

**Court No. - 70**

**Case :- MATTERS UNDER ARTICLE 227 No. - 12210 of 2023**

**Petitioner :-** Diwakar @ Sani

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Gyanu Shukla

**Counsel for Respondent :-** G.A.

**Hon'ble Sameer Jain,J.**

1. The instant application, filed under Article 227 of Constitution of India, is placed before this Bench after the order passed by the Senior Judge of this Court dated 28.11.2023 on the application moved by the petitioner.

2. Heard Sri Gyanu Shukla, learned counsel for the petitioner and Sri Kuldeep Singh, learned AGA appearing on behalf of the respondents.

3. Learned counsel for the petitioner submitted, the instant application under Article 227 of Constitution of India has been moved to release the applicant on short term bail/ parole for one month. He further submitted that as on 29.11. 2023 i.e. tomorrow there is *thirteenth day ceremony* of his father, who unfortunately expired on 19.11.2023, and petitioner is the sole son of his late father, therefore, for one month short term bail/ parole should be granted to him so as he may discharge his religious obligation.

4. At this stage, learned AGA raised preliminary objection and submitted that a prayer for short term bail/ parole cannot be made under Article 227 of Constitution of India and it can only be prayed under Section 439 Cr.P.C., therefore, the instant petition filed by the petitioner is not maintainable and, therefore, is liable to be dismissed as not maintainable.

5. I have heard both the parties and perused the record of the case.

6. From the record, it reflects that petitioner moved the instant application under Article 227 of Constitution of India with the following prayer:-

*" I. direct the concerned authority to enlarge the applicant on short term bail/ parole of one month time in Sessions Trial No. 69 of 2023 (State Vs. Sushil @ Munna and others) under Sections 147, 148, 149, 307 and 302 IPC, Police*

*Station- Sikandrara, District- Hathras arising out of case crime no. 513 of 2022, pending before Additional Sessions Judge-Ist, Hathras.*

*II. or other and further order which this Hon'ble Court of deem fit and proper under the facts and circumstances of the case.*

*III. issue a suitable direction directing the court below."*

7. From the record, it reflects that petitioner applied for short term bail/ parole before the court concerned but his parole/ short term bail application was dismissed by the court concerned on 24.11.2023 and order dated 24.11.2023 passed by the Additional Sessions Sessions, Court No. 1, Hathras is annexed as Annexure No. 7 to the affidavit.

8. By way of instant petition, applicant made a prayer to release him on short term bail/ parole for one month but I find force in the argument advanced by learned AGA that the instant application under Article 227 of Constitution of India is not maintainable and proper remedy was available before the petitioner under Section 439 Cr.P.C.

9. In view of the above, the instant application stands **dismissed as not maintainable.**

**Order Date :- 28.11.2023**

KK Patel