

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11266 of 2023

Applicant :- Mehadi Hasan

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

Counsel for Applicant :- Reetika, Aditya Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Mehadi Hasan** seeking anticipatory bail in Case Crime No.202 of 2022, under Sections 147, 323, 302, 506 IPC, Police Station Baniyather, District Sambhal.

2. Heard learned counsel for the applicant as well as the learned A.G.A. for the State and perused the record.

3. At the outset, a preliminary objection has been raised by the learned AGA about maintainability of this anticipatory bail application and it is submitted that the present anticipatory bail application has been filed for the offences under Sections 147, 323, 302, 506 IPC whereas Section 438 (6) CrPC (as applicable in U.P. by way of U.P. Act No. 4 of 2019, Section 2, w.e.f 1.6.2019), provides that :

"(6) Provisions of this section shall not be applicable,

(a) to the offences arising out of-

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secret Act, 1923;

(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(b) in the offences, in which death sentence can be awarded."

4. It is further submitted that since death sentence can be awarded in an offence punishable under Section 302 IPC, the anticipatory

bail application in view of the provisions of Section 438(6) CrPC is not maintainable.

5. Per contra, learned counsel for the applicant submitted that offence under Section 302 IPC is not made out against the applicant.

6. Having regard to the entire facts and circumstances of the case and having considered the rival submissions made by the learned counsel for the parties, in my view, since the case clearly falls into the category of cases which have been mentioned in Section 438(6) CrPC, (as applicable in U.P. by way of U.P. Act No. 4 of 2019, Section 2, w.e.f 1.6.2019), the present anticipatory bail application is not maintainable. Hence, without going into the merits of the case, the present anticipatory bail application is **rejected**.

Order Date :- 12.10.2023

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