



HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No. 1257 of 2024

22 January, 2025

Jogendra

.....Applicant

Versus

State Of Uttarakhand

.....Respondent

Presence:-

Mr. Arvind Vasishtha assisted by Mr. Vivek Pathak, Advocate for the applicant/accused.

Mr. G.S. Sandhu, Additional Advocate General with Mr. Rakesh Negi and Mr. Akshay Latwal, Brief Holders for the State.

Hon'ble Vivek Bharti Sharma, J.

By way of present application, the applicant is seeking anticipatory bail in F.I.R. No. 0802 of 2024, under Section 103(1), 109(1), 115(2), 190, 191(2), 193(3), 351(2), 352 and 61 (2) B.N.S. registered at Police Station Manglaur, District Haridwar.

2. Heard learned counsel for the parties and perused the record.

3. Learned State Counsel would submit that applicant/accused has an equally efficacious remedy available to file the anticipatory bail application before the Sessions Court but instead of approaching the Sessions Court, the applicant/accused has directly come before this Court.

4. Learned counsel for the State would further submit that the issue regarding entertainability of anticipatory bail application before the High Court u/s 482 B.N.S.S. is pending consideration before the Hon'ble Supreme Court in **Criminal Appeal**



**No.1562/2017 “Gauhati High Court Bar
Association v. The State of Assam & Ors.”**

the issue raised before the Hon’ble Supreme Court is that “Whether the High Court exercising jurisdiction under Section 482 B.N.S.S. has discretion not to entertain such an application on the ground that the applicant must first apply to the Court of Sessions.”

5. *Per contra*, learned counsel for the applicants/accused would submit that the High Court and the Court of Sessions have concurrent jurisdiction under Section 482 B.N.S.S. and the applicants/accused cannot be compelled to apply for anticipatory bail before the court of Sessions before approaching this High Court.

6. No doubt the High Court and the Sessions Court have concurrent jurisdiction 482 B.N.S.S. This is also abundantly clear from the language of Section 482 B.N.S.S. which says that any person who has reasons to believe that, he may be arrested on accusation of having committed a non-bailable offence, he may apply to High Court or the Court of Sessions for a direction under this Section, that in event of arrest he shall be released on bail. This means that High Court and Court of Session have concurrent jurisdiction to grant anticipatory bail for an offence. Hence, an application filed for grant of anticipatory bail directly in the High Court without first approaching Sessions Court is certainly maintainable. However, in considered view of this Court, the High Court hearing the application for anticipatory bail directly filed before it, always has discretion to entertain it or not or to direct



the applicant to first move the Court of Sessions for anticipatory bail.

7. This Court cannot be oblivious to the fact that there is equally efficacious remedy available with the applicants/accused to file application seeking anticipatory bail before the Sessions Court at the first instance. If the anticipatory bail applications are entertained in each and every case in the High Court, without exhausting the remedy before the Court of Sessions, it would result into flooding the High Court with cases for the relief which could have been granted by the Sessions Court and this Court will not be benefitted by the observations made by the Sessions Judge in the orders of rejections of the anticipatory bail application.

8. In view of the above, accused can certainly make an application for anticipatory bail before the High Court without first approaching the Court of Sessions but it is always open to the High Court, in such cases, either to exercise its discretion not to entertain such application for grant of anticipatory bail as equally efficacious remedy is available to the accused for anticipatory bail before the Court of Session or to entertain it considering the special facts and circumstances of that case.

9. In similar nature of case in ***“Ankit Bharti vs. State of U.P. and another and connected matters Criminal Misc. Anticipatory Bail Application No.1094 of 2020”***, Five Judges Full Bench of Hon’ble Allahabad High court has pondered upon this issue and observed as under:-



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“21. The special circumstances the existence of which have been held to be a sine qua non to the entertainment of an application for anticipatory bail directly by the High Court must be left for the consideration of the Hon’ble Judge before whom the petition is placed and a decision thereon taken bearing in mind the facts and circumstances of that particular cause. However special circumstances must necessarily exist and be established as such before the jurisdiction of the High Court is invoked. The application must rest on a strong foundation in respect of both the apprehension of arrest as well as in justification of the concurrent jurisdiction of the High Court being invoked directly...”

10. Hon’ble High Court of Andhra Pradesh at Hyderabad in **“Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others, 1993 SCC Online AP 243”** has held as under:-

“35.... It is not obligatory under Section 438 to move the Court of Session in the first instance. It is always open to this Court when an application is filed under Section 438, without first moving the Court of Sessions, to consider all the circumstances, and if situation warrants, this Court can direct the party to move the Court of Session.”

11. Hon’ble Karnataka High Court in **“Smt. Savitri Samson vs. State of Karnataka, ILR 2001 KAR 4080”** has observed as under:-

“...although the High Court has concurrent jurisdiction with Sessions Court to grant bail, it is desirable that ordinary practice should be that the lower court should be first moved in the matter, though in exceptional case and special circumstances, the High Court may entertain and decide an application for bail either under Section 438 or Section 439 Cr.P.C.”

12. Hon’ble High Court of Bombay in **“Mohanlal vs. State of Maharashtra, Crl Appln. No.84 of 2007, decided on 27.04.2007”** has also observed as under:-

“...Though an application for anticipatory bail filed directly to the High Court is maintainable, the High Court should ordinarily not entertaining such application unless exceptional reasons are made



out...”

13. It goes without saying that the Section 438 Cr.P.C. (*since repealed*) and Section 482 B.N.S.S. are same, therefore, the above judgment passed by various High Courts are equally applicable while disposing of any application in Anticipatory Bail Application under Section 482 B.N.S.S.

14. In the present case, applicant/accused is resident of District Haridwar. The F.I.R. is also registered at Police Station, Manglaur, District Haridwar. Learned counsel for the applicant/accused could not spell out the exceptional circumstances to make it a special case for the High Court to entertain this application for anticipatory bail without first exhausting equally efficacious remedy available to him in his home district itself.

15. In the opinion of this Court, this submission of learned counsel for the applicant/accused that anticipatory bail application filed before the Sessions Court does not get due consideration and that the Sessions Court are hesitant to grant relief, cannot be a ground to file every anticipatory bail in the High Court directly when the application for anticipatory bail can also be moved before the Sessions Court. The remedy of filing the anticipatory bail application is available in every cognizable and non-bailable offence.

16. It is common knowledge that the provision of anticipatory bail was not available in the State of Uttarakhand and prior to the creation of the State of Uttarakhand said provision of anticipatory bail was also



not available in the State of U.P. of which the State of Uttarakhand was previously part of. In absence of provision of anticipatory bail in the State of U.P. previously and State of Uttarakhand, the only remedy available to the accused was to approach the High Court u/s 482 of Cr.P.C. but as the provision of Section 438 Cr.P.C. (*as the criminal procedure then was*) has been made applicable in the State of Uttarakhand vide Notification No.205/XXXVI(3)/2020/82(1)/2019 dated August 11, 2020 the Sessions Court also has concurrent jurisdiction and the anticipatory bail application can be moved before Sessions Court also.

17. As the provision of anticipatory bail application has been introduced recently in the State of Uttarakhand and such application was not being moved before the Sessions Court prior to the introduction of the same, therefore, there seems to be some psychological barrier for the Sessions Court of the State while hearing the application for anticipatory bail effectively. But system of justice has to obviate such psychological barrier. If every anticipatory bail application is entertained in the High Court directly without first approaching the Sessions Court then the opportunity for the Sessions Court to rise to the occasion and grow would never see the light of the day.

18. It is also of common knowledge that State of Uttarakhand is a mountainous State with poor connectivity by roads and, therefore, it would not be possible for every person to approach the High Court, at Nainital directly for anticipatory bail. Therefore, unabated entertaining the anticipatory bail application



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directly by this Court would make denial of opportunity of justice to such litigants who cannot approach the High Court directly.

19. Therefore, this Court is of the view that although the High Court and the Sessions Court have the concurrent jurisdiction to entertain the anticipatory bail application but it should not be the situation in each and every case that anticipatory bail application without any special and exceptional circumstances should be entertained directly by the High Court without first approaching the Sessions Court. This goes without saying that when the application for anticipatory bail is first moved before the Sessions Court there can only be two situations, either it would be granted or rejected. If the anticipatory bail is granted, it would certainly save the time, money and energy of the accused to get the desired relief. However, if it is rejected by the Sessions Court then the order of rejection passed by the Sessions Court would throw light on the case and the High Court would be benefitted by the observations made by the Sessions Court in the rejection order.

20. At this stage, learned counsel for the applicants/accused seeks permission to withdraw the anticipatory bail application with liberty to file the same before the concerned Sessions Court.

(Vivek Bharti Sharma, J.)

Vacation Judge

22.01.2025

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