

Court No. - 72

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10858 of 2023**

Applicant :- Saurav Yadav

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rakesh Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Rakesh Dubey, learned counsel for the applicant and Sri R.P. Patel, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.764 of 2014, registered under Sections 147, 307, 326, 323, 504, 342 I.P.C. at Police Station Kotwali, District Ballia with a prayer to enlarge him on anticipatory bail.
4. This is the second anticipatory bail application on behalf of the applicant. The first anticipatory bail application was dismissed vide order dated 17.8.2023 of this Court. The said order is reproduced as under:-

"1. List has been revised. It is the anticipatory bail application filed as bail application. Neither of the two counsels have appeared to press this bail application. Learned AGA is present for the state. In the circumstances, I myself have perused the record. Learned AGA could not apprise this Court about the present status of the trial.

2. The instant anticipatory bail application was filed on 18th December, 2019 and none was present on behalf of the applicant on the last three occasions also i.e. on 20.7.2023, 28.7.2023 and 7.8.2023. Mere pendency of the bail application cannot accrue any right in favour of the applicant. It cannot be allowed to swing years together in the cloak of pendency.

*3. Sub-Section 5 of Section 438 Cr.P.C. [Uttar Pradesh Act 4 of 2019, s. 2 (w.e.f. 1-6-2019)] says that the anticipatory bail application be finally disposed of within thirty days of the date of such application. The Apex Court in para-73(k) of **Satender Kumar Antil vs. Central Bureau of Investigation and another**, reported in **2022 SCC Online SC 825** has held that the application for anticipatory bail are expected to be disposed of within a period of six weeks.*

*4. The Apex Court in **Ishwarlal Mali Rathod v. Gopal**, (2021) 12 SCC*

612 has categorically held that courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice.

5. It appears that either the trial has concluded or the applicant has lost interest in pursuing the matter. Therefore, by the efflux of time, it seems to have been rendered infructuous.

*6. The application is accordingly **dismissed as infructuous**.*

7. Interim protection granted, if any, stands vacated. "

5. The counsel for the applicant was not present on three consecutive dates to press the said anticipatory bail application, as such, it was dismissed.

6. Learned counsel for the applicant has stated that the applicant is entitled for anticipatory bail as there is cross-version in the present case and in the cross-case only one witness has been examined and there is no likelihood of early conclusion of the present case. All the witnesses of fact have been examined in the case which is filed on behalf of the applicant. Learned counsel has filed the order-sheet indicating the statement of PW-1 having been recorded in the present case.

7. Learned counsel for the applicant has further stated that the applicant has no criminal history to his credit. The applicant has apprehension of his arrest. Learned counsel for the applicants undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application.

9. After hearing learned counsel for the applicant as well as learned A.G.A., taking into consideration that there is cross-version of the present case and the trial is going on as also that the applicant was granted interim protection in the said case and the same was dismissed for non-prosecution and the arguments tendered at Bar pertains to regular bail and also in the light of paragraph-43 of the judgment of this Court passed in the case of **Shivam vs. State of U.P. and Another** reported in **AirOnline 2021 All 484**, I do not find it a fit case to grant anticipatory bail to the applicant.

10. The present anticipatory bail application is hereby found devoid of merits and is, accordingly, **rejected**.

Order Date :- 18.10.2023/Vikas

[Krishan Pahal, J.]