

**Court No. - 72**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 12382 of 2023

**Applicant :-** Ashok Kumar Sharma

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Rajesh Mishra, Abhishek Srivastava

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal, J.**

1. List has been revised.
2. Heard Sri Rajesh Mishra, learned counsel for the applicant, Sri Rakesh Kumar Singh, learned counsel for the informant, Sri Arun Kumar Mishra, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.426 of 2022, under Section 354-A IPC and Sections 11(1) and 12 of POCSO Act, Police Station T.P. Nagar, District Meerut, during the pendency of trial.
4. As per prosecution story, the applicant, who happens to be the teacher in the school, is stated to have outraged the modesty of the informant, aged about 13 years, who was a student of class-VIII in the institution. The FIR was instituted by the father of the victim.
5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. Learned counsel has placed much reliance on the statement of the victim recorded under Section 164 Cr.P.C., whereby she has stated that she wanted to make another student her friend, as such had given a chit to him which somehow reached the applicant and he started blackmailing her and even used to say that he loves her. Learned counsel has further stated that no allegations under Section 11 of POCSO Act are made out as there are no allegations of bad touch against the applicant.
6. Learned counsel for the applicant has further placed much reliance on the statement of the student Ashok Saini to whom the victim is stated to have given the said chit for friendship. Learned counsel has also placed reliance on the statement of the student Arun, who has also corroborated the same story.

Learned counsel has also placed much reliance on the statements of the principal and clerk who had stated that they were requested to be present at the house of the informant for matter to be settled, but had found already 4-5 people assembled there, as such they had returned. The informant had added colour just to cover the love angle with another student. There are no criminal antecedents of the applicant. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

7. Per contra, learned counsel for the informant and learned A.G.A. have opposed the anticipatory bail application on the ground that the applicant had filed a petition under Section 482 No.33440 of 2023, which was disposed of vide order dated 30.10.2023 and the applicant was directed to seek bail in light of the judgment of the Apex Court passed in **Satender Kumar Antil vs. Central Bureau of Investigation and Another, 2022 SCC OnLine SC 825**. The applicant has not applied for regular bail rather has filed the present anticipatory bail. Learned counsel has also placed reliance on the judgment of this Court passed in **Shivam vs. State of U.P. and Another, 2021 SCC OnLine All 264**, whereby it is opined that after filing a petition under Section 482 Cr.P.C. and having failed in it, the concerned accused is not entitled for anticipatory bail.

8. In rebuttal, learned counsel for the applicant has stated that the word 'bail' includes anticipatory bail, as such he has applied for anticipatory bail.

9. It is true that the word 'bail' includes anticipatory bail and the applicant concerned cannot be debarred from applying for anticipatory bail if there is an order for bail.

10. After hearing learned counsel for the parties and taking into consideration the judgment of this Court passed in **Shivam (supra)** and the fact that the applicant has filed a petition under Section 482 Cr.P.C. and failed in it, I do not find it a fit case for grant of anticipatory bail to the applicant. The arguments tendered at Bar pertain to regular bail application and cannot be agitated at the stage of 438 Cr.P.C. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

11. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall

have no bearing on the merits of the case during trial.

**Order Date :- 8.11.2023**

Ravi Kant

**(Krishan Pahal, J.)**