



2026:AHC:199588

A.F.R.

Reserved on 20.07.2026

Delivered on 23.09.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.**  
**- 7094 of 2026**

Pawan Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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|-------------------------------|---|--------------------------|
| Counsel for Applicant(s)      | : | Shams Tabrez Alam Ansari |
| Counsel for Opposite Party(s) | : | G.A.                     |

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Court No. - 67

**HON'BLE JITENDRA KUMAR SINHA, J.**

1. Heard Shri Shams Tabrez Alam Ansari, learned counsel for the applicant and Shri Anoop Trivedi, learned Additional Advocate General assisted by Shri Paritosh Malviya, learned AGA-Ist for the State.

2. At the very outset, learned Additional Advocate General submits that the applicant was granted anticipatory bail by this Court till submission of police report under Section 173(2) Cr.P.C. / 193(3) BNSS passed in Criminal Misc.Anticipatory Bail Application Under Section 482 BNSS No. 10927 of 2025. It is further submitted by him that charge sheet in this case has already been submitted and the applicant has no apprehension of arrest and therefore, the present application for anticipatory bail is not maintainable.

3. Learned Additional Advocate General has placed reliance on a recent judgement of the Hon'ble Supreme Court in the case of **Ram Pukar Yadav and another Vs. The State of Bihar and another**, passed in Special Leave to Appeal (Crl) No.11260 of 2026, in which, the Hon'ble Supreme Court has held that once cognizance has been taken and summons have been issued then the applicant has no apprehension of arrest and he is simply required to appear before the learned Court concerned and seek regular bail.

4. Per contra, learned counsel for the applicant submits that the anticipatory bail application is maintainable after submission of the charge sheet and he

has placed reliance upon the judgement of Hon'ble Supreme Court in the case of **Bharat Chaudhary and another Vs. State of Bihar and another (2003) 8 SCC 77**, in which, the Hon'ble Supreme Court has held that Section 438 Cr.P.C. (now Section 482 BNSS) does not bar the grant of anticipatory bail, even if such relief is sought for by accused after cognizance has been taken and summons have been issued in the matter.

5. Before considering the merits of the case, it is essential to examine whether an application for anticipatory bail is maintainable after the charge sheet has been submitted?

6. Learned Additional Advocate General has placed reliance on the judgement of Hon'ble Supreme Court in the case of **Ram Pukar Yadav and another Vs. The State of Bihar and another**, passed in SLP (Crl) No.11260 of 2026, in which, the Hon'ble Supreme Court has held in paragraph 3, which is quoted as under:

"3. This Court has already held in SLP (Crl.) No.16221 of 2015 that in a complaint case the police has hardly any role to play. Relevant portion of the order passed in SLP (Crl.) No.16221 of 2025 reads as under:

"7. We have noticed that there is a serious problem in two States, viz. The State of Bihar and State of Jharkhand, respectively. We fail to understand that in a private complaint how does the police involve itself or is concerned, in any manner. What was the basis for the accused to express apprehension that the police would arrest him.

8. In a private complaint when cognizance is taken and process is issued all that the court would do is to issue summons. We have explained many times in the past the purport of Section 87 of the Criminal Procedure Code, 1973.

7. In **Bharat Chaudhary & another Vs. State of Bihar & another**, 2003 (8) SCC 77, the Hon'ble Supreme Court has held that the Court has power to grant anticipatory bail under Section 438 Cr.P.C. even when cognizance is taken or charge sheet has been filed as held in paragraph nos. 5,6, 7 and 9, which are quoted as under:

"5. *If the arguments of the learned counsel for the respondent – State is to be accepted then in each and every case, where a complaint is made of a non bailable offence and cognizance is taken by the competent court then every court under the code including this Court would be denuded of its power to grant anticipatory bail under Section 438 of the Cr.P.C.*

6. *We do not think that was the intention of the legislature when it incorporated Section 438 in the Cr.P.C. which reads thus:*

*" 438(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 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."*

*7. From the perusal of this part of Section 438 of the Cr.P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pretrial taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned Courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the Courts i.e. the court of Session, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 Cr.P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.*

*9. From a careful reading of the said judgement we do not find any restriction or absolute bar on the concerned court granting anticipatory bail even in cases where either cognizance has been taken or a charge sheet has been filed. This judgement only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of charge sheet would be of some assistance for coming to the conclusion whether the claimant for an anticipatory bail is entitled for such bail or not. This is clear from the following observations of the Court in the above cases:*

*"It is, therefore, necessary that such anticipatory bail orders should be of limited duration only and ordinarily on the expiry of the duration or extended duration, Court, granting anticipatory bail, should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has been progress or charge sheet is submitted."*

**8.** The Section 438 Cr.P.C. now Section 482 BNSS lays down the provisions for grant of anticipatory bail that a person, who is apprehending his arrest in non bailable offence can seek anticipatory bail and the said provision does not provide any restrictions that the apprehension of arrest must be by the police as the apprehension of arrest has been mentioned.

**Section 482 BNSS, reads as under :-**

*(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.*

**9. The Hon'ble Supreme Court in the case of *Sundeeep Kumar Bafna Vs. State of Maharashtra and another* (2014) 16 Supreme Court Cases 623 has held in paragraph 16 of the judgement, which is quoted below:-**

*16. It appears to us from the above analysis that custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. In Roshan Beevi, the Full Bench of the High Court of Madras, speaking through S. Ratnavel Pandian J, held that the terms custody and arrest are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. This thesis is reiterated by Pandian J in Deepak Mahajan by deriving support from Niranjana Singh vs Prabhakar Rajaram Kharote (1980) 2 SCC 559. The following passages from Deepak Mahajan are worthy of extraction:-*

*48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of*

*the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words custody and arrest are not synonymous terms. Though custody may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi."*

**10.** From the above judgement of Hon'ble Supreme Court, it is evidently clear that the arrest cannot be interpreted in a restrictive sense since that the arrest can be made by the police but even if a person surrenders before the Magistrate / Sessions Court for seeking regular bail, he submits himself to the custody of the Court then it cannot be said that he has not been arrested as is evident from the wording of Hon'ble Supreme Court in the case of Sundeep Kumar Bafna. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the magistrate on appearance or surrender.

**11.** On bare reading of the said provision of Section 482 BNSS, it appears that a person may apprehend arrest due to the commission of a non-bailable offence; the phrase 'apprehension of arrest' is not limited merely to the fear of arrest by the police but also encompasses the apprehension of arrest even if the person surrenders and submits to the jurisdiction of the concerned court.

**12.** The Hon'ble Supreme Court in the case of **Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1** has settled that anticipatory bail can not be of limited duration and need not end on charge-sheet filing.

**13.** The Hon'ble Supreme Court in the **State of U.P. and others Vs. Ajay Kumar Sharma and another (2016) 15 Supreme Court Cases 289** has settled the law that a judgment previously delivered by a Bench of the Supreme Court of equal strength is binding and a subsequent Bench of the Supreme Court of equal strength cannot overrule it. In paragraphs 13, 14, and 15 of the judgment, which are quoted below:—

*"13 Time and again this Court has emphatically restated the essentials and principles of 'Precedent' and of Stare Decisis which are a cardinal feature of the hierarchical character of all Common Law judicial systems. The doctrine of Precedent mandates that an exposition*

*of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench.*

*14. If binding precedents even of co-ordinate strength are not followed, the roots of continuity and certainty of law which should be nurtured, strengthened perpetuated and proliferated will instead be deracinated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem 'The Second Coming' authored by William Butler Yeats. The lines obviously do not advert to the principle of precedent but they are apposite in bringing out the wisdom of this ancient and venerable principle.*

*"Turning and turning in the widening gyre The falcon cannot hear the falconer;*

*15. In the context of interminably citing all decisions delivered by this Court, the Constitutional Bench in Union of India V. Raghubir Singh (1989) 2 SCC 754 has made the following enunciation of law:*

*"25. It is not necessary to refer to all the cases on the point. The broad guidelines are easily deducible from what has gone before. The possibility of further defining these guiding principles can be envisaged with further juridical experience, and when common jurisprudential values linking different national systems of law may make a consensual pattern possible. But that lies in the future.*

*26. There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt has arisen on the point because of certain observations made by Chinnappa Reddy, J. in Javed Ahmed Abdul Hamid Pawala V. State of Maharashtra. Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in T.V. Vatheeswaran V. State of Tamil Nadu that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three-Judges in Sher Singh V. State of Punjab, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in T.V. Vatheeswaran, the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the conduct of the accused. As a member of another Bench of two Judges, in Javed Ahmed Abdul Hamid Pawala Chinnappa Reddy, J.*

**14.** Similarly, constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 Supreme Court Cases 680** has held in paragraphs 16, 17, 18, 19 and 20 of the judgement, which are quoted below :-

*"16. In State of Bihar V. Kalika Kuer alias Kalika Singh and others<sup>19</sup>, it has been held:-*

*"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the (2003) 5 SCC 448 decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."* The Court has further ruled:-

*"10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."*

*17. In G.L. Batra V. State of Haryana and others<sup>20</sup>, the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India Vs. Godfrey Philips India Ltd.<sup>21</sup>, Sundarjas Kanyalal Bhatija V. Collector, Thane, Maharashtra<sup>22</sup> and Tribhovandas Purshottamdas Thakkar V. Ratilal Motilal Patel<sup>23</sup>. It may be noted here that the Constitution Bench in Madras Bar Association V. Union of India and another<sup>24</sup> has clearly stated that the prior Constitution Bench judgment in Union of India V. Madras Bar Association<sup>25</sup> is a binding precedent. Be it clarified, the issues (2014) 13 SCC 759 (1985) 4 SCC 369 (1989) 3 SCC 396 AIR 1968 SC 372 (2015) 8 SCC 583 (2010) 11 SCC 1 that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.*

*18. In this regard, we may refer to a passage from Jaisri Sahu Vs. Rajdewan Dubey<sup>26</sup>:-*

*"10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Seshamma v. Venkata Narasimharao that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800:*

*"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has*

*acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."* AIR 1962 SC 83 In Virayya V. Venkata Subbaya it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in Bilimoria v. Central Bank of India. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

*19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.*

*20. In the context, we may fruitfully note what has been stated in Pradip Chandra Parija and others V. Pramod Chandra Patnaik and others<sup>27</sup>. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the (2002) 1 SCC 1 matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-*

*"6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ..."*

**15.** The learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court in the case **Ram Pukar Yadav's** case (supra), but the judgment of Hon'ble Supreme Court in the case of Bharat Chaudhary's case (supra) is of equal bench strength and earlier in time, therefore, relying upon the judgement of Hon'ble Supreme Court in State of U.P. Vs. Ajay Kumar Sharma and another and National Insurance Company Limited Vs. Pranay Sethi and others (supra), the earlier judgement of equal bench strength holds the field. Thus, relying upon the judgement of Bharat Chaudhary's case (supra), an application for anticipatory bail is maintainable even after submission of the charge sheet.

### **Merits of the case**

**16.** The Hon'ble Supreme Court in case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another (2020) 5 SCC 1**, the Hon'ble

Supreme Court has held that normally the anticipatory bail should continue till conclusion of the trial, however, under certain circumstances, the accused can be granted anticipatory bail for a limited duration.

**17.** The applicant was granted anticipatory bail till submission of police report under Section under Sections 173(2) Cr.P.C. / 193(3) BNSS, now the charge sheet has already been submitted and the applicant has been summoned to face trial and no investigation remains to be done.

**18.** The prosecution has not put forward any reason why the applicant should not be granted anticipatory bail till conclusion of the trial especially, when the charge sheet has been submitted and custodial interrogation of the applicant is not required. The State has only raised an objection regarding maintainability of the bail of the applicant, which has already been answered in the earlier part of the judgement.

**19.** In view of the foregoing, the applicant is entitled to be released on anticipatory bail till conclusion of trial on the same terms and conditions, on which, the applicant was granted anticipatory bail by this Court vide order dated 07.01.2026 passed in Criminal Misc. Anticipatory Bail Application U/s 482 BNSS No.10927 of 2025.

**20.** Accordingly, the present anticipatory bail application is **ALLOWED**.

**(Jitendra Kumar Sinha,J.)**

**September 23, 2026**  
RKM