

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2360 of 2023

Applicant :- Utkarsh Mishra @ Abhi (Minor) Thru. His
Natural Guardian/Father Prabhu Narayan Mishra

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

Counsel for Applicant :- Manoj Kumar Mishra, Anubhav
Awasthi, Shivam Srivastava, Vikas Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

Order on IA-2/23:

1. Heard.

2. This is an application for correction of the order dated 19.10.2023 duly supported by an affidavit.

3. The learned counsel for the applicant prays that inadvertently para no.5 has wrongly been typed in the order, secondly he has further prayed for replacing the word "applicant" with the word "co-accused" in third line of para no. 6 of the order and thirdly for replacing the term/sentence "wife of the applicant no.1" with 'mother of the applicant' in the sixth line of para no.7 and has sought corrections to this effect.

4. The cause shown in the affidavit is sufficient.

5. Accordingly, correction application is allowed and the corrected order dated 19.10.2023 shall now be read as under:

"1. Heard Sri Manoj Kumar Mishra, learned counsel for the applicant, the learned Addl. Government Advocate, and perused the record.

2. The applicant is seeking anticipatory bail in Case Crime No. 0249 of 2023 under sections 307, 308, 323, 452, 504, 506 IPC Police Station Kotwali Nagar, district Sultanpur.

3. The aforesaid case has been registered on the basis of a first information report (F.I.R.) lodged on 24.03.2023 against four persons, including the applicant alleging that at about 7 a.m. on 24.03.2023 the accused persons attacked the informant's daughter with an iron-rod and other members of the family were also beaten up.

4. *Learned Addl. Government Advocate has vehemently opposed the application for grant of anticipatory bail to the applicant stating that a proclamation under Section 82 of the Code of Criminal Procedure (Cr.P.C.) has been issued against them on 4th of July 2023 and in view of the law laid down by Hon'ble the supreme Court in the case of Prem Shankar Prasad vs State of Bihar, 2021 SCC Online SC 955, they are not entitled to claim anticipatory bail after issuance of a proclamation declaring them 'absconders'.*

5. *Keeping in view the fact that the F.I.R. was lodged on 24.03.2023, the application for grant of anticipatory bail to the co-accused was rejected by the trial court on 07.06.2023. Notice of the present application was given to the State on 03.07.2023 and the proclamation under section 82 against the applicant had been issued on 04.07.2023, I am of the view that as the applicant had filed application for grant of anticipatory bail before the trial court, without any inordinate delay after lodging of the F.I.R. and after rejection of the same he had given notice of the present application within a reasonable time and the process under Section 82 has been issued thereafter, in the peculiar facts of the present case, the application seeking anticipatory bail for the applicant does not deserve to be rejected on this preliminary objection.*

6. *In the affidavit filed in support of the bail-application, it has been stated that the incident occurred because of a sudden quarrel between the families of the applicant and the informant in which the persons from both the sides received injuries; the applicant tried to lodge F.I.R. of the incident, but the same was not registered; the mother of applicant co-accused Snehlata alias Lata Mishra filed an application under section 438, CrPC No. 1230 of 2023 and on 26.05.2023 this Court passed an order providing that in case of her arrest, the aforesaid co-accused shall be released forthwith on bail. The Court has recorded in the order that there are some photographs showing that the informant's brother was breaking the vehicle of the applicant and that the persons from both the sides have received injuries in the incident. The Court further provided that the photographs of the incident as well as the DVR containing video recording of the incident will be provided to the investigating officer.*

7. *Learned counsel for the applicant has submitted that it is only after the aforesaid order that the aforesaid evidences in the shape of photographs and video-recordings of the incident were taken by the investigating officer and an F.I.R. bearing Case Crime No. 504 of 2023 has been registered against the informant and his family members.*

8. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the dispute appears to have taken place because of a sudden quarrel; that persons from both the sides have received injuries in the incident; that the co-accused Sneh Lata has been granted anticipatory bail by this court, and that the applicant's FIR was not registered under intervention of this court and a direction issued to the investigating officer to take evidence of the incident from the applicant, three co-accused persons have already been granted anticipatory bail; that the applicant is 15 years old boy having no criminal history, I am of the view that the applicant is also entitled to be granted anticipatory bail.

9. Accordingly, anticipatory bail application stands disposed of with a direction that in the event of arrest/ appearance of applicant before the learned Trial Court, he shall be released on anticipatory bail in the aforesaid case crime on his furnishing a 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."

6. This order shall be read in conjunction with the order dated 19.10.2023.

7. The office is directed to supply a certified copy of this order along with the order dated 19.10.2023 to the concerned on payment of usual charges.

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(Subhash Vidyarthi, J.)

Order Date :- 22.11.2023

Ram.