Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 12004 of 2023

Applicant :- Animesh Srivastava
Opposite Party :- State of U.P.
Counsel for Applicant :- Arun Kumar Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. The instant anticipatory bail application has been filed on behalf of the applicant **Animesh Srivastava** with a prayer to grant him anticipatory bail in Case Crime No.658 of 2023, under Section 3/7 of Essential Commodities Act, 1955, Police Station - Cantt., District - Gorakhpur.

2. At the very outset, it is to be clarified that offence under Section 3/7 of Essential Commodities Act is a bailable offence.

3. By virtue of Act No.18 of 1981, as amended by Act No.34 of 1993, the words "and non-bailable" were inserted after the word "cognizable" and such arrangement was made for a period of 15 years, but now the same has ceased to have any effect. It is clarified that the special provisions under the Act No.18 of 1981 came into force w.e.f. 1.9.1982 initially for a period of 5 years and were extended for further period of 5 years and thereafter from 1992 to 1997 and as such special provisions were enforced till 13.8.1997. Subsequently, the Essential Commodities Amendment Ordinance, 1998 (Central Amendment Ordinance 13 of 1998) was promulgated by the President, but with the passage of time, it was lapsed since no enactment came into force to replace the Ordinance and that is why Special Provisions remained in force only till 8.7.1998. It is pertinent to mention here that the Essential Commodities (Special Provisions) Act, 1981 ceased to have effect on the expiry of 15 years from the date of commencement of this Act whereby in Section 10-A of the Principal Act, after the word "cognizable" the words "and non-bailable" were inserted.

4. Resultantly, now the offence under Section 3/7 Essential Commodities Act is cognizable, but bailable as such and, therefore, the Application under section 438 Cr.P.C. for grant of anticipatory bail under this Section is not maintainable. It is

pertinent to mention here that there is a specific provision under section 438 Cr.P.C. (U.P. Amendment) wherein it is provided that where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session.

5. This being the legal position, the present anticipatory bail application under section 438 Cr.P.C. is not maintainable as such and is disposed of accordingly.

Order Date :- 2.11.2023
ss

Digitally signed by :-
SANDEEP SHARMA
High Court of Judicature at Allahabad