

Court No. - 65

Case :- CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 1053 of 2025

Applicant :- Gosia And 2 Others

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

Counsel for Applicant :- Anand Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Abhishek Pandey, learned Advocate holding brief for Sri Anand Kumar, learned counsel for applicants and Sri Ranveer Singh, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for State and also perused the material available on record.
3. The present application for anticipatory bail has been filed for protection in regard to FIR/Case Crime No. 250 of 2023, under Sections 147, 452, 323, 504, 506, 308 I.P.C., P.S.- Bhagatpur, District- Moradabad.
4. This is the second anticipatory bail application. The first one was rejected by this Court vide order dated 30.4.2024 and the applicant was granted protection for a period of four weeks in light of the judgment of *Satender Kumar Antil vs. Central Bureau of Investigation and another*, reported in *2022 SCC Online SC 825*.

PROSECUTION STORY:

5. As per prosecution story, the applicants and the other co-accused persons are stated to have barged into the house of the informant causing grievous injuries to four members of the family on 20.10.2023 at about 10.30 am.

ARGUMENTS ON BEHALF OF APPLICANT:

6. As a new ground, learned counsel has stated that the co-accused person Bhuri, whose bail was also rejected by this Court vide order dated 2.5.2024 has been granted bail by the Supreme Court vide order dated 17.9.2024 passed in Special Leave to Appeal (Crl.) No(s). 8293 of 2024, as such, the applicants are also entitled for bail on the ground of parity.
7. The order of the Supreme Court dated 1.7.2024 passed in Special Leave to Appeal (Crl.) No. 8293 of 2024 is being reproduced hereinbelow:-

"1. The petitioner is a sixty-four years old lady. The materials on record would reveal that this is a case of cross FIRs. No specific role has been attributed to the petitioner.

2. Issue notice, returnable in four weeks.

3. In the meantime, the petitioner shall not be arrested in connection with Case Crime No. 250 of 2023 registered with Police Station Bhagatpur, District Moradabad, Uttar Pradesh."

8. The order of the Supreme Court dated 17.9.2024 passed in Special Leave to Appeal (Crl.) No(s). 8293 of 2024 is being reproduced hereinbelow:-

"This Court vide order dated 01.07.2024 granted interim protection to the petitioner.

Taking into consideration the facts and circumstances of the case and upon hearing the learned counsel for the parties, we consider appropriate to make order dated 01.07.2024 absolute, provided the petitioner extends all cooperation during the trial, as according to Ms. Garima Prashad, learned Additional Advocate General for the State of Uttar Pradesh, the petitioner is not appearing in the trial, because of which the trial is getting delayed.

In case, any such complaint is further made, it would be open for the State of Uttar Pradesh to apply for recall of this order.

The Special Leave Petition and pending applications are disposed of accordingly."

9. Learned counsel for the applicants has stated that the applicants have been falsely implicated in the present case. They are unmarried girls and their life would be ruined, if they are sent behind the bars. It is stated that the injuries are simple in nature. Even no head injury has been sustained by any injured person, which stands corroborated from the supplementary report, in which no fracture has been sustained by any of the injured persons.

10. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is further submitted that the applicants have no criminal antecedents. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

ARGUMENTS ON BEHALF OF OPPOSITE PARTY/STATE:

11. The prayer for anticipatory bail has been opposed on the ground that the order from the Supreme Court was garnered by misleading, as it was mentioned in the earlier order that the interim protection was granted to the co-accused person Bhuri on 30.4.2024 that there is cross version to the instant case and subsequently, the said order has been made absolute by the Supreme Court.

12. The said argument of the applicant that there is no head injury sustained is also

false. All the four injured persons have sustained injuries to their cranium and they are all lacerated wounds, although it is true that in the supplementary report, no fracture was found but the argument that the injured persons have not sustained any injury on vital organ (head) is false.

13. There is no provision of filing second anticipatory bail application. On 30.4.2024, the applicants were granted protection to appear before the trial court and seek bail by the Court but they have misused the said opportunity and in the meantime, nine months have passed.

14. The applicants have not come with clean hands and they have concealed the fact that they had filed a petition u/s 482 Cr.P.C. No. 37191 of 2024 before this Court, and the same was rejected vide order dated 5.12.2024 and the applicants were granted protection for a period of six weeks to apply for bail. The same has also not been complied by the applicants. They are not letting the trial proceed, as it has been put to a standstill. There are four accused persons and there being no cross-version as stated by the co-accused person Bhuri before the Supreme Court, as such, the applicant is not entitled for bail.

CONCLUSION:

15. In ***Satpal Singh vs. State of Punjab (2018) 13 SCC 813***, the Supreme Court has held that the satisfaction of the court for granting protection under Section 438 Cr.P.C. is different from the one under Section 439 Cr.P.C. while considering regular bail. In ***Pratibha Manchanda and another Vs. State of Haryana and another (2023) 8 SCC 181***, the Supreme Court has opined that the relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest.

16. A three Judge bench of the Supreme Court in ***Criminal Appeal Nos.872-873 of 2020 'Dr. Naresh Kumar Mangla Vs. Smt. Anita Agarwal & others'*** held that:

19. It is apposite to mention here the distinction between the considerations which guide the grant of anticipatory bail and regular bail. In ***Pokar Ram vs. State of Rajasthan (1985) 2 SCC 597***, while setting aside an order granting anticipatory bail, this Court observed:

5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. Three situations in which the question of granting or refusing to grant bail would arise, materially and substantially differ from each

other and the relevant considerations on which the courts would exercise its discretion, one way or the other, are substantially different from each other. This is necessary to be stated because the learned Judge in the High Court unfortunately fell into an error in mixing up all the considerations, as if all the three become relevant in the present situation.

6. The decision of the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565*** clearly lays down that "the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest". Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. A direction under Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or confinement. In para 31, Chandrachud, C.J. clearly demarcated the distinction between the relevant considerations while examining an application for anticipatory bail and an application for bail after arrest in the course of investigation. Says the learned Chief Justice that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to 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. It was observed that "it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides, and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond". Some of the relevant considerations which govern the discretion, noticed therein are "the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and 'the larger interests of the public or the State', are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail". A caution was voiced that "in the evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it".

17. It is true that in the instant case, four persons have sustained injuries, that too, on vital organ i.e. cranium but there being no fracture, does not indicate that the injuries are not on the vital organ. The bail application of the co-accused person Bhuri was rejected by this Court vide order dated 25.2024 and the applicants have subsequently, agitated the provisions of Section 482 Cr.P.C. and failed, as such, I do not find it a fit case for grant of anticipatory bail to the applicants as the arguments advanced by learned counsel for the applicants pertains to regular bail application

and cannot be agitated u/s 482 BNSS at this stage.

18. In view of the above, the present anticipatory bail application of the applicants **Gosia, Shahina and Saziya** is found devoid of merits and is, accordingly, **rejected**.

Order Date :- 11.2.2025

Shalini

(Justice Krishan Pahal)