

**Anticipatory Bail Only A Statutory Right Not Linked With Article 21; Successive Pleas Not Maintainable: Allahabad High Court**

**2022 LiveLaw (AB) 493**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**SURESH KUMAR GUPTA; J.**

CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 8376 of 2022; 15.11.2022

**Raj Bahadur Singh versus State of U.P.**

*Counsel for Applicant :- Rajeev Giri, Raj Kumar Singh, Sheshadri Trivedi Counsel for Opposite Party :- G.A.*

1. This is the second anticipatory bail application. The first anticipatory bail application was duly rejected by a coordinate bench of this Court passed in Crl. Misc. Anticipatory Bail Application No. 19577 of 2021 vide order dated 14.12.2021 which reads as under:

*"Heard learned counsel for the applicant and learned A.G.A.*

*The instant anticipatory bail application has been filed on behalf of the applicant, Raj Bahadur Singh with a prayer to release him on bail in Case Crime no. 126 of 2019, under Sections 363, 366, 376 I.P.C. and section 3/4 POCSO Act, P.S. Suriyawan, district-Bhadohi.*

*Learned counsel for the applicant contended that the applicant is absolutely innocent and has been falsely implicated in the present case just only to tarnish his image and injure his reputation in the society. The applicants have definite apprehension that they may be arrested by the police any time. He lastly contended that if the applicant is released on bail, he will co-operate in the investigation.*

*Learned A.G.A. has vehemently opposed the prayer for anticipatory bail and submitted that the alleged victim in her statement recorded under Section 164 Cr.P.C. has made allegation of rape against the present accused. He also submits that the applicant is having criminal history of eleven cases, which are grievous in nature, hence the prayer for anticipatory bail is liable to be rejected.*

*Without expressing any opinion on the merits of the case and considering the submission advanced by learned counsel for the applicants, considering the criminal history, considering the nature of accusation; possibility of the applicant to flee from justice; where the accusation has not been made with the object of injuring or humiliating the applicant by having him so arrested, this Court finds no good ground for grant of anticipatory bail to the applicant.*

*Accordingly, the anticipatory bail application is rejected."*

2. The present anticipatory bail application under Section 438 Cr.P.C. has been filed by the applicant seeking anticipatory bail apprehending arrest in S.T. No. 20 of 2019 arising out of Case Crime No. 126 of 2019, under Sections 363/366/376 IPC & 3/4 POCSO Act, Police Station- Suriyawan, District- Bhadohi.

3. Learned counsel for the applicant has submitted that the applicant is innocent and has falsely been implicated in the present case. The counsel for the applicant further submits that the first anticipatory bail application was rejected on the ground of criminal history of the applicant sent by the police station concerned. In the first anticipatory bail application, it is mentioned that the applicant has criminal history of 11 cases. Regarding which the applicant filed RTI and as per RTI information, there are only 5 criminal cases against the applicant and as such due to changed circumstances, the applicant has preferred the second anticipatory bail application.

4. It is further submitted that the trial court summoned the applicant to face trial U/s 319 CrPC. Being aggrieved, the applicant approached this Court by means of Application U/s 482 CrPC No. 15004 of 2021 which was disposed of with a direction to the applicant to

appear before the court below and apply for bail within three weeks vide order dated 31.8.2021. Against the said order of this Court, the applicant approached before the Supreme Court, but no relief was granted to him. The applicant is ready to cooperate in the trial.

5. Learned AGA has vehemently opposed the prayer of the applicant and submitted that unless and until changed circumstances are shown in the affidavit, the second anticipatory bail application is not maintainable. Sufficient evidence is available against the applicant and there is no ground for false implication of the applicant. The accusation against the applicant is well founded. Thus, the application is liable to be rejected.

6. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the entire record.

7. Now the moot question arises as to whether second anticipatory bail application is maintainable or not in this matter.

8. Considering the aforesaid facts and circumstances of the case, I am of the view that there is no substantial difference between Sections 438 CrPC (Anticipatory bail) and 439 CrPC (Regular bail), as regards the appreciation of the case as to whether or not a bail is to be granted. The only distinction is that in a case under Section 438, the person who approaches the Court apprehends that he may be arrested without any basis whereas under Section 439, such person approaches the Court after his arrest. Evidently the power to grant anticipatory bail does not flow from Article 21 of the Constitution but it has been conferred by the Statute enacted by the Parliament whereas provisions contained in Section 439 flow from Article 21 of the Constitution of India. If bail application of the accused under Section 439 is dismissed once, he can move second and successive bail application on the ground of substantial change in factual situation between the earlier bail application and the subsequent one, but filing of second and successive bail applications on the basis of new argument and new twists on the same facts cannot be encouraged. Speedy trial is a Constitutional right of the accused provided to him by Article 21 of the Constitution. If first application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial. Section 439 relates to Constitutional right of the accused whereas Section 438 to his statutory right. The provisions of Section 438 should not be put to abuse at the instance of unscrupulous accused.

9. In view of the above, the second and successive anticipatory bail application is not maintainable. Every aspect has been dealt with by the coordinate bench of this Court passed in the first anticipatory bail application bearing No. 19577 of 2021 vide order dated 14.12.2021. The applicant already challenged the summoning order to face trial U/s 319 CrPC by means of Application U/s 482 CrPC No. 15004 of 2021 which was disposed of by this Court vide order dated 31.08.2021 with a direction to the applicant to seek remedy of regular bail. Due to non-cooperation of the applicant, the trial is still pending since year 2020. Thus, this is not a fit case for anticipatory bail and is hereby **rejected**.

10. However, it is provided that if the applicant appears/surrenders before the court below and applies for bail, then his bail application shall be considered and decided as per the law propounded by the Apex Court.