

(iv) A significant number of witnesses remain to be examined, and there is no likelihood that the trial will conclude in the near future;

(v) There is no indication that the applicants have misused the interim bail previously granted;

(vi) The applicants' antecedents have been sufficiently explained.

The Court finds it to be a fit case for bail. Accordingly, the bail applications are hereby allowed.

57. Let the applicants- **Nandan Singh Bisht, Latif Alias Kale, Satyam Tripathi Alias Satya Prakash Tripathi, Shekhar Bharti, Dharmendra Singh Banjara, Ashish Pandey, Rinkoo Rana, Ullas Kumar Trivedi Alias Mohit Trivedi, Ankit Das, Lavkush, Sumit Jaisawal and Shishupal** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicants shall not tamper with evidence.

(ii) The applicants shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed

against them in accordance with law.

58. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

59. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(2024) 11 ILRA 227

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 08.11.2024

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Criminal Misc. Anticipatory Bail Application Nos
6849 of 2024, 6901 of 2024, 6946 of 2024 &
7113 of 2024
(U/s 438 Cr.P.C.)

Mukesh & Ors. ...Appellants

Versus

State of U.P. ...Respondent

Counsel for the Appellants:

Sri Girijesh Kumar Gupta, Sri Shiv Shankar Pd. Gupta, Sri Sunil Kumar

Counsel for the Respondent:

G.A., Sri Naveen Kumar Srivastava

Criminal Law- The Code of Criminal Procedure,1973 - Section 438- Power of anticipatory bail is somewhat extraordinary in character and it is to be exercised only in exceptional cases where the person is falsely implicated. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory

bail is the rule--- Where from the material and allegation against an accused, offence is made out, the accused is required to show exceptional circumstances warranting the protection of liberty--- The Court is required to exercise jurisdiction of anticipatory bail on sound judicial principles. The court should be slow to grant anticipatory bail to an accused who does not abide by law and commits an offence--- No extraordinary circumstances have been shown by applicants that refusal to grant anticipatory bail would lead to injustice.

Anticipatory bail applications lack merit and are accordingly dismissed. (E-15)

List of Cases cited:

1. Sabita Paul Vs St. of W.B., 2024 INSC 245
2. Shrikant Upadhyay & ors. Vs St. of Bihar & anr., 2024 INSC 202

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Sunil Kumar and Sri Girijesh Kumar Gupta, learned counsels for the applicants and Sri Naveen Kumar Srivastava, learned counsels for the informant, as well as, Sri Om Prakash Dwivedi, learned A.G.A. for the State.

2. All the four anticipatory bail applications are heard together with the consent of learned counsels for the respective parties and are being decided by a common judgment and order.

3. Present Anticipatory Bail Applications are preferred with the common prayer to grant anticipatory bail to applicants – **Mukesh s/o Buddhu, Nitin s/o Raju, Tusar s/o Sripal, Shiva s/o Sripal, Tusar @ Tushar Tomar s/o Mukesh @ Mukesh Tomar, Amit @ Dhoni @ Amit Tomar s/o Surendra @ Surendra Singh, Vikas s/o Mukesh, Umesh s/o Deshpal, Deepak s/o Munipal,**

Sonu s/o Satveer, Kapil s/o Ompal, Rahul s/o Chandar @ Chandrapal Singh and Ashish @ Deepak s/o Surendra (13 in number) in Case Crime No. 0206 of 2024 under Sections 147, 148, 149, 452, 352, 307, 323, 325, 324, 504, 506, 427 I.P.C., Police Station – Pilkhua, District - Hapur.

4. It is submitted by learned counsels for applicants that FIR was lodged on 22.04.2024 at 1701 hours in respect of an incident of 21/22.04.2024 with the allegation that a dispute had arisen on 21.04.2024 between children and that was resolved, however, nominated accused persons have later on come near the house of informant and when informant along with family members reached near their house in mid night at about 1:00 PM (in the intervening night of 21.04.2024 & 22.04.2024), accused persons have assaulted the informant & family members and have fired & assaulted, as a result of same, injured have suffered injuries including firearm injury.

5. Learned counsel for applicants submits that general allegations of assault are made against nominated accused persons except against Tusar, Amit @ Dhoni, Ashish and Rahul against whom allegations of firing have been made. Learned counsels for applicants submits that 11 persons have suffered injuries in alleged occurrence out of which injury of three injured is grievous in nature. Injured, who have suffered grievous injuries are, namely, Keshav, Ankit and Shiva. Injury report of injured-Keshav is at page-27 of compliance affidavit dated 02.09.2024, where injured has received single gun shot injury on right arm. Learned counsels for applicants submits that insofar as, injury of injured-Ankit is concerned, which is at page-30 of compliance affidavit, he has

also suffered single gun shot injury at left thigh. Insofar as, injury of injured-Shiva is concerned, there are superficial abrasion on right cheek and has not suffered any gun shot injury. Learned counsels for applicants by referring to page-60 of compliance affidavit submits that injured-Ankur has suffered grievous injuries, however, as per NCCT report, which is at page-34 of compliance affidavit, there are no bony injury found.

6. Learned counsels for applicants further submit that two persons have suffered gun shot injuries, which is on non-vital part of the body. By referring to statement of injured, which is at page-19 of counter affidavit, learned counsels for applicants submit that general allegations with regard to assault have been made against accused persons. The injured has stated that it was a night incident and many persons were present at the place and he had only seen persons standing at the place of occurrence. Learned counsel for applicants further submits that eye-witness-Aman has also given the similar account. On the strength of the aforesaid statement, learned counsels for applicants submit that there are no allegation that applicant-Tusar had fired, his parentage is also not being disclosed in the statement of witnesses, as such it is not identifiable, as to who, is the author of gun shot injury.

7. Learned counsels for applicants further submit that applicants have no previous criminal history and a simple quarrel between two groups have resulted into present FIR and as such, present case is indicative of over implication. Learned counsels for applicants submit that in the facts and circumstances of the case, Section 149 IPC would not be attracted. Learned counsels for applicants further submits that

there is delay in lodging of FIR. If applicants are enlarged on anticipatory bail, they will not misuse the liberty and cooperate with investigation. The applicants have apprehension of their arrest by police any time.

8. Sri Naveen Srivastava, advocate appearing on behalf of informant submitted that 11 persons have suffered injuries in assault, out of which, two have suffered gunshot injuries and one has suffered injury which is grievous in nature, as per medical report.

9. It is submitted by learned counsel for informant that in present case, occurrence has taken place adjacent to house of informant, when informant came back to his house from marriage ceremony. The nominated accused persons were waiting for informant and family members. When the informant reached near his house, nominated accused have assaulted them, as such in the medical report, it has been referred to as group fighting.

10. Learned counsel for informant further submit that in the present case section 149 I.P.C. would be attracted as there was no occasion for the applicants to have reached house of informant in mid of night. Learned counsel for informant further submits that there are two eye-witness account of alleged occurrence and injured themselves have supported the prosecution story and as such complicity of applicants cannot be denied. It is submitted by learned counsel for informant that eye-witness has come at later stage as can be seen from their statement. He submits that statement of injured itself is sufficient to prosecute the applicants.

11. Learned A.G.A. for State has submitted that in the present case there are

gunshot injuries of two injured persons. The incident has taken place at mid of night when accused/applicants along with other accused persons have come to house of informant and have assaulted. He submits that section 149 IPC would be attracted in the facts and circumstances of the present case. No person has suffered injuries on the side of the applicants, which is indicative of the fact that it was a one sided assault.

12. It is submitted by learned A.G.A. that it cannot be denied that gunshot injury received by two injured are itself enough to prosecute the applicants under section 307 IPC. It is further submitted by learned A.G.A. that palleys have been recovered on 22.04.2024. The recovery memo is at page-68 of the compliance affidavit.

13. The prosecution case as per first information report is to the effect that on 21.01.2024, marriage of one Arun (who is the family member of informant) was solemnized and informant & family members had gone to Village – Tatarpur, District – Gautambudh Nagar. Where there was a dispute between two children and same was intervened & the dispute was put to peace. On 21/22.04.2024 at about 01:00 o'clock in the night, informant, his brother Ajai Tomar, son of informant Vishal, Vikas, Rahul, Devendra, Keshav, Shiva, Sachin were coming back from marriage and as soon as aforesaid persons alighted from their vehicle, nominated accused persons started assaulting them with stick, farsa, gadansa, balkati, iron rod, bricks and firearm. The aforesaid accused persons were identified in the street-light. Accused-Tushar, Amit @ Dhoni, Ashish and Rahul fired with intention to commit culpable homicide. Injured-Keshav suffered firearm injury on the hand and was unconscious on the spot and other accused

persons have assaulted as a result of the same, hand of injured-Ajai Tomar was fractured and there was injury on the head. Injured-Vishal was assaulted with sharp edged weapon and he sustained injury. Injured-Shiva was assaulted with iron pipe on his face, injured-Sachin received injury on his ear and others also received injury. The motorcycle of the informant was also damaged. When injured persons including informant in order to save themselves entered into their house, accused person armed with weapons also entered into the house and have abused, assaulted and when the villagers came, they ran away. When informant went to police, the police got conducted the medical examination of injured and the injured-Ajay Tomar, Vishal and Vikas were admitted to the hospital. The cover of bullet was also found at the place of occurrence which was handed over to police.

14. Injured–Devendra was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

*1. Multiple Abrasion
5cm x 4cm on left
shoulder; 2. Contused
abrasion of size 10cm x
cm on left ankle and
foot.*

15. Injured–Vijay was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

*i. lacerated wound of size
1cm x 1cm on left side frontal area*

of scalp 9cm above left eyebrow; ii. Contusion below left eye of size 6cm x 5cm on left side of face; iii. Abrasion on chin of size 2cm x 2cm; iv. Contusion on right index finger of size 1cm x 1cm;

16. Injured–Rahul was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. lacerated wound on dorsom of right wrist of size 2cm x 0.5cm skin deep; ii. Contusion over right proximal forearm of size 1cm x 2cm; iii. Contusion over right distal arm; iv. Contusion of size 8cm x 3cm over left shoulder;

17. Injured–Ajay was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. two lacerated wound over left parietal occipital area of size 2cm x 1cm into skin deep;

18. As per supplementary report of injured–Ajay which is at page-37 of compliance affidavit, hematoma along left fronto parieto temporal convexity and right shoulder dislocation was found which was grievous in nature.

19. Injured–Vishal was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the

aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. incised wound on frontal area of scalp of size 6cm x 1cm skin deep; ii. Swelling over right forearm with tenderness;

20. As per supplementary report of injured–Vishal at page-40 of Compliance Affidavit, hematoma along right high parietal convexity, undisplaced fracture of postero lateral wall of right maxillary sinus which are grievous in nature.

21. Injured–Vikas was medically examined on 22.04.2024 at Community Health Centre, Pilkhuwa, District–Hapur. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. lacerated wound on left temporal tempo parietal area of scalp of size 3.5cm x 0.5cm into skin deep; ii. tenderness over left side lower back and left flank; iii. Abrasion over right arm of size 6cm x 1cm; iv. redness and tenderness over proximal forearm;

22. As per supplementary report of injured–Vikas which is at page-43 of compliance affidavit, injury was non-grievous in nature.

23. Injured–Ankur was medically examined on 22.04.2024 at Rama Super Speciality Hospital & Research Centre. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. lacerated wound on head of size 5cm x 1cm; ii. Abrasion on right wrist; iii. Abrasion on right knee;

24. Injured–Keshav was medically examined on 22.04.2024 at Rama Super Speciality Hospital & Research Centre. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. Gunshot wound 1.5cm x 1cm over anterior aspect in right arm and on posterior aspect 2cm x 1cm;

25. As per supplementary report of injured–Keshav at page-35 of compliance affidavit firearm injury on right hand was found which was grievous in nature.

26. Injured–Aakash Tomar was medically examined on 22.04.2024 at Rama Super Speciality Hospital & Research Centre. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. Lacerated wound on forehead 4cm x 1cm in right side;

27. Injured–Ankit was medically examined on 22.04.2024 at Rama Super Speciality Hospital & Research Centre. As per the aforesaid medical report the following injuries were sustained by the aforesaid injured :-

i. Gunshot wound at left thigh approx. diameter 1cm;

28. Injured–Shiva was medically examined on 22.04.2024 at Rama Super Speciality Hospital & Research Centre. As per the aforesaid medical report the following injuries

were sustained by the aforesaid injured :-

i. Superficial abrasion on right cheek approx. 2cm x 1cm;

29. The investigating officer recorded the statement of informant and injured-Vishal, Vikas, Rahul, Akash, Keshav, Ankit, Shiva, Ajay, Devendra, under section 161 Cr.P.C. who supported the prosecution story. As per statement of informant and injured-Vishal, Vikas, Rahul, Akash, Keshav, Ankit, Shiva, Ajay, Devendra, accused persons namely Tushar, Amit @ Dhoni, Ashish and Rahul have fired, as a result of same, injured-Keshav had sustained firearm injury on the hand and the other injured persons were also assaulted in the incident and had received injuries. The prosecution has also relied upon to eyewitnesses namely Akash and Aman, however, the aforesaid witnesses have stated that when they reached the place of occurrence the assault had already taken place and the applicants were standing at the place of occurrence.

30. It is not in dispute between the parties that two injured have suffered gunshot injuries and others have sustained injuries. It is also to be noted that applicants and accused persons are resident of same village. Being the resident of same village, accused persons and the informant including other injured were known to each other. The incident had taken place in intervening night of 21.04.2024 and 22.04.2024 at about 1:00 AM, when informant and other injured came back from marriage to their house. The applicants case rests on the general allegations of assault being made on injured persons by accused persons and specific case with regard to assault by

firearm has been made against accused-Tushar, Amit @ Dhoni, Ashish and Rahul. There are two persons with name of Tushar, have been nominated as accused person in first information report, one being Tushar s/o Mukesh and other being Tushar s/o Sripal. The present anticipatory bail application is filed by persons who have not been alleged as the person who have caused injury by firearm except for Tushar where the prosecution in the first information report has not specified as to which of the accused – Tushar has fired although both the accused Tushar have remained present at the time of occurrence.

31. Applicants along with other accused persons are being proceeded under Sections 147, 148, 149, 452, 352, 307, 323, 325, 324, 504, 506, 427 IPC. As per the submission of learned counsel for applicants, gunshot injuries of injured is on the right arm and left thigh and is not on a vital part. As per the medical opinion three injured have suffered grievous injuries.

32. Section 307 of Indian Penal Code contemplates punishment for attempt to murder. It provides that whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder, would be punishable for attempt of murder. For the purpose of Section 307 I.P.C., what is material is the intention or the knowledge and not the consequence of actual act done, for purpose of carrying out intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about intended consequence on account of intervening circumstances.

33. To justify a prosecution/conviction under this section, it

is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to intention of accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds.

34. It is further to be noted that incident is of mid night hours when informant and other injured persons reached the house after attending the marriage. The previous dispute which had arisen at the marriage, between two children, was resolved. Two persons have suffered firearm injury. As per first information report and statement of the injured, the accused person namely Tushar, Amit @ Dhoni, Ashish and Rahul have fired, as a result of same, injured-Keshav has sustained firearm injury on the hand & 11 persons, as per the prosecution, have suffered injuries in the alleged occurrence.

35. The carrying of firearms by accused persons to the house of informant and suffering of gunshot injuries to injured at the behest of the accused persons is indicative of intention of accused persons to commit culpable homicide more particularly when incident has taken place at the mid night when the accused person are not expected to be on streets near the house of informant under normal circumstances.

36. It is further to be noted that the 11 persons have been injured out of which two persons have suffered gunshot injuries. The gunshot injuries has not been attributed to the applicants (except Tushar, however, it has not been specified as to which of the

two accused namely Tushar were the author of gunshot injuries).

37. In general, an accused person is liable to be prosecuted and convicted only in respect of the act which is committed by the accused, however, the difficulty arises when the offence is committed by means of several acts of individuals and which cannot be distinguished or proved as to the part exactly taken by each of them in furtherance of the offence. In such an event, the law imposes joint liability or constructive liability on all accused persons who were involved in offence. Such joint liability or constructive liability may arise from rigours of section 34, section 149 or section 120B of Indian penal code.

38. In the present case, large number of persons have assembled near the house of informant at the mid night hours and thereafter have assaulted, as a result of the same, 11 persons have been injured from the informant side out of which two persons suffered gunshot injuries. As per the prosecution case four persons have been alleged to have fired namely Tushar, Amit @ Dhoni, Ashish and Rahul and there are general role of assault assigned to the nominated accused person which has resulted in 11 persons suffering injuries.

39. Section 149 of the Indian penal code provides, if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence

40. Section 141 of Indian Penal Code prescribes unlawful assembly and the same is quoted herein below :

141. Unlawful assembly.—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, 12[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

41. The visiting of accused persons in midnight at house of informant, when informant and injured person came back to their house thereafter the assault has been made, is indicative of planning made by accused persons. It is not in dispute that as per first information report more than five persons have reached the house of informant and have assaulted. The members of aforesaid assembly were carrying firearm weapons and other weapons which is indicative of intention with which the aforesaid accused persons went to house of informant more particularly when the previous dispute at the marriage between the children's was already resolved. Under ordinary circumstances no person is expected to be on streets in the midnight. No explanation has been offered by learned counsel for applicants, as to why, the accused persons including applicants were on the streets near the house of informant in the midnight.

42. It is contended by learned counsel for applicants that eyewitness Akash and Aman have stated that applicants were standing at place of occurrence and as such mere standing at the place of occurrence by itself cannot be said that applicants were members of unlawful assembly. The said argument of learned counsel for the applicants cannot hold the field as the aforesaid witnesses have also stated that when they reached the place of occurrence when major part of the assault has already taken place. Once the aforesaid witnesses have already stated that they are not the witness to the complete incident then it cannot be said that the applicants were not the member of the unlawful assembly more particularly when the injured witnesses have supported the prosecution case.

43. It is further to be noted that as per prosecution, applicants were part of unlawful assembly and also participated in offence which aspect has not been challenged by applicants but only submission that has been advanced is that applicants were only standing at the place of occurrence. It is to be seen that incident is of midnight and under ordinary circumstances persons are expected to be in their house however no explanation has been offered on behalf of applicants, as to why, applicants' presence has been shown at the place of occurrence by the prosecution. The injured in their statement have stated that applicants were also the participants in crime. The first information report indicates that about 19 known persons and one unknown person were participants in offence. There are injuries to 11 persons out of which two have sustained firearm injury. At this stage it cannot be denied that accused persons had intention to commit an offence, the manner in which the accused person had visited the house of the informant by forming an assembly of persons with the purpose of committing an offence would prima facie make all the participants of the unlawful assembly liable for offence.

44. In **Sabita Paul v. State of West Bengal, 2024 INSC 245**, the Supreme Court has held as under :-

"6. The concept of anticipatory bail came to be part of the criminal law landscape via the 41st Report of the Law Commission which recommended the inclusion of such a provision, which then stood incorporated in the Code of Criminal Procedure, 1973. Over the years, many judgments of this Court have considered that a Court

must weigh while considering an application for anticipatory bail. In Dr. Naresh Kumar Mangla v. Anita Agarwal & Ors ., a three-Judge Bench laid down the following factors : "17. The facts which must be borne in mind while considering an application for the grant of anticipatory bail have been elucidated in the decision of this Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] and several other decisions. The factors to be considered include : (SCC pp. 736-37, paras 112-13) "112. ...

(i) *the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

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

(iii) *the possibility of the applicant fleeing from justice;*

(iv) *the likelihood of the accused repeating similar or other offences;*

(v) *whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;*

(vi) *the impact of the grant of anticipatory bail particularly in cases of large*

magnitude affecting a very large number of people; (2021) 15 SCC 777

(vii) *the courts must carefully evaluate the entire material against the accused. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in such cases is a matter of common knowledge and concern;*

(viii) *while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

(ix) *the reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;*

(x) *frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

45. In **Shrikant Upadhyay and others Vs State of Bihar and another, 2024 INSC 202** has observed as under

"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

46. The power of anticipatory bail is somewhat extraordinary in character and it is to be exercised only in exceptional cases where the person is falsely implicated. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule.

47. The court owes duty that justice is done to all the parties (i.e.) accused, prosecution, informant, complainant and victim). The citizens in terms of constitutional mandate are required to abide by law. Where from the material and allegation against an accused, offence is made out, the accused is required to show exceptional circumstances warranting the protection of liberty. No

circumstances have been shown by applicant(s) to demonstrate that personal liberty of accused in the facts and circumstances of the case is required to be protected. In the facts and circumstances of the case, the grant of anticipatory bail would lead to miscarriage of justice.

48. The Court is required to exercise jurisdiction of anticipatory bail on sound judicial principles. The court should be slow to grant anticipatory bail to an accused who does not abide by law and commits an offence. In the present case, it is not shown by the applicant(s) that the prosecution or complainant has falsely implicated the applicant(s). One cannot lose sight of the fact that unwarranted protection to an accused has adverse effect on the peace and tranquillity of society at large and effects maintenance of law and order in the society. The jurisdiction of anticipatory bail permits the accused to be not produced before the ordinary jurisdictional court although ordinary jurisdictional court at grass root level have greater experience and exposure with regard to situation of maintenance of law and order at the local place. The process of anticipatory bail permits consideration of anticipatory bail by Session Court or High Court and not by Magistrate courts. Facts and circumstance of each case is to be examined at the time of consideration of anticipatory bail.

49. A perusal of the First Information Report and the material available during investigation would show that offence is made out against the applicants. It is not a case where no offence is made out against an accused.

50. The grant of anticipatory bail to accused in the present case would have

adverse impact on protection of rights and interest of the informant/victim.

51. The nature and gravity of offence and the role play by applicants disentitle the applicants to grant of anticipatory bail. Applicants have failed to show that there is harassment, humiliation and unjustified detention of applicants. It is also not shown that there is over implication of the applicants or the applicants have been falsely implicated or there is frivolity in prosecution. A person who has committed an offence is not entitled to grant of discretionary jurisdiction of anticipatory bail unless it is shown that the accused is falsely implicated or is entitled for protection of liberty. A person who has violated the law and has not shown exceptional circumstances is not entitled to the benefit of extraordinary jurisdiction. No extraordinary circumstances have been shown by applicants that refusal to grant anticipatory bail would lead to injustice. Even otherwise, the applicants have failed to demonstrate factors which would entitle the applicants for anticipatory bail.

52. In view of the above, the present anticipatory bail applications lacks merit and are accordingly dismissed.

(2024) 11 ILRA 238
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.11.2024

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 337 of 2020

Neeraj

Versus

...Appellant

State of U.P.

...Respondent

Counsel for the Appellant:

Deepak Kaushaik

Counsel for the Respondent:

G.A.

आपराधिक विधि - भारतीय दंड संहिता, 1860 - धारा 376 - लैनिगक अपराधों से बालकों का संरक्षण अतिधनियम - 2012 - धारा 6, 3/4 - आजीव कारावास - अर्थदंड - दंड प्रक्रिया संहिता, 1973 - धारा 161, 164, 313 - 8 वर्ष से अधिक समय से कारागार में सजा भुगत चुका है - अभियोजन पक्ष के अनुसार वादी मुकदमा ने एक लिखित तहरीर दी कि दिनांक 27.09.2017 को प्रार्थी की लड़की पीड़िता (प्रथम) आयु 5 वर्ष व पीड़िता (द्वितीय) आयु 4 साल दोनों बच्चियों गली में खेल रही थी, तभी अभियुक्त गली में आया और दोनों बच्चियों के साथ असलील हरकत करने लगा - बाद में अभियुक्त ने बड़ी लड़की का मुँह दबाकर नजदीक के खाली प्लाट में ले गया - छोटी बच्ची चिल्लाते हुए घर पर गई और घर वालों को पूरी घटना के बारे में बताया, घर वाले तथा पड़ोस में रहने वाले कुछ व्यक्तियों ने प्लाट में जाकर देखा तो अभियुक्त पीड़िता के साथ अश्लील हरकत कर रहा था - विवेचक द्वारा विवेचना की गयी एवं अभियुक्त के विरुद्ध पर्याप्त साक्ष्य पाए जाने पर विचरण हेतु आरोप पत्र दाखिल किया गया | (प्रस्तर 2, 4)

अपीलार्थी ने तर्क दिया कि उसे रजिशन वर्तमान मामले में असत्य व कपोल-कल्पित तथ्यों के आधार पर झूठा फसाया गया है - उन्होंने आगे कहा कि कुछ अभियोजन साक्षियों के पक्षद्रोही हो जाने का कोई विपरीत प्रभाव अभियोजन के विरुद्ध नहीं पड़ता है, क्योंकि पक्षद्रोही साक्षियों ने भी अपने साक्ष्य में तथाकथित घटनास्थल पर घटना के घटित होने की बात मानी है, परंतु घटनास्थल पर स्वयं को उपस्थित न होने संबंधी अभिकथन करते हुए अभियोजन के विरुद्ध अभिकथन किया है। (प्रस्तर 41)

अभिनिर्धारित, पीड़िता के साथ बलात्कार की घटना अभियुक्त के द्वारा ही कारित की गई है, यह अभियोजन साक्षियों द्वारा दिए गए बयान से साबित है, इसके अलावा मेडिकल साक्ष्य व अन्य दस्तावेजीय साक्ष्य से भी युक्ति-युक्त संदेह से परे प्रमाणित है। (प्रस्तर 46, 47)

दाण्डिक अपील आंशिक रूप से स्वीकार (E-13)

प्रोद्दत मामलों की सूची: