed of.

In the meantime, the State may also file counter affidavit/objections with regard to the prayer of anticipatory bail of the applicant.

It is provided that till the next date of listing, in the event of arrest of the accused-applicant namely, Gaurav Mishra @ Prachand, involved in the above noted case, he shall be released forthwith on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- and two sureties each in the like amount to the satisfaction of the Station House Officer of the Police Station concerned/ Investigating Officer/Trial Court with the following conditions:-

(1) The applicant shall co-operate in the investigation and would remain present before the investigating officer as and when directed even for the recovery of any fact, as provided under Section 27 of the Indian Evidence Act.

(2) The applicant shall provide his telephone number to the investigating officer and will attend all the calls which may be made by the investigating officer for the purpose of procuring his attendance.

(3) The applicant shall directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police office.

(4) The applicant shall not leave the territory of India without previous permission

of the Court.

In case of default of any condition mentioned herein-before, the investigating officer/learned A.G.A. may move an appropriate application for vacation of the protection which has been granted to the applicant, even before the next date of listing."

4. Learned A.G.A. on the basis of instructions submits that the applicant has cooperated in the investigation and now charge sheet has been filed.

5. Considering the interim protection granted by this court vide order extracted above which has not been misused by the applicant, charge sheet has been filed, identically placed co-accused Vijay Kumar Singh and the main accused Ranveer Singh have been granted regular bail, the applicant has no criminal antecedent and without expressing any opinion on the merit of the case, I am of the opinion that the interim protection granted earlier is liable to be and is hereby made absolute.

6. The application is allowed accordingly.

Order Date :- 18.12.2024

kkb/