

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10244 of 2023

Applicant :- Smt. Parvati Devi And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Parashuram Barnawal, Pradeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State and perused the material available on record.

2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicants - **Smt. Parvati Devi and 2. Jagdish Kushwaha (Singh)** in Criminal Case No. 701 of 2022 arising out of Crime No.107 of 2022, under Sections 147, 323, 452, 504, 506, 308 IPC and Section 3 (1) (Da) (Dha) of S.C./S.T. Act, Police Station - Pataherwa, District- Kushinagar.

3. The applicants in the present anticipatory bail application is alleged to have committed offences punishable under Sections 147, 323, 452, 504, 506, 308 IPC and Section 3 (1) (Da) (Dha) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The applicants filed the anticipatory bail application under Section 438 Cr.P.C. before the Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Kushinagar at Padrauna which was rejected vide order dated 7.8.2023. It is submitted by learned counsel for the applicants that the applicants are innocent and they have no concern with the present matter. They have not committed any offence. Allegations levelled against the applicants are false. It is further submitted that after investigation, charge-sheet has been submitted in the matter. Punishment prescribed in the alleged offences is upto seven years. Applicant has fully cooperated during investigation. If the allegations are taken to be true, then also offence under S.C./S.T. Act is not made out. In support of his contention, learned counsel for the appellant has also relied upon the decision of the Hon'ble Apex Court in the case of **Hitesh Verma Vs. State of Uttarakhand & another, 2020 (10) SCC 710**, pertaining to S.C./S.T. Act and has contended that the the applicants' case is

squarely covered under Section 438 Cr.P.C. It is further submitted that if the applicants are enlarged on bail, they will not misuse the liberty and will cooperate with the investigation. The applicants have apprehension of their arrest by the police any time.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently submitted that the present anticipatory bail application moved under Sections 147, 323, 452, 504, 506, 308 IPC and Section 3 (1) (Da) (Dha) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not maintainable as Sections 18 & 18A (2) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 specifically provide that :

"18. Section 438 of the Code not to apply to persons committing an offence under the Act- Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act".

"18 A. (2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court".

6. It is submitted that in view of the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 above mentioned, the present anticipatory bail application is not maintainable.

7. Contending to that the learned counsel for the applicants has vehemently submitted that from perusal of the entire record no where even any whisper is found that the applicants at any stage of the case was known to the fact that the informant belongs to SC/ST community. It is further submitted that the alleged offence was not committed on account of the informant being a member of SC/ST community. Hence the barring provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not apply to this case.

8. However, after the decision of the Hon'ble Supreme Court in **Prathvi Raj Chauhan vs. Union of India & Others, (2020) 4 SCC 727**, the legal position is that an anticipatory bail in a crime where an offence under SC/ST is alleged can be granted only if the Court is satisfied that the allegations levelled do not prima facie make out a case under SC/ST Act. The position of law remains same even after the enactment of Section 18A of the Act. Under SC/ST Act, there is special procedure and Special Courts/Exclusive Special Courts for dealing with the cases

involved in the offences against the scheduled castes and scheduled tribes. A reading of the provisions of Sections 2(d), 2(bd) and Section 14 categorically indicate that the said offences are exclusively triable by Special Courts as contemplated by the legislature.

9. It is further to be kept in mind that under the special provisions of the SC/ST Act, the right of the victim and the witnesses are on a higher pedestal than provided under Cr.P.C. From the entire scheme of the act, including the powers of the Special Courts, it can be concluded that the Act has given primacy and exclusivity to the Special Courts over normal Courts.

10. Thus, in view of the aforesaid principle enumerated above, the Special Court while dealing with an application for anticipatory bail must ascertain whether a prima facie case for an offence punishable under the Act is made out, then only the application for anticipatory bail can be considered.

11. In the case in hand sufficient evidence has been found against the accused applicants in the matter and prima facie offence under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also made out and on the basis of record, the court is satisfied that the allegations levelled against the accused applicant prima facie make out a case under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, in view of the provisions of Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and also in the light of the judgment of Hon'ble Apex Court in Prathvi Raj Chauhan (supra), present anticipatory bail application is not maintainable.

12. In view of the aforesaid observations, the present anticipatory bail application is **dismissed**, as not maintainable.

13. In the last, learned counsel for the applicants has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicants in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another***, 2022 SCC OnLine SC 825.

14. Hence, it is observed that the bail application of the applicants, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil case*** (supra).

15. It is further directed that the Court concerned while considering the bail application of the applicants in the light of **Satender Kumar Antil** case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgement by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 30.10.2023

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