

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13043 of 2023

Applicant :- Jogendra Singh @Yogendra Singh

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

Counsel for Applicant :- Atul Sharma, Ajay Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Jogendra Singh @Yogendra Singh** seeking anticipatory bail in Case No. 888 of 2000, Case Crime No. 94 of 1994, under Sections 302/32, 504, 506 IPC, Police Station Dakor, District Kanpur Jalaun.
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 very outset it is submitted by the learned AGA that since the process under Section 82 CrPC has been issued against the applicant and he has been declared a proclaimed offender, in view of the settled legal position regarding the issue that the anticipatory bail application moved by a proclaimed offender is not maintainable, the present application is not liable to be entertained.
4. To meet out this argument, learned counsel for the applicant has vehemently submitted that the present case lies in the category of rare and exceptional cases, so far as the grant of anticipatory bail is concerned. The anticipatory bail application was rejected by the Sessions Court at Jalaun on 12.10.2023. The applicant moved the anticipatory bail application before this Court on 22.11.2023. Process under Section 82 CrPC has been issued against the applicant on 7.7.2023. The applicant was not a wilful defaulter.
5. In this matter, from the perusal of the record it reveals that the anticipatory bail application moved on behalf of the applicant was rejected by the Sessions Court at Jalaun on 12.10.2023. The applicant moved the anticipatory bail application before this Court on 22.11.2023. Process under Section 82 CrPC has been issued against the applicant on 7.7.2023. Investigation in the matter has been completed and charge sheet has been submitted. Hence, it is

clear that at the time of issuance of process under Section 82 CrPC against the applicant no anticipatory bail application was pending and the applicant was declared proclaimed offender, as he was not cooperating with the trial court. Even at the time of consideration of his application for anticipatory bail by the Sessions Court, he was already a proclaimed offender. It also reveals that proceeding under Section 299 CrPC has also been initiated against the applicant.

6. In the recent pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023, the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (relevant portion of paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender....."

7. In view of the above discussions and keeping in view the conduct of the applicant and also following the dictum of the Hon'ble Apex Court in the aforesaid decision, in my view, the present case does not fall in the category of exceptional and rare case and same is not maintainable. Since the applicant was not cooperating with the trial court and remained absconded, process under Section 82 CrPC was issued against him to procure his presence.

8. The anticipatory bail application is **rejected** as not maintainable.

Order Date :- 11.12.2023

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