

**Court No. - 71**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 10246 of 2023

**Applicant :-** Deepak Prakash Singh @ Deepak Singh

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Arun Kumar Tripathi

**Counsel for Opposite Party :-** G.A.,Babu Lal  
Ram,Gyanendra Kumar

**Hon'ble Shekhar Kumar Yadav,J.**

1. Heard Mr V. P. Srivastava, learned Senior Counsel assisted by Mr Arun Kumar Tripathi, learned counsel for the applicant, learned Additional Government Advocate for the State of U.P. and perused the record. Learned counsel for the informant is also present.

2. This Criminal Misc. Anticipatory Bail Application has been filed seeking anticipatory bail in Case Crime No. 0139 of 2023, under Sections 354,376 IPC and Section 7/8 of POCSO Act and Section 3(2)(Va) of SC/ST Act, P.S. Jafarabad, District Jaunpur, during the pendency of present application.

3. A preliminary objection has been raised by learned A.G.A. as well as learned counsel for the informant with regard to the maintainability of the instant application under Section 438 Cr.P.C. by virtue of bar contained under Section 18 and 18A of the S.C./S.T. Act and Section 438(6) Cr.P.C. as it is applicable in the State of U.P. contending anticipatory bail application moved by applicant is not maintainable by virtue of bar contained under Section 438 (6) Cr.P.C.

4. In reply to the above contention, it is submitted by learned senior counsel for the applicant that comparative analysis of the objects, scheme and scope of Protection of Children from Sexual Offences Act, 2012 and SC/ST Act, 1989 shows that, in any case, involving both the offences punishable under the protection of Child from Sexual Offences Act, 2012 and SC/ST Act, the procedure laid down under the provisions of Protection of Child from Sexual Offences Act, 2012 shall be applicable. Hence, it is submitted that the

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instant anticipatory bail application under Section 438 Cr.P.C. is maintainable.

5. Learned counsel for the applicant has also drawn the attention of this Court towards the judgement of Hon'ble Supreme Court passed in **Prithvi Raj Chauhan Vs. Union of India and others; 2020 4 SCC 727** and vehemently submitted that though a bar has been created by virtue of Section 18 and 18A of the SC/ST Act and Section 438(6) Cr.P.C. pertaining to the anticipatory bail of an accused person seeking anticipatory bail pertaining to the offences provided in SC/ST Act, however, in the above judgment passed by the Supreme Court, it has been categorically laid down that if the allegations in the F.I.R. are prima facie appearing to be misconceived and not appearing truthful and the case appears to have been lodged only for the purpose of harassment with malafide and prima facie the provisions of S.C./S.T. act are not attracting, in that case the jurisdiction of anticipatory bail is not barred for an accused person, who is charged with offences pertaining to SC/ST Act.

6. Further, in the case of **Rinku Vs State of UP, Criminal Misc Bail Application No. 17348 of 2018**, it has been held by co-ordinate Bench of this Court that the provision of the POCSO Act will prevail over the SC/ST Act and whenever an offence under the POCSO Act is alleged, along with the provisions of SC/ST Act, the accused is entitled to take recourse of the procedure contemplated under the POCSO Act for bail. I am in complete agreement with the concurrent view expressed by the co-ordinate Bench of this Court.

7. Further, Supreme Court of India in the case of **Sharat Babu Digumarti Versus Govt. of NCT of Delhi, 2017 (1) PLJR (SC) 382** has held that where there are two special statutes which contain non obstante clauses the later statute must prevail because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and it's non obstante clause and the Legislature still confers the later enactment with a non obstante clause, means that the Legislature wanted that the later enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment which in other words means that in case of conflict between two enactments the earlier enactment shall prevail.

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8. In this bail application, offences under the SC/ST Act and the POCSO Act are both charged against the applicant. Special Court under the POCSO Act, would have jurisdiction to determine the bail plea in the present crime, where offences under the SC/ST Act are also charged. Further an appeal under Section 14(A) of SC/ST Act, will lie only when the orders granting or refusing bail to an accused is passed by the Special Court or the Exclusive Special Court constituted under the provisions of the SC/ST Act, 1989, but in this case the order refusing bail has been passed by the Special Court constituted under the POCSO Act and not by the Special Court under the SC/ST Act, therefore, in my considered view, the objection of the learned AGA regarding maintainability of the presnet anticipatory bail application is not sustainable in the eyes of law and is accordingly overruled.

9. Now the merits of the case:-

10. In short, as per contents of the FIR, applicant is said to have molested the minor daughter of the informant on 26.7.2023 at about 6 to 7 pm in the evening. It is alleged that while the informant along with his daughter was grazing goats in the neighborhood and when the informant sent her retarded daughter to home to get water, there the applicant called her daughter and dragged her daughter inside the house and forcefully made her lie down on the ground without her consent and when her daughter made noise, he forcibly pressed her hand on her mouth and molested her.

11. Initially, FIR was lodged on 27/7/2023 under Sections 354 IPC and Section 7/8 of POCSO Act and Section 3(2) (Va) of SC/ST Act. It is after the statement of the victim said to have been recorded under Sections 161, 164 Cr.P.C. Section 376 IPC has been added in the case.

12. Learned counsel for the applicant/accused contended that he is innocent and has been falsely implicated by the informant. He has committed no offence as alleged by the prosecution. He has neither molested the victim nor invited her to his house. The First Information Report has been filed with a delay without any proper explanation. It is further contended that there was a rivalry between him and the informant's family and litigation in the revenue and civil courts is pending and with the intention of pressurizing for settlement in the said case, the above fake case was

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registered against the applicant on the basis of wrong, untrue, false, fabricated and false facts. It is further submitted that there are contradictions among the first information report and the victim's statements said to have been recorded under Section 161 & 164 Cr.P.C. The applicant has no criminal history. There is no credible evidence to connect the applicant with the crime in question. The applicant is under apprehension of imminent arrest. In case, the applicant is released on bail, he would not misuse the liberty of bail and would cooperate with the trial.

13. Learned Additional Government Advocate as well as learned counsel for the informant, have opposed the prayer for granting anticipatory bail to the applicant. It is further submitted that looking to the statement of the victim under Section 164 Cr.P.C. no case for bail is made out. They have also drawn the attention of the Court towards the statements of the victim recorded under Section 161 and 164 Cr.P.C. in which she has supported the prosecution case. It is further submitted that the victim was unable to speak, hence her statement has been recorded through a special educator. The age of the victim girl is only 14 years and eight months and she is mentally retarded child. It is further submitted that the date of birth of the victim is mentioned in the educational certificate as 09.09.2008 and on the date of incident, the victim was a minor. It is also submitted by the learned AGA that though medical report does not support the factum of rape, but whether rape has occurred or not is legal conclusion and not medical. Absence of injuries on private part or other part of body of victim would not rule out her being subjected to rape. The applicant is accused of raping a minor victim belonging to Scheduled Caste. The matter is of very serious nature, hence the anticipatory bail application submitted by the accused deserves to be cancelled.

14. In this case, a heinous crime has been committed with a minor retarded girl aged about 14 years and eight months, by the applicant, who is said to be a Teacher. In our society, "A Teacher plays a very important role in shaping the future of their students" and such conduct of the teacher would certainly create an atmosphere of fear in the minds of people of society and such perpetrator should not go unpunished and should get just punishment from the Courts of law to curb such incidents in future.

15. In the light of above, looking to the facts and

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circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation, medical report and the statement under Sections 161 & 164 Cr.P.C., this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of applicant.

16. Accordingly, this application under Section 438 Cr.P.C. is rejected.

**Order Date :- 13.10.2023**

RavindraKSingh