

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No. 23 of 2020
(Under Section 438 of Cr.P.C)

Krishna Shamsher JB Rana

..... Applicant

Vs.

State of Uttarakhand and another

..... Respondents

Present:

Ms. Samridhi Arora, Advocate, for the applicant.

Ms. Mamta Joshi, Brief Holder for the State.

Hon'ble Sharad Kumar Sharma, J. (Oral)

The brief facts as are reflected from the record are that the applicant had earlier submitted a bail application before this Court, who is an accused for commission of offence under Sections 419, 420, 467, 468 and 471 IPC, which has been registered against him as Case Crime No. 145 of 2018 at PS Raiwala, District Dehradun on 03.09.2018.

2. After his arrest and as per the legal advice extended to the applicant, he had earlier approached to the learned Sessions Judge, Dehradun, by filing an Anticipatory Bail Application No. 1213 of 2018, Krishna Shamsher Jang Bahadur Rana vs. State. The said Anticipatory Bail Application, was later rejected by an order of 04.02.2019 by the Sessions Court. The reason for rejecting the Anticipatory Bail Application has been assigned by the learned Sessions Judge in his order of 04.02.2019 as contained in its paras 6 and 7, it was because of the fact that at that relevant point of time, when the Anticipatory Bail Application, was filed, the provisions of Section 438 Cr.PC., were not made applicable in the State of Uttarakhand, even, as per the provisions of Reorganization Act, because it was not a provision in vogue in the undivided State of Uttar Pradesh, which could have been made applicable then in February,

2018, as it was not on existing, which would stand applicable under the Reorganization Act as per its Section 86 and 87 of the Act.

3. The applicant filed yet another Anticipatory Bail Application No. 03 of 2020 Krishna Shamsher JB Rana vs. State of, before this Court. The same was taken up for consideration and after considering the impact of the Reorganization Act and non-applicability of the provisions contained under Section 438 Cr.P.C., this Court had rejected the Anticipatory Bail Application on 15.06.2020, on the ground that since the said provision is not applicable, the only recourse, which was available to the applicant at that relevant point of time, was to file regular bail, hence he was relegated to file a regular bail and, accordingly, the said observation was also made by this Court *vide* its order dated 15.06.2020. The relevant paras are referred to hereunder:-

“13. In that view of the matter, since Section 438 of the Cr.P.C. itself is not applicable in the State of Uttarakhand by virtue of amendment, which was carried by Act No. 16 of 1976 w.e.f. 28th November, 1975, which stood adopted by virtue of Section 86 to be read with 87 of the Reorganization Act, I have no hesitation to hold that the present Anticipatory Bail Application is not maintainable before this Court.

14. Hence, the same is dismissed without prejudice to the rights of the applicant to seek his regular bail for the aforesaid offences.”

4. During the intervening period, certain judicial developments took place and as a consequence of the judgment of the Division Bench, which was rendered on 19.09.2018, the provisions of Section 438 Cr.P.C. was made applicable in the State of Uttarakhand by a judicial precedent.

5. Subsequently, the Anticipatory Bail Application, which was preferred by the applicant before the learned Sessions Judge, being Anticipatory Bail Application 1112/2018, which was rejected by the Sessions Judge, Dehradun, by an order of 23.09.2020, it was based on extracting the reasoning, which were given by this Court, in its order dated

15.06.2020 in Anticipatory Bail Application No. 03 of 2020 then holding thereof that since I had earlier directed to file a regular bail, the Anticipatory Bail Application which had been filed later before the Sessions Judge would not be maintainable.

6. This was apparently wrong reasoning, which has been assigned by the Sessions Judge for the reason being that at that point of time relegating the applicant to file a regular bail by the order dated 15.06.2020, was on the ground that Section 438 Cr.P.C. then at that time was not available to the applicant. Hence, the direction was given for filing of the regular bail. But, during the intervening period, when there was a change in law, and Section 438 Cr.P.C. was made applicable, then obviously the Anticipatory Bail Application which was preferred by the applicant ought to have been decided on its own merits rather than on account of restrictions/directions, which were made by this Court in its order dated 15.06.2003, because those reasoning after the judgment of Division Bench, cannot be extracted to hold that Anticipatory Bail Application, which was preferred by the applicant, cannot be decided on merits.

7. In that view of matter, while setting aside the order of 23.09.2020, as has been passed by the learned Sessions Judge, which is under challenge in the present Anticipatory Bail Application before this Court, instead of this Court venturing into the Anticipatory Bail Application, on its own merit, is relegating the matter to the Sessions Judge to decide the Anticipatory Bail Application itself on its own merit, under the changed circumstances of law, as made applicable in the State of Uttarakhand, and the Anticipatory Bail Application, as preferred by the applicant, would be decided on its own merits after considering the rival contentions of the parties to the proceedings. Subject to the above the impugned order is quashed.

8. The counsel for the applicant has expressed an apprehension that in all probabilities, the principal proceedings may be placed before the learned Trial Court by 2nd week of February, 2021. The applicant also

apprehends that in an event, if this order is not placed before the learned Sessions Judge for consideration of his Anticipatory Bail Application, which has been revived to be considered on merits as a consequence of the aforesaid judgment, the applicant apprehends for the stay of arrest.

9. In that eventuality, it would be left open for the applicant to file an appropriate application supported by an affidavit before the Sessions Judge, intimating about today's order and direction given therein to decide the Anticipatory Bail Application on its own merits and the Sessions Judge is requested to decide the Anticipatory Bail Application on its own merits before the next date.

(Sharad Kumar Sharma, J.)
Vacation Judge
29.01.2021

Kaushal