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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRCA No.652 of 2023**

Mohammed Husham

---- Applicant

**Versus**

State Of Chhattisgarh Through Mahila Thana Raipur, District Raipur  
Chhattisgarh.

---- Respondent

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For Applicant	:	Mr. Uttam Pandey, Advocate
For State	:	Mr. Gagan Tiwari, Dy. G.A.

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

**16.06.2023**

1. This is second anticipatory bail application. The first anticipatory bail application i.e. MCRCA No.177/2023 was dismissed by this Court on merit vide order dated 16.02.2023.

2. The present bail application arises out of Crime No.19/2023 registered at Police Station Mahila Police Station, Raipur, District Raipur (CG) for the offence punishable under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

3. Learned counsel for the applicant would submit that some facts were not brought into the notice of this Court at the time of hearing of first bail application for grant of anticipatory bail. He would also submit that statements of witnesses would have been recorded by the Investigating Agency and from the statement, genuineness of FIR can



be judged. He would also submit that '*khula talaq*' was sent by the applicant from the Islamic Court of Nagpur and no *Talaq-e-Biddat* was inflicted on the complainant, therefore, the application may be allowed.

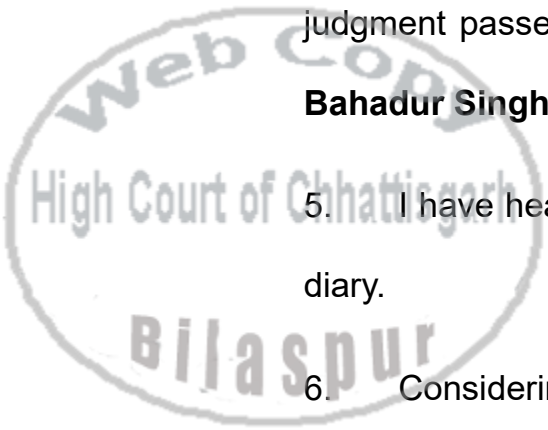
4. On the other hand, learned counsel for the State would oppose the prayer and would submit that anticipatory bail is not statutory right linked with Article 21 of the Constitution of India, therefore, successive pleas not maintainable. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of **Mohd. Shamim Khan Vs. State of Jharkhand, Special Leave to Appeal (Crl.) No.9449/2021** and judgment passed by the **High Court of Allahabad** in the matter of **Raj Bahadur Singh Vs. State of U.P., reported in 2022 LiveLaw (AB) 493.**

5. I have heard learned counsel for the parties and perused the case diary.

6. Considering the fact that first bail application was dismissed on merits by a detailed order and second bail application has been preferred by the applicant more or less on the same grounds.

7. In the matter of *Mohd. Shamim Khan (supra)*, the Hon'ble Supreme Court has deprecated the practice of filing second anticipatory bail application under Section 438 of Cr.P.C. and held as under :-

"The first application under Section 438 of the Cr.P.C. filed by the petitioner was rejected by the High Court by an order dated 10.11.2020. There was no substantial change of circumstances placed on record while filing the second application seeking pre-arrest bail under Section 438 of the Code and that came to be rejected by the High Court under the order impugned dated 02.08.2021.





Even before us, the learned Counsel for the petitioner is unable to show any change of circumstances to invoke the jurisdiction of filing second application under Section 438 of the Code before the High Court.

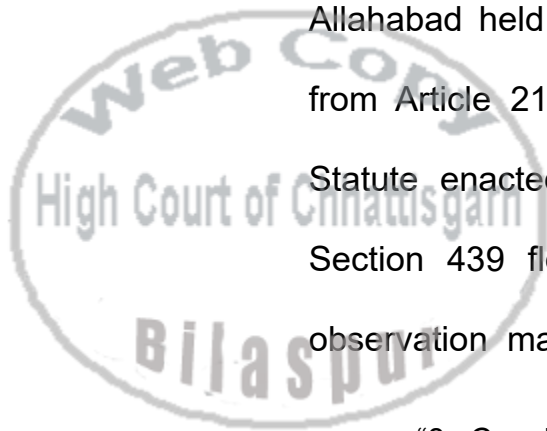
We deprecate such practice of filing second application under Section 438 of the Code after the first being rejected.

We have heard learned Counsel for the petitioner and find no reason to interfere in our jurisdiction under Article 136 of the Constitution.

The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.”

8. In the matter of *Rajbahadur Singh (supra)*, the High Court of Allahabad held that 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. The observation made in para 8 as under :

“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. Taking into consideration the facts of the present case and law laid down by the Hon’ble Supreme Court and High Court of Allahabad, I am of the view that there is no change of circumstance and first anticipatory bail application was dismissed vide order dated 16.02.2023 on merits and thus, this successive application is not maintainable and the same is dismissed.

10. The observation made in the course of this order or only for considering the case of the applicant. The concerned Trial Court shall not be influenced or bound by the observation made in the course of this order.

**Sd/-**

**(Rakesh Mohan Pandey)**

Judge