2026:AHC:209284

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 10473 of 2026**

Asif

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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| Counsel for Applicant(s) | : | Shubham, Syed Abbas Shaukat Abidi |
| Counsel for Opposite Party(s) | : | G.A. |

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**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 in Case Crime No.134 of 2026, under Sections 2/3 of the Gangster Act, Police Station Magorra, District Mathura, with a prayer to grant him anticipatory bail.

3. Learned counsel for the applicant submits that the applicant is absolutely innocent and has been falsely implicated in the present case; he has nothing to do with the alleged offence in spite of that the police are trying to arrest the applicant. It is further submitted on behalf of the applicant that two cases have been shown in the gang chart against the applicant and in both the cases, the applicant is on bail. It is also submitted that co accused namely Arif, Yadvendra @ Yash and Manish Khan have already been enlarged on anticipatory bail by this Court vide orders dated 22.06.2026, 23.07.2026, 13.08.2026 passed in Criminal Misc. Anticipatory Bail Application No. 21147 of 2026, 6146 of 2026, 7979 of 2026, respectively.

4. He further stated that in F.I.R., in issue, the allegations with regard to disturbing the public order as also regarding gaining undue temporal, pecuniary, material or other advantage of like nature against the applicant are vague. Further, stated that in absence of allegation concerning an act

or omission on the part of an accused, covered by the definition of term "gang" and "gangster" as provided under Section 2 of the Act, no FIR is maintainable. In the instant case, the FIR is based upon the pending criminal case(s) and not upon any new allegation(s) or discovery of fact(s) having serious reflection on the society, for which purpose the Act was enacted.

5. He also stated that the provisions of the Act could not be used as a weapon to wreak vengeance or harass or intimidate citizens or to settle scores on political or other fronts.

6. He stated that in this case, it appears that the District Administration in order to show good work or to win laurels or seek appreciation from the higher authorities of Government or ruling party has invoked the provisions of the Act, which is unjustified.

7. He also stated that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicant is not guilty of the offence under the Gangsters Act and that he would not commit the offence while on anticipatory bail. He also submitted that the applicant while on anticipatory bail would not commit any crime/offence nor would try to tamper the evidence or influence the witnesses in any manner whatsoever it may be.

8. Learned counsel for the applicant further submits that the applicant undertakes to cooperate during investigation and trial and shall appear as and when required by the Investigating Agency or the Court concerned. It has also been stated that, in case the applicant is granted anticipatory bail, he 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.

9. Learned A.G.A. has opposed the prayer for grant of anticipatory bail, but has fairly conceded that in the cases mentioned in the gang chart, the applicant is on bail. He also could not dispute that co-accused persons have already been enlarged on anticipatory bail by this Court. However, he further submitted that the applicant is member of a gang and habitual of committing crime. In case the applicant is released on bail, he will

again indulge in similar anti-social activities and will misuse the bail by extending threat and intimidation to the prosecution witnesses.

10. I have heard the rival submissions of both sides and perused the record.

11. Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 reads as follows:-

> *"(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless--*
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> *(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
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> *(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."*

12. In light of Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, I have considered the material evidence available on record, the nature of offence which has been mentioned in the gang-chart and the criminal background of the accused-applicant.

13. In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

14. In Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme

Court Cases 676, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

15. Considering the settled principle 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 merits, and the case of the applicant is squarely covered by the aforesaid judgments, a case for anticipatory bail is made out.

16. Accordingly, the anticipatory bail application is allowed with following directions:-

(i) In the event of arrest of the applicant- **Asif** involved in aforesaid case shall be released on anticipatory bail till the conclusion of trial, before the competent Court on his furnishing a personal bond of Rs.50,000/- with two sureties each of the like amount to the satisfaction of the Station House Officer of the police station concerned;

(ii) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(iii) 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 him/her from disclosing such facts to the Court or to any police officer; and

(iv) The applicant shall not leave India without the previous permission of the Court.

17. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant, before the concerned court.

**(Vivek Kumar Singh,J.)**

**October 6, 2026**
Nitendra

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