

Court No. - 16

1. Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2322 of 2023

Applicant :- Mohammad Alam

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Prateek Tewari,Arbab Hussain
Zaidi,Raj Nath Singh

Counsel for Opposite Party :- G.A.

2. Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2324 of 2023

Applicant :- Shahe Alam (In F.I.R. Shah Alam)

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Raj Nath Singh,Arbab Hussain
Zaidi,Prateek Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Prateek Tewari, the learned counsel for the applicant as well as Sri Jayant Singh Tomar, the learned Additional Government Advocate-I appearing on behalf of the State and perused the records.

2. The above applications have been filed by the applicants seeking anticipatory bail in F.I.R. bearing Case Crime No. 210/2022, under Section 3(1) U.P. Gangsters & Anti Social Activities (Prevention) Act, Police Station Safdarganj, District Barabanki.

3. The learned AGA has raised a preliminary objection that the applicant is seeking anticipatory bail regarding offence under Section 3(1) U.P. Gangsters & Anti Social Activities (Prevention) Act, Police Station Safdarganj, District Barabanki whereas Section 438(6)(a)(iv), as it applies to the State of U.P., provides that the provisions of Section 438 Cr.P.C. shall not be applicable to the offences arising out of U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986.

4. Replying to the aforesaid preliminary objection, the learned counsel for the applicant has placed before this Court a judgment of the Hon'ble Supreme Court in ***Vilas Pandurang Pawar & Anr. v. State of Maharastra*** (2012) 8 SCR 270, ***Dr.***

Subhash Kashinath Mahajan v. the State of Maharashtra & Anr. (2018) 4 SCR 877 and **Prithvi Raj Chauhan v. Union of India & Ors** (2020) 4 SCC 727. He has also placed reliance on a judgment of the Hon'ble High Court of Kerala at Ernakulum in the case of *X v. State of Kerala*, Bail Application No. 144 of 2023 decided on 20.09.2023.

5. In the case of **Vilas Pandurang Pawar**, the Hon'ble Supreme Court was not dealing with the provision of Section 438 Cr.P.C. as it applies to the State of U.P. and, therefore, the aforesaid judgment is not relevant for decision of the present case.

6. In **Dr. Subhash Kashinath Mahajan** the Hon'ble Supreme Court held that there is no absolute bar against grant of anticipatory bail in cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

7. In **Prithvi Raj Chauhan (supra)**, the Hon'ble Supreme Court held that Section 438 Cr.P.C. shall not apply to the cases Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by [section 18](#) and [18A](#) (2) shall not apply.

8. In **X v. State of Kerala**, the question involved was whether Sub-section (4) of Section 438 Cr.P.C. creates an absolute bar in granting pre-arrest bail to an accused involved in the offence of rape of a minor girl.

9. The mandate of Section 438(6)(a)(iv) Cr.P.C. is clear and there is no ambiguity in it. The question of prima facie satisfaction of innocence of otherwise would only arise when the Court entertains the application and examines it on its merits. As Section 438(6) clearly provides that the provisions of Section 438 shall not be applicable to the offences arising out of U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986, this Court has no power to entertain an application for grant of anticipatory bail for offence under U.P. Gangsters & Anti Social Activities (Prevention) Act.

10. Accordingly, the application is not maintainable and is **dismissed** as such.

Order Date :- 19.10.2023

Pradeep/-