

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13905 of 2023

Applicant :- Smt. Sima

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Deshraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Deshraj Singh, learned counsel for the applicant and Sri Arun Kumar Mishra, learned A.G.A. for the State as well as perused the record.
3. This is the second anticipatory bail application filed on behalf of the applicant in F.I.R./Case Crime No. 228 of 2021, under Sections 308, 323, 324, 504 of IPC, Police Station- Asmauli, District- Sambhal, with a prayer to enlarge him on anticipatory bail. The first one was decided by the coordinate Bench of this Court vide order dated 09.12.2021 passed in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.18906 of 2021. The said order dated 09.12.2021 reads as under:-

"Heard over anticipatory bail application, under Section 438 Cr.P.C., moved by the applicant- Smt. Seema, in Case Crime No. 228 of 2021, under Sections 323, 324, 504, 308 I.P.C., Police Station- Asmauli, District- Sambhal.

Learned counsel for the applicant argued that the accused-applicant is innocent; she has been falsely implicated in this very case crime number whereas report was got lodged for offences punishable under Sections 325, 323, 504 I.P.C., whereas, on the basis of injury report, offence punishable under Section 308 I.P.C. was added; application for anticipatory bail was moved before court of session where it was rejected; there is every likelihood of arrest by the police; hence this application for anticipatory bail with above prayer.

Learned AGA has vehemently opposed with this contention that chargesheet has already been submitted in this very case crime number.

Having heard and gone through material placed on record, it is apparent that non cognizable offence was reported under Section 323, 504 I.P.C., this was against Kallu, Itwari, Harprasad and Smt. Seema, with accusation of abuse as well as threat followed by scuffle and assault, thereafter, on the basis of medical report, this N.C.R.

was converted into Case Crime No. 228 of 2021, under Sections 323, 324, 504, 308 I.P.C., Police Station- Asmauli, District- Sambhal; subsequently, a supplementary medical report is there, on the basis of which, offence punishable under Section 308 I.P.C. was added; the statement of injured has been annexed, which reveals the role assigned to applicant was of abuse only, rather, the accusation of assault was for Itwari, Kallu and Harprasad, whereas, Kallu and Itwari, have been granted bail by trial Court itself.

Under above facts and circumstances, the mere accusation against applicant Smt. Seema, is as above, punishable under Section 504 I.P.C. and it is an offence punishable with less than seven years of sentence, for which a direction is there under Section 41 of Cr.P.C. as well as in law laid down by this Court in the case of Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290 as well as judgement passed by Hon'ble Apex Court reported in 2009 (3) ADJ 322 (SC), Lal Kamendra Pratap Singh Vs. State of U.P.

Hence, no ground for grant of anticipatory bail is made out except this observation that Court concerned is to abide by Section 41 of Cr.P.C. as well as law, cited as above, at the time of disposal of bail application of Smt. Seema."

4. After arguing for some time, applicant's counsel submits that the present application for anticipatory bail may be disposed of with liberty to file a regular bail application which may be decided keeping in view the guidelines as laid down by the Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and another**, reported in 2022 SCC Online SC 825.

5. Learned A.G.A. has no objection to the prayer made by the learned counsel for the applicant.

6. After hearing learned counsel for the parties, no case is made out for interference u/s 438 Cr.P.C.. The present anticipatory bail application is **disposed of** with the direction that the applicant shall surrender before the court concerned within four weeks from today and in case, a regular bail application is filed, the same be decided in view of the law laid down by the Supreme Court in the case of **Satender Kumar Antil (supra)**.

7. For the period of four weeks from today or till the time of surrender of the applicant before the court concerned, whichever is earlier, no coercive action shall be taken against the applicant, in the above case.

(Justice Krishan Pahal)

Order Date :- 16.12.2023

Siddhant