

Court No. - 83

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 3552 of 2023

Applicant :- Smt. Urmila Devi And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Pramod Kumar Singh, Praveen Chandra Mishra

Counsel for Opposite Party :- G.A., Gaurav Sharma

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Pramod Kumar Singh, learned counsel for the applicants, Sri Gaurav Sharma, learned counsel for the informant, Sri Ramesh Chandra Vaishya in person, Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.58 of 2016, under Sections 392 and 452 I.P.C., Police Station Tharwai, District Allahabad, during the pendency of trial.
4. To avoid verbiage, the allegations levelled in the FIR are not been narrated here.
5. Learned counsel for the applicants has submitted that the applicants have been falsely implicated in the present case. The applicants were summoned by the court concerned by invoking the powers under Section 319 Cr.P.C. in the present case. Learned counsel has further stated that the summoning order under Section 319 Cr.P.C. dated 15.03.2021 was passed under Sections 323, 504, 506, 325, 452 and 392 I.P.C and the applicants had applied for bail under Sections 323, 325, 504 and 506 I.P.C. only, as such they were enlarged on bail by the Magistrate concerned on 04.01.2022. Learned counsel has further stated that the applicants are entitled for bail in the added sections also as they have not misused the bail granted earlier on.
6. Per contra, learned AGA and the informant in person have vehemently opposed the anticipatory bail application on the ground that neither the Magistrate nor the Public Prosecutor took care to see under what sections the applicants were summoned and the bail was granted to the applicants except Sections 452 and 392 I.P.C. Thus, the applicants have misused the process of court as they were already enlarged on regular bail by the court concerned in some sections only. The

applicants can't be permitted to apply in part before the Magistrate by invoking Section 437 Cr.P.C. and then apply in other sections by invoking Section 438 Cr.P.C. This is misuse of process of court. At the outset, either the applicants should have applied under Sections 438 Cr.P.C. before the Sessions Court, Allahabad or should have applied under all the sections in the Court of the Magistrate concerned.

7. Learned A.G.A. has also argued that the Magistrate is competent to hear and either reject or grant a bail in the cases of triable by a Court of Magistrate even if the sentence of life imprisonment could be passed. He has placed much reliance on the judgment of **Satyan vs. State of Kerala** reported in **1981 Cri LJ 1313**, whereby the said opinion was expressed by the High Court.

8. The arguments advanced by informant in-person and A.G.A. carry conviction that the Magistrate was competent to hear and dispose of the bail under Sections 392 and 452 I.P.C. The said act at the part of the applicants and Magistrate concerned and even the Public Prosecutor was clearly not proper. The applicants have certainly not come with clean hands.

9. The accused was summoned under Sections 323, 504, 506, 325, 452 and 392 I.P.C. and should have applied for bail in all the sections. No person can be permitted to apply for bail in part, that too firstly getting bail by invoking powers u/s 437 Cr.P.C. and later on taking recourse to Section 438 Cr.P.C. in the other sections. He has to apply for bail in all the sections he is wanted either u/s 437 Cr.P.C. or 438 Cr.P.C.

10. After hearing learned counsel for the parties and taking into consideration the rival submissions and careful perusal of annexure nos.9 and 10 of the affidavit filed with the anticipatory bail application, I do not find it a fit case for grant of anticipatory bail to the applicants.

11. The present anticipatory bail application is hereby found devoid of merits and is accordingly **dismissed**.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

(Krishan Pahal, J.)

Order Date :- 18.5.2023/Ravi Kant