

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12200 of 2023

Applicant :- Suresh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyamu Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant; learned Additional Government Advocate for the State and perused the record.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Criminal Case No.32467 of 2023, Case Crime No.98 of 2023, under Sections 279 & 304 IPC, Police Station Geeda, District Gorakhpur.
3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case, in fact, no such incident has taken place. The applicant has never committed any offence as alleged in the impugned FIR. It is further submitted that as per allegation that the applicant (owner of tractor) was fully aware that the tractor in question was driven by the minor who has not holder of the driving licence, resulting one minor girl was died by the accident. Prima facie no offence is made out against the applicant. The investigation is going on and till date no charge sheet has been filed. The applicant is having no previous criminal history as has been mentioned in paragraph 34 of the affidavit.
4. Learned counsel for the applicant further submits that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.
5. Learned A.G.A. vehemently opposed the prayer for anticipatory bail of the applicant and has submitted that applicant was fully aware that the said tractor was plied by the minor, therefore, the case is made out against him. The allegations are very serious and keeping in view the seriousness of the allegations made against the applicant, applicant is not entitled to grant of anticipatory bail. The

apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted. Learned AGA pointed out that this is second anticipatory bail application, the earlier Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 3554 of 2023, was rejected but the protection has been given that for a period of one month the applicant shall not arrest on the condition that he shall surrender before the court below within said period. The applicant has not surrendered before the court below in compliance of aforesaid order and filed the present application under Section 438 Cr.P.C.

6. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of the applicant.

7. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**.

Order Date :- 17.11.2023

I.A.Siddiqui