

Neutral Citation No. - 2025:AHC:71845

A.F.R.

Court No. - 67

Case :- CRIMINAL MISC. ANTICIPATORY BAIL
APPLICATION U/S 482 BNSS No. - 3263 of 2025

Applicant :- Sikandar Alam

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

Counsel for Applicant :- Brijesh Kumar Sharma, Pankaj
Bharti

Counsel for Opposite Party :- G.A., Pradeep Kumar
Mishra, Ved Prakash Mishra

Hon'ble Chandra Dhari Singh, J.

1. The instant application has been filed on behalf of applicant - Sikandar Alam, under Section 482 of B.N.S.S. seeking anticipatory bail in Case Crime No.0169 of 2024, under Sections 302, 120-B, 506, 34 I.P.C., Police Station - Shahganj, District - Jaunpur.

2. Learned counsel appearing on behalf of applicant has submitted that applicant was not named in the F.I.R., his name was disclosed in the statement of informant. It is further submitted that informant/opposite party no.2 was a reporter of Sudarshan News and R.T.I. Activist. It is further submitted that some dispute was going on between applicant and informant, therefore, he has been falsely implicated. In the statement of informant recorded under Section 161 Cr.P.C. has not disclosed the name of applicant but in subsequent statement he has taken the name of applicant first time due to ulterior motive. It is clarified that brother of informant being activist was investigating the irregularities regarding 'Madarsa properties' but applicant was not connected with the said 'Madarsa' so, there was no reason available to commit the offence by the applicant as alleged in the F.I.R. It is

submitted that there is no credible evidence or material on record to connect the applicant to the instant offence. The applicant is also suffering from some brain and heart disease and treatment is going on in the hospital at Mumbai since 2003. It is also submitted that previous criminal history has been explained in respective paragraphs of the paper book. He has been falsely roped in the offence punishable under Section 302, 120-B, 506, 34 I.P.C. and has great apprehension of arrest by the police.

3. Learned counsel appearing on behalf of applicant has further submitted that considering the aforesaid facts, applicant may be released on anticipatory bail at the event of the arrest. He has undertaken to co-operate with the investigation and also undertaken that he shall abide by all terms and conditions imposed by this Court while granting the anticipatory bail.

4. *Per contra*, learned A.G.A. appearing on behalf of the State vehemently opposed the instant anticipatory bail application and has submitted that applicant has antecedents of 17 criminal cases, all are serious in nature. He is a habitual offender. It is also submitted that F.I.R. was lodged on 14.05.2024 and since then he is absconding from the police and not co-operating with the investigation. It is further submitted that non-bailable warrant has been issued on 26.03.2025, in spite of that applicant is not appearing before the police or investigating agency. It is further submitted that applicant filed a Writ Petition under Article 226 for quashing of F.I.R., which was dismissed by Division Bench of this Court vide order dated 13.11.2024. It is also submitted that after dismissal of the said writ petition applicant has chosen not to appear before the investigating agency and avoiding the investigation. He has charged for the

heinous crime for offence punishable under Section 302 IPC along with Sections 120-B, 506, 34 of I.P.C. It is further submitted that the evidences collected by the police during investigation, is credible evidence to connect the applicant with the offence as alleged. There are no contradictions in statement of the informant. It is also submitted that if, applicant will release on anticipatory bail, he may influence the investigation and also influence the witnesses.

5. The learned counsel for State submitted that taking into consideration the nature of offence, his custodial interrogation is required. It is also submitted that in the catena of judgment, Hon'ble Supreme Court has held that in the heinous offences the Courts may not grant anticipatory bail generally. In the instant case there are credible evidences against the applicant which connect the applicant with the instant case. Applicant is a habitual offender as he has criminal history of 17 cases which establishes that he may influence the investigation or may threat the witnesses. It is vehemently submitted that taking into consideration the nature of offence and criminal history of the applicant, the instant bail application may be rejected.

6. Learned counsel for the complainant/informant appeared in advance notice vehemently opposed the instant bail application and submitted that brother of informant has been brutally murdered by the applicant. It is also referred the criminal antecedents of the applicant. Applicant is hard core criminal and therefore, there are possibility to threat the members of family of the informant and witnesses in the instant case. It is also submitted that if applicant will release on anticipatory bail, it is great chance to misuse the bail conditions. Learned counsel for the complainant has vehemently submitted that in view of

facts and circumstances of the case, the applicant has measurably failed to make out any case for granting anticipatory bail. Therefore, the instant bail applicant is devoid of any merit and is liable to be rejected.

7. Heard learned counsel appearing on behalf of applicant, Sri Ved Prakash Mishra, learned counsel appearing on behalf of the informant as well as Sri Kailash Pathak, learned A.G.A. for the State and perused the contents made in bail application as well as the material available on record.

8. Before considering the rival submissions on behalf of the respective parties, the provision of new statute regarding grant of bail to person apprehending arrest is being reproduced herein below for ready reference:

9. Section 482 of the B.N.S.S. for grant of anticipatory bail, when a person apprehends arrest for non-bailable offence the provision vested discretion in the courts to grant anticipatory bail based on these facts and circumstances of the case, Section 482 B.N.S.S. produced herein for better adjudication of the instant case:-

"482. Direction for grant of bail to person apprehending arrest.

(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."

10. The determination of whether a case is fit for grant of bail involves the balancing of the numerous factors among which the nature of the offence, the severity of the punishment and *prima facie* view of the involvement of the accused are important. No straight jacket formula exists for Courts to assess an application for the grant or rejection of bail.

11. At the stage of assessing whether a case is fit for the grant of bail, the Court is not required to enter into detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused has committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of criminal justice system.

12. It is admitted fact that the applicant is a habitual offender and there are criminal history of 17 cases, all are serious in

nature. It is also admitted fact that applicant is not co-operating with the investigating agency as non-bailable warrant has already been issued against him. The writ petition filed by the applicant before the Division Bench of this Court for quashing of F.I.R. has already been dismissed.

13. I have also perused the custodial report and the evidence and material collected by the police during investigation, there are sufficient credible evidence collected by the police to link the applicant to the offence punishable under Sections 302, 120-B, 506, 34 I.P.C. and I have also read the statement of complainant recorded under Section 161 Cr.P.C., in his statement, it is clearly stated that he is responsible for the commission of offence as alleged.

“बयान वादी... .श्री संतोष कुमार श्रीवास्तव पुत्र स्व० श्री योगेन्द्र प्रसाद श्रीवास्तव निवासी ग्राम सबरहद थाना शाहगंज जौनपुर मो.न. 7052484838 द्वारा पूछताछ पर बताया कि मैं ग्राम सबरहद का रहने वाला हूँ हम 6 भाई थे, सबसे बड़े विनोद श्रीवास्तव उनके बाद प्रमोद श्रीवास्तव फिर मैं तथा मेरे बाद आशुतोष, परितोष, अतुल थे हमारी दो बहनें शशिबाला व मधुबाला भी हैं। आशुतोष श्रीवास्तव सुदर्शन न्यूज चैनल स्थानीय पत्रकार थे तथा सूचना के अधिकार का प्रयोग कर जन समस्याओं को हल कराने में आगे रहते थे क्षेत्र में अवैध रूप से की जाने वाली गौ तस्करी का विरोध करते थे हमारे गांव सबरहद के गाटा संख्या 1816 तालाब खाते के नाम दर्ज था जिस पर गांव के कुछ लोगों की काफी समय से नियत कब्जा करने की भी जिसके चलते गांव के कुछ लोगों द्वारा साजिश कर तालाब खाते की जमीन की नवैय्यत परिवर्तित कर उसे फारुकिया मदरसा के नाम दर्ज करा दी गयी तथा उस जमीन पर फारुकिया मदरसे के प्रबन्ध समिति के लोगों द्वारा अवैध रूप से लीज पर देकर मछली पालन कराकर अवैध रूप से रुपया कमाया जा रहा था। जिसकी जानकारी जब मेरे भाई आशुतोष को हुई तो उसके द्वारा नासिर जमाल पुत्र फरीदुलहक, अरफी उर्फ कामरान पुत्र मैनुद्दीन, जमीरुद्दीन पुत्र हनीफ कुरैसी व मो. हासिम पुत्र वाहिद द्वारा किये गये अवैध कब्जे के सम्बन्ध में तहसील शाहगंज व राजस्व परिषद उत्तर प्रदेश लखनऊ को जरिये आईजीआरएस शिकायत की गयी व आरटीआई के तहत वस्तुस्थिति के सम्बन्ध में तहसील शाहगंज से सूचना माँगी गयी जिस कारण फारुकिया मदरसे प्रबन्ध समिति के नासिर जमाल

पुत्र फरीदुलहक, अरफी उर्फ कामरान पुत्र मैनुद्दीन जमीरुद्दीन पुत्र हनीफ कुरैसी व मो. हासिम पुत्र वाहिद आदि मेरे भाई से काफी नाराज हो गये नासिर जमाल द्वारा पोखरे की जमीन, रामलीला मैदान व रामरथ मार्ग पर अतिक्रमण कर खाता संख्या 1037 में कराया गया जिसमें उसका सहयोग अरफी उर्फ कामरान द्वारा किया गया अरफी द्वारा नासिर जमाल के कहने पर पोखरे की जमीन रनिवाया की जमीन, चाँद तारा पोखरे की जमीन पर भी नासिर जमाल व अन्य से साजिश कर कब्जा किया गया मो. हासिम जो वर्तमान में जिला कारागार जौनपुर में बंद है के द्वारा वर्ष 2020 मेरे भाई आशुतोष के विरुद्ध एक फर्जी मुकदमा 330/22 धारा 302/307/504/506/120 बी. भादंवि पंजीकृत कराया था विवेचना से सत्यता पायी जाने पर अभियोग में धारा 302/201/194/211/120 बी भादंवि व 3(2)5 एस.सी/एस. डी एक्ट का अपराध हासिम के विरुद्ध ही पाया गया था जिसमें वह जेल भेजा गया था अभियुक्त जमीरुद्दीन क्षेत्र का एक बड़ा गो तस्कर है जो आस पास के क्षेत्र से गाय बैल को अवैध रूप से कटान के लिए तस्करी किये जाने में लिप्त रहता है। मेरे भाई द्वारा आशुतोष द्वारा इन सभी लोगों के अवैध कृत्यों के विरुद्ध आवाज विभिन्न माध्यमों से उठाई थी जिससे यह सभी लोग मेरे भाई से काफी नाराज थे तथा मेरे भाई को कई बार प्रत्यक्ष व अप्रत्यक्ष रूप में जान से मारने की धमकी भी दी थी। जिसकी सूचना मेरे भाई द्वारा समय समय पर प्रशासन को दी गयी थी। कल दिनांक 13.05.2024 की सुबह 9.30 बजे मेरा भाई अपने बुलेट मोटरसाइकिल नं. यूपी 65 डीआर 0447 से उसरहटा आजाद जाने को कहकर घर से निकला था मैं उससे पूर्व ही घर के पास संतलाल मेडिकल स्टोर पर दवा लेने गया था जब मेरे भाई मोटरसाइकिल लेकर सबरहद मोड़ के पास काजी एग व किराना स्टोर के पास पहुंचा तो वहाँ पहले से मौजूद अफी व उसके साथ 5 अज्ञात लोगों द्वारा मेरे भाई को हाथ देकर रोका गया मेरे भाई ने मोटरसाइकिल रोक दी तभी उफी व कामरान के इशारे पर पांचों लोगों ने अपने पास लिये घातक शस्त्रों से मेरे भाई आशुतोष को जान से मारने की नियत में गोलियां मार दी। लोगो को आतंकित करते हुये अरफी उर्फ कामरान ने चिल्लाकर कहा आज भाई नासिर जमाल जमीरुद्दीन व मोहम्मद हासिम व मदरसे के कमेटी के लोगों का काम पूरा हो गया जिसे संतलाल मेडिकल स्टोर पर मौजूद मैंने सुना व पूरी घटना देखी घटना के बाद हमलावर व अरफी मौके से भाग गये उनके भाग जाने के बाद मैंने भागकर घायल आशुतोष को सड़क से सहारा देकर उठाया घर पर खबर कर अपने भाइयों अतुल व पारितोष को बुलाकर टेम्पो से आशुतोष को शाहगंज अस्पताल ले जाने लगे। रास्ते में आशुतोष ने रुक रुक कर इशारे से हम तीनों भाइयों को बताया कि उसे अरफी उर्फ कामरान, नासिर जमाल, जमीरुद्दीन, मो. हासिम व फारुकिया मदरसे प्रबन्ध समिति के लोगों द्वारा साजिश कर गोली

मरवायी गयी है। टैम्पो से ले जाते समय कुछ आगे चलने पर वीमार्ट के दुकान के सामने पहुँचते पहुँचते आशुतोष ने गोलियों से आयी चोट के कारण दम तोड़ दिया हम लोग सी. एच.सी. शाहगंज पहुंचे जहां डाक्टर ने मेरे भाई का मुआयना कर उसे मृत घोषित कर दिया। अचानक इतनी बड़ी घटना हो जाने के कारण हमारा पूरा परिवार सदमे व डर के कारण भयभीत था तथा आशुतोष के शव का पोस्टमार्टम व उसकी अंत्येष्टि कर्म काण्ड में लगे रहने के कारण तत्काल थाने पर तहरीर नहीं दे सका था। आज कुछ फुर्सत पाकर तहरीर टाइप थाने पर आकर मुकदमा लिखाया है। मेरे परिवार के लोग अभी भी दहशत में हैं हमें डर है कि मुल्जिमान हम पर भी हमला न करा दे।"

14. In the case of **Prasanta Kumar Sarkar vs Ashish Chatterjee & Anr.**¹, the Hon'ble Supreme Court held as under:-

"Para 09: We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

1(2010) 14 SCC-496

15. In **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr**². – Hon'ble the Supreme Court observed in paragraph 11 as under:-

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly, where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant."

16. In the case of **State of UP vs. Amarmani Tripathi**³ – Hon'ble the Supreme Court noted the facts of the case therein to the effect that the respondent therein had been named in ten other criminal cases in the last 25 years or so, out of which five cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. That in most of the cases he was acquitted for want of sufficient evidence. Without saying anything further this Court noted that the High Court in the said case completely ignored the general principle for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, death or life imprisonment.

17. In the case of **X Vs. State of Rajasthan and another**⁴ - Hon'ble Supreme Court has held in para 14 as under:-

"14. Ordinarily in serious offences like rape, murder, dacoity etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused."

18. In the case of **Brijmani Devi vs. Pappu Kumar**⁵; Hon'ble the Supreme Court has held as under:-

2 (2004) & SCC 528

3 (2005) 8 SCC 21

4 Special Leave Petition (Criminal) No.13378 of 2024

5 (2022) 4 SCC 497

"25. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.

26. We have extracted the relevant portions of the impugned orders above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforesaid judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystallised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused."

19. In the latest judgment passed by the Division Bench of this Hon'ble Court in the case of **Jitendra Pratap Singh alias Jeetu Vs. State of U.P.**⁶ has held as under:-

"15. In the present case, the State amendment explicitly prohibits anticipatory bail for offences punishable by death sentence. The statutory bar is absolute. It is not for the Courts to rewrite the law or create exceptions to a legislative mandate that is unequivocal. While the Courts are the guardians of individual liberties, they are also

⁶ Criminal Misc. Anticipatory Bail Application U/S 438 CR.P.C. No.144 of 2024 by Allahabad High Court (Lucknow Bench)

bound to uphold the rule of law and respect the boundaries set by the legislature.

16. The argument that the nature of the offence should be considered in determining whether anticipatory bail can be granted, despite the statutory prohibition, is untenable. Such an approach would effectively render the legislative bar meaningless and open the door to judicial overreach.

17. Any perceived hardship or injustice that may arise from the strict application of the statutory bar is a matter for the legislature to address through amendment. It is not for the Courts to fill perceived gaps in the law by exercising discretion contrary to the express provisions of the statute. However, as settled by the Supreme Court in the case of Prithvi Raj Chauhan (supra), the Court in its inherent jurisdiction under Section 482 Cr.P.C. or under Article 226/227 of the Constitution of India can still grant interim protection from arrest if prima facie, the offences alleged are not made out from the contents of the complaint. Further, even an interim bail can be granted by a Court, in appropriate cases, pending a regular bail application.

18. In light of the clear and unequivocal wording of Section 438 of the Cr.P.C., which prohibits filing of anticipatory bail application in cases where the offence is punishable by death sentence, this Court is of the opinion that no judicial discretion can be exercised to entertain anticipatory bail application in such cases.

19. The answer to the question referred to this Bench is, therefore, in the negative. The Courts cannot entertain anticipatory bail application in cases where the State amendment prohibits it."

20. Taking into consideration of reasons stated in foregoing paragraphs, I do not find any merit in the arguments advanced by learned counsel for applicant and contents made in the bail application for the following reasons:-

Firstly, the applicant allegedly involved in commission of heinous offence punishable under Section 302 IPC, in which the sentence may be awarded life imprisonment or death sentence.

Secondly, in the statement recorded under Section 161 Cr.P.C. of the informant has corroborated the contents of the F.I.R., the other materials on record, which have been collected by the

police during investigation *prima facie* linked the applicant for commission of said offence.

Thirdly, applicant has history of 17 criminal cases.

Fourthly, Taking into consideration of criminal history of applicant, there are great apprehension of threat to the witnesses as stated by learned counsel appearing on behalf of the informant.

21. In view of the aforesaid reasons, I do not find any merit in the instant application. Therefore, without expressing any opinion on merits, the instant bail application is **rejected**.

(Chandra Dhari Singh, J.)

Order Date :- 6.5.2025

Atul