

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12873 of 2023

Applicant :- Rahman

Opposite Party :- State of U.P.

Counsel for Applicant :- Rizwan Ullah Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant - **Rahman** in Case Crime No. 178 of 2023, under Sections 379 and 411 I.P.C., Police Station - Kotwali Nagar, District - Saharanpur.
2. Heard learned counsel for the applicant as well as the learned AGA and perused the material available on record.
3. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. Applicant's case is squarely covered under Section 438 Cr.P.C. Investigation in the matter is going on. It is further submitted that if the applicant is enlarged on bail, he will not misuse the liberty. The applicant has apprehension of his arrest any time.
4. Learned A.G.A. opposed the prayer and submitted that on the basis of instructions received, the police is not making any attempt to arrest the applicant as the alleged offences are punishable with the imprisonment for a maximum period of seven years.
5. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.
6. In this matter, as is evident from the record, offences levelled against the applicant are punishable with the imprisonment upto seven years. Specific provisions under Section 41-A CrPC have been provided giving protection to the accused person from arrest for the offences punishable upto seven years' imprisonment and in **Arnesh Kumar vs. State of Bihar and another, (2014) 8 SCC 273**, the Hon'ble Apex Court has also emphasized upon the power

of police to arrest without warrant and it has been clarified that a balance between individual liberty and societal order should be made while exercising power of arrest. It has also been directed that where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, the police officer shall not arrest the accused unnecessarily and Magistrate shall not authorize detention casually and mechanically. The Hon'ble Apex Court has reiterated the guidelines / observations made in **Arnesh Kumar** (supra) in **Md. Asfak Alam vs. The State of Jharkhand and another (Criminal Appeal No. 2207 of 2023)**, decided on 31.7.2023. Even in Section 438 CrPC it has been promulgated that accused must have reason to believe that he may be arrested in cognizable offence by the police to get protection of anticipatory bail. In the light of aforesaid provisions, the applicant has no reason to believe that he may be arrested. Hence, having regard to the entire facts and circumstances of the case, no indulgence is warranted in the matter. Prayer made in the application is refused.

7. This Court directs that the Investigating Officer of the case would comply with the directions of the Hon'ble Apex Court rendered in **Arnesh Kumar** and **Md. Asfak Alam case** (supra) in letter and spirit.

8. The application stands **disposed of** accordingly.

Order Date :- 23.11.2023

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