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A.F.R.

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Court No. - 90

Case :- CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 4464 of 2025

Applicant :- Asheesh Kumar
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Abhishek Trivedi
Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. This matter was heard on 18.06.2025. On that date, a preliminary objection was raised by Sri Pankaj Saxena, learned A.G.A. that present anticipatory bail application is not maintainable as same is filed merely on issuance of summon in complaint case. On issuance of a summons, the applicant has no reason to believe that he may be arrested unless non-bailable warrant is issued in complaint case. The above preliminary objection raised by learned A.G.A. was vehemently opposed by Sri Abhishek Trivedi, learned counsel for the applicant. Therefore, this Court after releasing the applicant on interim bail reserved the judgement on the issue whether anticipatory bail is maintainable merely on issuance of summons in the complaint case wherein the accusation is regarding the non-bailable offence.

2. Learned counsel for the applicant has submitted that on issuance of a summons in a complaint case wherein there is an allegation of committing a non-bailable offence against the applicant, the applicant has reasonable apprehension that on his appearance before the Court, he may be taken into custody by the court which would also fall in the category of apprehension of arrest as the object of custody or arrest is of curtailing the personal liberty of a person. In support of his contention, learned counsel

for the applicant has relied upon the judgement of Patna High Court in the case of **Muni Khatoon Vs. State of Bihar and others, 2017 SCC Online Pat 3808,** as well as the judgement of Division Bench of Delhi High Court in the case of **P.V. Narsimha Rao Vs. State (CBI), 1997 (40) DRJ (DB)** wherein the Patna High Court and the Delhi High Court have observed that power to release a person on anticipatory bail cannot be curtailed and this principle applies equally to both complaint cases as well as State cases.

3. *Per contra*, Sri Pankaj Saxena, learned A.G.A. has submitted that the words 'reason to believe' in Section 482 B.N.S.S. does not mean mere 'fear' and it must be founded on a reasonable ground and custody of the court cannot be equated with the arrest by the police. It is further submitted by learned A.G.A. that criminal enactment should be interpreted strictly, not liberally, as beneficial legislation.

4. After hearing the above submission, the legal question which arises is whether the anticipatory bail is maintainable during the proceeding of complaint case ? To decide this issue, it would be beneficial to reproduce Section 482 B.N.S.S. regarding anticipatory bail. Section 482 B.N.S.S. (corresponding Section 438 Cr.P.C.) is being quoted as under :-

> ***Section 482 B.N.S.S. :-***
>
> *1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
>
> *(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—*
>
> *(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
>
> *(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

5. The main ingredients of Section 482 B.N.S.S. are as follows :-

(a) Reason to believe that a person may be arrested.

(b) on the accusation of having committed a non-bailable offence.

(c) Upon arrest without a warrant by a police officer on such accusation, he shall be released on his readiness to give bail.

6. From the above mentioned ingredients of Section 482 B.N.S.S., it is clear that anticipatory bail would be maintainable where the person has reason to believe that he may be arrested without warrant by a police officer on accusation of having committed a non-bailable offence.

7. As per Section 2(29) B.N.S., “reason to believe” means sufficient cause to believe that thing but not otherwise. Therefore, mere fear will not be sufficient. Section 2(29) B.N.S. is being quoted as under :-

*2. **Definitions** – In this Sanhita, unless the context otherwise requires -*

(29) “reason to believe” - A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise;

8. The words “reason to believe” have been considered by the Constitution Bench of the Hon’ble Supreme Court in the case of **Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC**

565. The Hon'ble Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** has observed that expression 'reason to believe' that the applicant may be so arrested must be founded on a reasonable ground and mere 'fear' is not 'belief' and ground on which belief of applicant is based, that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Paragraph no. 35 of **Shri Gurbaksh Singh Sibbia (supra)** is being quoted as under :

> *35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief", for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.*

9. The word "non-bailable warrant" has been defined in Section 2(c) of B.N.S.S. wherein it is mentioned that all cases which are not mentioned as bailable in the First Schedule of B.N.S.S. would be non-bailable though the literal meaning of non-bailable offence is wherein the police normally would not grant bail after arrest. However, in bailable offence, police would release the person after arrest on bail if he is ready to give bail. But the Magistrate can grant bail in non-bailable offence on fulfilling certain conditions as mentioned in Section 480 B.N.S.S. Section 480 B.N.S.S. (corresponding Section 437 Cr.P.C.) is being quoted as under :-

480. When bail may be taken in case of non-bailable offence*-(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-*

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

> *Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:*
>
> *Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:*

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of Section 492 and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter VII or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023 or abetment of, or conspiracy or

attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,--

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond for his appearance to hear judgment delivered.

10. The police can arrest a person if offence is cognizable whether bailable or non-bailable but if the person is arrested in bailable offence, he would normally be released on bail by the police if the accused is ready to furnish the bail but in case of non-bailable offence, police is also required to produce the person before the concerned Magistrate within 24 hours as per Section 58 of B.N.S.S. Thereafter, the Magistrate decides whether a person should be sent to police custody or judicial custody or be released on bail. However, police can arrest a person if it is alleged that he has

committed a cognizable offence but for the maintainability of anticipatory bail under Section 482 B.N.S.S., there must be apprehension to arrest regarding non-bailable offence not the bailable offence.

11. From the above discussion, it is clear that there must be apprehension of arrest on the basis of an allegation of committing the non-bailable offence. The procedure of arrest has been mentioned in Section 43(1) B.N.S.S. which provides that in making the arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested except in the case of a woman providing oral intimation of the arrest as per proviso of Section 43(1) of B.N.S.S. Section 43(1) of B.N.S.S. is being quoted as under :

> *43. (1) In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:*
>
> *Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody or an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.*

12. The arrest can be made by a police officer, by any person or by a Judicial or Executive Magistrate. The process of arrest is the same as mentioned in Section 43(1) of B.N.S.S.

13. In Section 482 B.N.S.S., the word is ‘arrest’, not ‘custody’. The Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** has also observed that for anticipatory bail if the proposed accusation appears to be stemmed not from motive of furthering the ends of justice but from some ulterior motive, the object being injure and humiliate the applicant by having him **arrested**, a direction for the release of the applicant on bail in the **event of his arrest** would generally be made.

14. The term “arrest” has not been defined in either B.N.S. or B.N.S.S. though Section 43 B.N.S.S. lays down the mode of arrest. *Black’s Law Dictionary*, (5th Edition, 1979) defines “arrest” as follows :-

> *"To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All that is required for an "arrest" is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer, no formal declaration of arrest is required."*

15. Similarly, the term "custody" is also not defined in either B.N.S. or B.N.S.S. But the definition of "custody" can be borrowed from the *Corpus Juris Secundum* (Vol. 25 at p. 69) and the same is as follows :-

> *"When it is applied to persons, it implies restraint and may or may not imply physical force sufficient to restrain depending on the circumstances and with reference to persons charged with crime, it has been defined as meaning on actual confinement or the present means of enforcing it, the detention of the person contrary to his will. Applied to things, it means to have a charge or safe-keeping, and connotes control and includes as well, although it does not require, the element of physical or manual possession, implying a temporary physical control merely and responsibility for the protection and preservation of the thing in custody. So used, the word does not connote dominion or supremacy of authority. The said term has been defined as meaning the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the prisoner to whose custody it is subjected; charge; charge to keep, subject to order or direction; immediate charge and control and not the final absolute control of ownership."*

16. From the perusal of the definition of "arrest" and "custody", it is clear that "arrest" is different from "custody". Therefore, the term "arrest" used in Section 482 B.N.S.S. cannot be equated with the term "custody" which the police takes after arrest or the court can take on surrendering or producing an accused before it.

17. Section 438 Cr.P.C. (corresponding Section 482 B.N.S.S.) was introduced on the basis of the 41st report dated 24.09.1969 of the Law Commission of India which pointed out the necessity of introducing the provision in the Code to grant anticipatory bail. The object of inserting this section has been mentioned in paragraph no. 39.9 of this report of Law Commission of India, and the same is being reproduced as under :-

"The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

(3) If any person in respect of whom such a direction is made ***is arrested without warrant by an officer in charge of a police station on an*** *accusation of having committed that offence, and is prepared either at* ***the time of arrest or at any time while in the custody of such officer to give bail****, such person shall be released on bail.'*
We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any

> *observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused."*

18. From the perusal of the above recommendation of the Law Commission of India, it is clear that the purpose of introducing the provision of anticipatory bail is to grant **protection from the arbitrary arrest by the police**.

19. The three-Judge Bench of the Apex Court in the case of **Balchand Jain (Shri) Vs. State of Madhya Pradesh, (1976) 4 SCC 572** also considered the object and legislative intent of Section 438 Cr.P.C. and observed that intention of the legislature in enshrining the salutary provisions in Section 438 Cr.P.C. which applies only to non-bailable offence, was to see that the liberty of a person is not to be in jeopardy on frivolous grounds at the instance of unscrupulous or **irresponsible officers** or **persons who may be incharge of prosecution.**

20. Similarly, the Constitution Bench of the Apex Court in the case of **Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another, (2020) 5 SCC 1** while considering the issue regarding limitation of period of anticipatory bail also observed that basic object behind Section 438 Cr.P.C. as per 41st and 48th report of Law Commission is protection against **arbitrary and unwanted arrest by the police** and also providing a preventive or curative measure to deal with unwanted arrest. It is worth noting that unwanted arrest or detention can be made by the police or a prosecuting agency rather than by the court. Paragraph nos. 57 and 62 of **Sushila Aggarwal (supra)** is being quoted as under :

> *57. The interpretation of Section 438 — that it does not encapsulate Article 21, is erroneous. This Court is of the opinion that the issue is not whether Section 438 is an intrinsic element of Article 21 : it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which*

Parliament itself recognised as a ***widespread malaise on the part of the police.***

62. This Court cannot lose sight of the fact that the Law Commission's 41st and 48th Reports focused on the need to introduce the provision (for anticipatory bail) as a preventive, or curative measure, to deal with a particular problem i.e. unwarranted arrests. Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] noticed this fact, and also that significantly, Section 438 is not hedged with any obligation on the court's power, to impose conditions. That situation remains unchanged : the provision remains unaltered — at least substantially (barring an amendment in 2005 which obliged the issuance of notice to the Public Prosecutor before issuing any order for anticipatory bail) [The amendment i.e. the Criminal Procedure Code (Amendment) Act, 2005 — which has till now, not been brought into force, reads as follows:"438. Direction for grant of bail to person apprehending arrest.—(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest, he shall be released on bail and the Court may after taking into consideration inter alia the following factors, namely—(i) the nature and gravity of the accusation;(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;(iii) the possibility of the applicant to flee from justice; and(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,either reject the application forthwith or issue an interim order for the grant of anticipatory bail:Provided that where the High Court or as the case may be the Court of Session has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail it shall be open to an officer in charge of police station to arrest without warrant the applicant on the basis of the accusation apprehended in such application.(I-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with the copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.(I-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice."] . The 203rd Report of the Law Commission, which reviewed the entire law on the subject and noticed later decisions, such as Salauddin [Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 : 1996 SCC (Cri) 198] , Adri Dharan Das [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , etc. recommended no change in law on this aspect

relating to conditions. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant anticipatory bail) is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under Section 376(3) or Section 376-AB or Section 376-DA or Section 376-DB of the Penal Code. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such offences. The amendment [Code of Criminal Procedure Amendment Act, 2018 introduced Section 438(4)] reads as follows:

> *"438. (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code."*

21. Sometimes confusion arises from the observations made in the case of **Sushila Aggarwal (supra)** in paragraph no. 7.6, wherein the Apex Court while considering the observations of Constitution Bench of Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** regarding imposition of condition for limiting the period of anticipatory bail, that for limiting the period of anticipatory bail, the court may consider the circumstances especially the stage for filing the anticipatory bail whether at the stage before F.I.R. is filed or after filing of F.I.R. or at the stage when the investigation is complete and charge-sheet is filed. However, the above observations in **Sushila Aggarwal (supra)** do not suggest that anticipatory bail is maintainable upon issuance of a summons after the concerned court takes cognizance on the charge-sheet or complaint. Even otherwise, the Apex Court in the case of **Union of India Vs. Amrit Lal Manchanda and Another, (2004) 3 SCC 75** and **Jitendra Kumar Singh and Another Vs. State of U.P. and Others, (2010) 3 SCC 119** observed that observations of the court are neither to be read as Euclid's theorem nor as a provision of statute and that too taken out of their context and isolated observation in a judgement cannot be treated as a precedent dehors the fact. The discussion in a judgement is meant to explain, not to define.

22. The Constitution Bench of Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** while considering the issue of limitation on the duration of anticipatory bail also considered the legislative intent behind enacting the Section 438 Cr.P.C. (corresponding Section 482 B.N.S.S.) and observed that the proof of legislative intent can be gathered from the language which legislature uses but in case of ambiguity, same can be resolved by resort to extraneous aids. It was also observed that there must be imminent likelihood of arrest, which is the basis for the maintainability of anticipatory bail. Relevant extract of paragraph no. 12 of **Shri Gurbaksh Singh Sibbia (supra)** is being quoted as under :

> *"The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non- bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail if generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail."*

23. The Constitution Bench of the Apex Court again in paragraph no. 41 of **Shri Gurbaksh Singh Sibbia (supra)** observed that while granting anticipatory bail under Section 438 Cr.P.C., a possible conflict between the right of an individual to his liberty and the **right of the police to investigate into crimes reported** to them can be avoided. Paragraph no. 41 of **Shri Gurbaksh Singh Sibbia (supra)** is quoted as under :

> *41. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of*

> *anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.*

24. The Apex Court in the case of **Arun Kumar Aggarwal Vs. State of Madhya Pradesh and Others, (2014) 13 SCC 707** has considered the effect of observation made in the judgement and held that the term “obiter dictum” is a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).

25. When the intention of the legislature is evident from the language of a section, the court should not add any word to interpret in a way that would result in an interpretation that was never intended by the legislature. The Apex Court in the case of **Supreme Paper Mills Limited Vs. Assistant Commissioner, Commercial Taxes, Calcutta and others, (2010) 11 SCC 593** also observed as under :

> *“Where the statutory language is clear and unambigious, it would not be proper for the court to add any words thereto and evolve some legislative intent not found in the statute.”*

26. The Apex Court in the case of **Sukhdev Singh Vs. State of Haryana, (2013) 2 SCC 212** considered the issue of interpretation of statute and observed as under :

> *“No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed.”*

27. From the perusal of Section 482 B.N.S.S. (438 Cr.P.C.) as well as judgement discussed above, it is clear that language of Section 482

B.N.S.S. is very clear and there is no ambiguity and purpose of anticipatory bail u/s 482 B.N.S.S. (438 Cr.P.C.) is to grant protection from unwanted and arbitrary arrest on the part of police or other prosecuting agency without warrant and not against the custody which could have been taken by the court on appearance before the concerned court concerning accusation of committing a non-bailable offence.

28. From the conjoint reading of Section 482 (1) and 482 (3) of B.N.S.S., it is clear that there must be an apprehension of arrest by the police without a warrant. Now, the question arises if in a complaint case, filed on accusation of committing non-bailable offence, the court issues an arrest warrant or proclamation against the accused for his appearance, whether in that case anticipatory bail would be maintainable even though the accused has apprehension of arrest ? This question is no more *res integra*.

29. The Apex Court in the recent judgement in the case of **Srikant Upadhyay and Others Vs. State of Bihar and Anr., (2024) INSC 202** after considering the earlier judgements of the Apex Court in the cases of **Prem Shankar Prasad Vs. State of Bihar and Another, (2022) 14 SCC 516, Lavesh Vs. State (NCT of Delhi), (2012) 8 SCC 730** and **State of Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171** observed that in case wherein a warrant of arrest or a proclamation is issued, the applicant is not entitled to invoke the extraordinary remedy of anticipatory bail. However, in exceptional circumstances, the court can grant anticipatory bail even on the issuance of a non-bailable warrant or proclamation. Relevant extract of the judgement of **Srikant Upadhyay (supra)** is being quoted as under :

> *At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.*

30. Therefore, if a court issues a summons or a bailable warrant in a complaint case then it cannot be presumed that the person has a reasonable apprehension of being arrested by the police or prosecuting agencies even if there is an accusation of committing a non-bailable offence in the complaint.

31. So far as the judgement of the Apex Court in **Bharat Chaudhary and Another Vs. State of Bihar and Another, (2003) 8 SCC 77,** judgement of Division Bench of Delhi High Court in the case of **P.V. Narsimha Rao (supra)** and judgement of Patna High Court in the case of **Muni Khatoon (supra)** relied upon by learned counsel for the applicant are concerned, this Court with great respect submits that these judgements are against the ratio of Constitution Bench judgement of Supreme Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** as well as **Sushila Aggarwal (supra)** wherein it is clearly observed that apprehension of arrest in Section 438 Cr.P.C. (482 B.N.S.S.) must involve an arbitrary and **unwanted arrest by the police**. Therefore, when a person is taken into custody by the court upon appearing before it, in response to a summons, this cannot be classified as an arrest as mentioned in Section 482 B.N.S.S.

32. Therefore, on the basis of above analysis, this Court holds the following :

(i) In a complaint case involving accusation of a non-bailable offence, anticipatory bail is not maintainable upon the issuance of a summons, as there is no apprehension of arrest by the police without warrant;

(ii) in the aforementioned complaint case, when a bailable warrant is issued, although the accused may fear the arrest in pursuance of bailable warrant but he will be released on bail on his readiness to provide it. Therefore, in such cases also, the anticipatory bail is not maintainable as there is no apprehension of arrest and detention.

(iii) In the event of a non-bailable warrant or proclamation issued in the above complaint case, anticipatory bail is typically not maintainable.

However, in view of the judgement of the Apex Court in **Srikant Upadhyay (supra)**, the court may grant pre-arrest bail in exceptional circumstances in the interest of justice.

33. Coming back to the facts of the present complaint case, record shows that till date, warrant whether bailable or non-bailable, has not been issued, therefore, merely issuance of summon by order dated 23.08.2022 against the applicant would not come within the premises of apprehension of being arrested by the police.

34. Therefore, the present anticipatory bail application is not maintainable. Accordingly, it is **rejected.**

35. However, the applicant is at liberty to file a regular bail application before the court below within a period of 15 days. In case such an application is filed, the court below shall consider the same in accordance with law.

Order Date :- 01.08.2025
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