



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 28331 of 2025

Nand Kishore

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Syed Wajid Ali
Counsel for Opposite Party(s)	:	G.A.

Court No. - 80

HON'BLE RAJEEV MISRA, J.

1. Heard Mr. Syed Wajid Ali, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This application for bail has been filed by applicant-Nand Kishore seeking his enlargement on bail in Case Crime No. 171 of 2017 under Sections 147, 420, 467, 468, 471 I.P.C., Police Station-Bahsuma, District-Meerut, during the pendency of trial .

4. Record shows that the F.I.R. giving rise to present criminal proceedings was lodged on 22.10.2017 by first informant-Sunil Chahal. The same was registered as Case Crime No. 0171 of 2017 under Sections 147, 420, 447, 448, 467, 468, 471 I.P.C., Police Station-Bahsuma, District-Meerut. In the aforesaid F.I.R., eight persons namely Smt. Rajesh, Rajappal, Pawan, Pradeep, Pushpendra, Prabhat, Ashok and Nand Kishore have been nominated as named accused whereas an Executive Officer has also been arraigned as an accused.

5. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. On the basis of material collected by the Investigating Officer during course of investigation, he came to the conclusion that the offence complained of is prima-facie established. He therefore opined to submit a charge sheet/police report. Accordingly, the Investigating Officer submitted the police report (charge sheet) dated 17.07.2019 in terms of Section 173 (2) Cr.P.C. Copy of the same is on record as Annexure S.A.-3 to the supplementary affidavit dated 08.09.2025. As per aforementioned charge sheet/police report following have been

charge sheeted in different sections, same is tabulated herein below:

I. Smt. Rajesh, Rajappal, Pawan and Pradeep have been charge sheeted under Sections 147, 420, 447, 448, 467, 468, 471, 120 B I.P.C.

ii. Ashok and Nand Kishore have been charge sheeted under Sections 147, 420, 467, 468, 471 I.P.C.

III. Jagveer, Vinod, Jeevam Ram and Hukam Singh have been charge sheeted under Sections 147, 447 and 448 I.P.C.

6. Out of 10 charge sheeted accused, most of the accused have been enlarged on bail. The details of the same are as under:

i. Co-accused Smt. Rajesh Kumar has filed Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 18537 of 2021, which was allowed by this Court vide order dated 24.01.2022. For ready reference the order dated 24.01.2022 is reproduced herein below:

"Heard Shri Syed Wajid Ali, learned counsel for the applicant and Shri Paritosh Kumar Malviya, learned AGA for the State through video conferencing mode.

Shri Syed Wajid Ali, learned counsel for the applicant contends that the applicant has been falsely implicated in the case. The applicant is duly recorded tenure holder and the owner of house no.97. The property comprised in the F.I.R. is the subject matter of dispute in various civil suits. The criminal proceedings are being leveraged in the disputed civil claim being made by the opposite party no.2. The opposite party no.2 was an accused in the murder of the applicant's husband. Apart from the instant case the applicant does not have any criminal history. Lastly it is contended by the learned counsel for applicant that the applicant shall not abscond and will fully cooperate in the criminal law proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any manner.

Learned AGA could not satisfactorily dispute the aforesaid submissions from the record. He, however, does not dispute the fact that the applicant does not have any criminal history apart from the instant case.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering

bail applications on behalf of accused persons.

I see merit in the submissions of the learned counsel for the applicant and hold that the applicant is entitled to be enlarged on anticipatory bail.

In the light of the preceding discussion and without making any observations on the merits of the case, the anticipatory bail application is allowed.

The applicant-Smt. Rajesh Kumari involved in Case Crime No.171 of 2017, under Sections 147, 420, 447, 448, 467, 468, 471, 120B I.P.C. Police Station-Baisuma, District-Meerut, is granted anticipatory bail till the conclusion of the trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall attend the Court proceedings as and when required.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise or to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court to any police officer or tamper with the evidence.

(iii) The applicant shall not leave India without the previous permission of the court.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of anticipatory bail before this Court.

In case any false facts have been stated on behalf of the applicant or material facts have been suppressed, the State or any concerned party may file an application for recall of this order.

The applicant is directed to produce a copy of this order before the S.S.P./S.P., who shall ensure the compliance of present order.

Order Date :- 24.1.2022 "

ii. Co-accused Rajpal has filed Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 5947 of 2022, which was allowed by this Court vide order dated 26.09.2022. For ready reference the order dated 25.09.2022 is reproduced herein below:

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The instant anticipatory bail application has been filed on behalf of the applicant- Rajpal with a prayer to release on bail in Case Crime No. 171 of 2017, under Sections 147, 420, 447, 448, 467, 468, 471, 120-B IPC, Police Station- Bahsuma, District- Meerut.

It is contended on behalf of the applicant that the applicant is innocent and has been falsely implicated in the present case, as he is witness of murder of husband of co-accused-Rajesh Kumari. He further submitted that after lodging of the F.I.R. the applicant approached before this Court by means of Criminal Misc. Writ Petition No. 19020 of 2018 in which this Court granted stay of arrest till filing of charge sheet. He further submitted that as a matter of fact, house no. 92, which is being alleged to be his own house by the opposite party no. 2, is completely misplaced as the house no. 92 which has further renumbered as House no. 97 belongs to co-accused Rajesh Kumar and she has been residing therein for quite long time. Civil dispute is also pending between the first informant and co-accused Rajesh Kumari.

It is further submitted that without collecting cogent and credible evidence the Investigating Officer filed charge sheet against the applicant in a routine manner before the court in the year, 2019 and cognizance has been taken on 6.2.2021. Non bailable warrant has been issued against the applicant, therefore, there is apprehension of his arrest. He further submitted that after filing of charge sheet the applicant approached before this Court by filing of an Application under Section 482 Cr.P.C. Further submission is that the applicant fully cooperated with the investigation. There is no evidence against the applicant. The case of the applicant is on better footing than the co-accused, Rajesh Kumari, who has been granted anticipatory bail in CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 18537 of 2021 on 24.1.2022. Hence, the applicant may be enlarged on anticipatory bail and he is ready to cooperate with the trial. If the applicant is granted anticipatory bail, he will never misuse the same. Learned counsel for the applicant has placed reliance on a judgement of the Supreme Court in the case of Sushila Aggarwal and others v. State (NCT of Delhi) and another, (2020) 5 SCC 1.

Learned A.G.A. vehemently opposed the prayer for bail.

It may be stated that in case of Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, it has been held by Hon'ble Supreme Court that while deciding anticipatory bail, Court must consider nature and gravity of accusation, antecedent of accused, possibility of accused to flee from justice and that Court must evaluate entire available material against the accused carefully and that the exact role of the accused has also to be taken into consideration.

In the instant case, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on merit of the case, a case for anticipatory bail is made out.

In the event of arrest the applicant is arrested, he/her shall be released on anticipatory bail in the aforesaid case for the aforesaid offences on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

- 1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court.**
- 2. The applicant shall surrender passports, if any, to the concerned trial Court forthwith. The passport will remain in custody of the concerned trial Court.**
- 3. That the applicant 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 from disclosing such facts to the Court or to any police officer;**
- 4. The applicant shall file an undertaking to the effect that the applicant shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.**
- 5. In case, the applicant misuses the liberty of bail, the Trial Court**

concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of **Sushila Aggarwal and others v. State (NCT of Delhi) and another, (2020) 5 SCC 1.**

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

The anticipatory bail application is allowed.

Order Date :- 26.9.2022 "

iii. Co-accused Pradeep Kumar has been granted interim bail by court below vide order dated 22.07.2021. Copy of the same is on record at page 91 to 96 of the paper book.

iv. Co-accused Jagveer, Vinod Kumar, Jeevan Ram and Hukam Singh were granted bail by court below vide order dated 23.03.2021. Copy of the same is on record at page 11 of the supplementary affidavit.

6. On the above premise, the learned counsel for applicant submits that though the charge sheet/police report was submitted in the year 2020, upon which cognizance was taken upon same by the concerned court in exercise of jurisdiction under Section 190 (1) (b) Cr.P.C. in the year 2021, however, the charges have not yet been framed against charge sheeted accused. Apart from above, except for the present applicant, all other charge-sheeted accused have been enlarged on bail. Referring to the judgement of Supreme Court in **Mahdoo Bava Vs. C.B.I., 2023 SCC OnLine SC 299**, the learned counsel for applicant submits that the evidence sought to be relied upon by the prosecution against applicant is substantially documentary in nature. In view of the law laid down by Apex Court in aforementioned judgement that in case applicant is enlarged on bail then in that eventuality he can not temper with the evidence sought to be relied upon by the prosecution. He therefore contends that in view of the aforementioned factual position as well as the judgement of the Supreme Court referred to above, the applicant is liable to be enlarged on bail during the pendency of Trial.

7. Per contra, the learned A.G.A. representing State-opposite party-1 has

vehemently opposed the prayer for bail. Learned A.G.A. submits that since the applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The Executive Officer of the concerned Nagar Panchayat in his statement under Section 161 Cr.P.C. has clearly and categorically deposed before the Investigating Officer that entire embezzlement was committed while applicant was holding the Charge of Tax Collector, Nagar Panchayat, Bahsuma, District-Meerut. He therefore submits that in view of aforesaid no indulgence be granted by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant this Court finds that at the relevant point of time applicant was working as Tax Collector, Nagar Panchayat, Bahsuma, District Meerut. In view of the charge alleged against applicant, the evidence sought to be relied upon by the prosecution is substantially documentary in nature. As such, in case applicant is enlarged on bail then in that eventuality it cannot be said that applicant shall temper with the evidence sought to be relied upon by the prosecution. The Apex Court in **Mahdoom Bava (Supra)**, has itself observed that where the evidence relied upon by the prosecution against an accused is substantially documentary in nature, in such circumstance, accused should be enlarged on bail during the pendency of trial. Learned A.G.A. could not point out any such incriminating feature from record on the basis of which the ratio laid down by Apex Court in aforementioned judgement can be so distinguished so as to deny bail to applicant. Considering the above and irrespective of the objections raised by the learned A.G.A. in opposition to the application for bail but without making any comment on the merits of the case this Court finds that applicant has made out a case for bail.

9. In view of above this application for bail succeeds and is liable to be allowed.

10. It is accordingly **allowed**.

11. Let the applicant-**Nand Kishore** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

- (i) Applicant will not tamper with prosecution evidence.
- (ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.
- (iii) Applicant will not indulge in any unlawful activities.
- (iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison.

September 22, 2025
YK

(Rajeev Misra,J.)