2026:AHC:209103

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 10107 of 2026

Anita

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajai Kumar, Susheel Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 71

HON'BLE VIVEK KUMAR SINGH, J.

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

2. The present application has been filed on behalf of the applicant- Anita in Case Crime No.478 of 2016, under Sections 3/7 of the Essential Commodities Act, 1955, Police Station Mossajhag, District Budaun, with a prayer to grant her anticipatory bail.

3. Learned counsel for the applicant submits that the applicant is absolutely innocent and has been falsely implicated in the present case. She has nothing to do with the alleged offence in spite of that the police are trying to arrest the applicant. Learned counsel for the applicant further submits that the applicant undertakes to cooperate during trial and shall appear as and when required by the Court concerned. It has also been stated that, in case the applicant is granted anticipatory bail, she shall not misuse the liberty of bail, shall cooperate with the investigation, and shall abide by all the conditions that may be imposed by the Court.

4. On the other hand, learned A.G.A. has opposed the application for anticipatory bail. A preliminary objection has been raised by the learned A.G.A. that the applicant is not appearing before the trial court. It is further contended that the Non Bailable Warrant has been issued by the trial court against the applicant, therefore, the present anticipatory bail application is not maintainable in view of settled law.

5. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

6. It is not in dispute that a non-bailable warrant has been issued against the applicant in connection with the present case crime number before filing his anticipatory bail application. The record of the present case reflects that the chargesheet was submitted before the court concerned on 23.03.2018, whereby the learned court concerned took cognizance of offence on 06.06.2018. The applicant had full knowledge of the submission of the chargesheet. She filed an application under Section 482 Cr.P.C. No.37539 of 2018, challenging the impugned chargesheet dated 23.03.2018, arising out of the present Case Crime No.478 of 2016, under Section 3/7 of the Essential Commodities Act. The aforesaid application under Section 482 Cr.P.C. No.37539 of 2018 was disposed of by this Court vide order dated 12.10.2018 with a direction to the court concerned to decide the bail application of the applicant in view of settled law of the High Court as well as the Supreme Court. In case she appears within 45 days from 12.10.2018. It was also provided that no coercive action would be taken against the applicant for the same period.

7. Pursuant to the order dated 12.10.2018, passed by this Court, the applicant did not appear before the court concerned to obtain regular bail. The aforesaid order was not produced by the applicant before the court concerned. Thereafter, the learned court concerned issued Non-Bailable Warrants against the applicant on 08.01.2024, which are still operative. On the last date, i.e. 18.06.2026, the court concerned issued Non-Bailable Warrants against the applicant. The applicant did not appear before the court concerned though she had full knowledge regarding pendency of the present case. She is absconding and concealing herself in order to avoid execution of the Non-Bailable Warrants. After submission of the chargesheet in the year 2018, the applicant has filed the present anticipatory bail application after 8 years. The delay in filing the present anticipatory bail application has not been satisfactorily explained by the applicant.

8. The conduct of the applicant drags him under the umbrella of the law promulgated by the Hon'ble Apex Court in **Prem Shankar Prasad**

Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it revealed that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

> *"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually."*

9. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi)(2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

10. Further, the judgment passed in **Lavesh (supra)** was referred by the

Hon'ble Apex Court in **State of Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of **Lavesh (supra)**, in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

> *"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."*

11. In the case of **Srikant Upadhyay and Others vs. State of Bihar and Another, (2024) 12 SCC 382**, the Hon'ble Supreme Court has held that the power to grant anticipatory bail is an extraordinary power. While called upon to exercise the said power, the Court has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice. When warrant of arrest or proclamation is issued, the applicant is not entitled to invoking extraordinary power. The relevant paragraph no. 30 of **Srikant Upadhyay (supra)** is quoted as under:

> *"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest*

of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

12. In the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court has held that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The power under Section 438 of Cr.P.C./482 of B.N.S.S. has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The relevant paragraph no. 69 of **P. Chidambaram (supra)** is reproduced as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. "

13. Further, in the pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Lavesh

v. State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesh (supra) is the decision in State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v. State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

'68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529, 2021 SCC OnLine SC 955] ...'"

14. Hence, the law is discernible on the point that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court without offering any legal or plausible justification for his abscondence and consequently has been declared a proclaimed offender.

15. The deliberate oblivion to the process issued by the Court on the part of the applicant denudes her claim to treat her application for grant of anticipatory bail as maintainable under the roof of a 'rare and exceptional case' and thereby to grant anticipatory bail to her.

16. In view of the above, declaring the present application for grant of anticipatory bail as not maintainable, I deem it not a fit case to grant anticipatory bail to the present applicant. The wilful defaulter, who does not cooperate with the trial court or investigation at all, is not entitled to get any relief from this Court by way of anticipatory bail.

17. The anticipatory bail application is, accordingly, **rejected**.

(Vivek Kumar Singh,J.)

October 6, 2026
Nitendra

Digitally signed by :-
NITENDRA TIWARI
High Court of Judicature at Allahabad