



2026:AHC:140625

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.
- 4807 of 2026**

Awadhesh Kumar Budhauiliya

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Sita Ram Nigam, Sushil Kumar
Counsel for Opposite Party(s)	:	Ajay Sengar, G.A.

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Sunil Kumar along with Sri Sushil Kumar as well as Sri Sita Ram Nigam, learned counsel for the applicant, Sri Ajay Sengar, learned counsel for the opposite party no.2, Sri Mohd. Afzal, learned counsel for the State and perused the record.

2. The present application has been filed on behalf of the applicant, in Case Crime No.153 of 2026, under Sections 109 and 351(3) B.N.S. (corresponding to Sections 307 and 506 I.P.C.), Police Station - Kotwali Orai, District Jalaun, with a prayer to grant him anticipatory bail.

3. The prosecution case, in brief, is that the First Information Report was lodged on 22.03.2026 at 21:55 hours in respect of an incident dated 19.03.2026 at 21:00 hours. The FIR was registered as Case Crime No. 153 of 2026 under Sections 109 and 351(3) of the BNS at Police Station Kotwali Orai, District Jalaun. The applicant was named in the FIR. It is alleged in the FIR that the applicant, along with three unknown persons, caused firearm injury to the son of the informant on 19.03.2026 at 9:00 p.m. The incident

4. The statement of the injured was recorded by the Investigating Officer, wherein he stated that on 02.02.2026, a dispute took place between him and the applicant on account of throwing waste materials. On account of that enmity, the applicant, along with his three associates, opened fire upon the injured. He was rescued by his family members.

5. 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 contended that the allegation of causing injury has been levelled against the applicant and three other co-accused. However, only a single injury was noticed on the body of the injured. There is no repetition of fire; therefore, the ocular version is not corroborated by the medical evidence. It is further contended that no offence under Section 109 of the BNS is made out against the applicant, and the offence would not travel beyond Section 118 of the BNS (corresponding to Section 324 of the IPC). It is next contended that the injuries of the injured were not dangerous to life; rather, he sustained a superficial injury. The injuries are not on a vital part of the body of the injured. It is further contended that the FIR was lodged after a delay of three days, which has not been properly explained by the prosecution, and the non-explanation of the said delay is fatal to the prosecution case. It is also contended that the prosecution has not come with clean hands. The place of the incident has been changed by the prosecution, and there is no consistency in the prosecution case. The allegations levelled against the applicant are not reliable. The applicant is ready to appear before the Investigating Officer if some protection is granted to him by this Court. It is further submitted that the custodial interrogation of the applicant is no longer required in the present matter.

6. Further submission has been made by the learned counsel for the applicant that if the applicant had intended to kill the injured, then in that circumstance, the applicant or any other person would have caused injury on

the investigation, and shall abide by all the conditions that may be imposed by the Court.

7. On the other hand, learned counsel for the State and learned counsel for opposite party no. 2 have opposed the application for anticipatory bail. It is contended that the main role of firing has been attributed to the applicant, and he is named in the FIR. The names of the three other culprits have come during the course of the investigation. The custodial interrogation of the applicant in the present case is very much required, inasmuch as the Investigating Officer has to recover the weapon used in the commission of the offence. It is further contended that the allegations levelled against the applicant are grave and serious in nature. There are specific and categorical allegations against the applicant to the effect that he opened fire upon the injured. Pellet injuries were found on the person of the injured, which were removed after surgery. The investigation qua the FIR in question is still going on, and the recovery of the alleged weapon has to be effected from the applicant. The custodial interrogation of the applicant is imperative for the purpose of effective and fair investigation and to unearth the case of the prosecution. It is further contended that, in case the applicant is granted the concession of anticipatory bail at this stage, it may impede the ongoing investigation.

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

9. The applicant is the main accused, who is stated to have caused a firearm injury on the person of the injured. It has been held in various judgment of the Hon'ble Supreme Court that bail is a rule but jail is an exception, but so far as anticipatory bail is concerned, it ought to have been granted in exceptional cases since it is an extraordinary power.

10. 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

"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."

11. 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 not 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

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. "

12. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another, 2022 SCC OnLine SC 2528***, relevant paragraph nos.14 and 15 whereof read as under:

"14.....

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation, Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information.....

6.....

*75. Observing that the arrest is a part of the investigation intended to secure several purposes, in ***Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303; 2005 SCC (Cri) 933]***, it was held as under: (SCC*

n. 212, para. 10)

motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

76. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others*, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514], the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory

with the object of injuring or humiliating the applicant by arresting him or her.

77. *After referring to **Siddharam Satlingappa Mhetre** [**Siddharam Satlingappa Mhetre v. State of Maharashtra**, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar** [**Jai Prakash Singh v. State of Bihar**, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468], the Supreme Court held as under: (SCC p. 386, para 19)*

*"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. P.T. Manokaran** [**D.K. Ganesh Babu v. P.T. Manokaran**, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345], **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain** [**State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain**, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176] and **Union of India v. Padam Narain Aggarwal** [**Union of India v. Padam Narain Aggarwal**, (2008) 13 SCC 305: (2009) 1 SCC (Cri) 1].)"*

Directorate of Enforcement v. Ashok Kumar Jain
[Directorate of Enforcement v. Ashok Kumar Jain, (1998)
2 SCC 105; 1998 SCC (Cri) 510], it was held that in
economic offences, the accused is not entitled to anticipatory
bail."

15. In Sushila Agrawal and others v. State (NCT of Delhi) and Another reported in (2020) 5 SCC 1, Constitution Bench of this Court held that while considering an application for grant of pre-arrest 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 or likelihood of fleeing justice. The Court held:-

"92.4. 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; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

13. As per the allegations put forth in the FIR, serious allegations have been levelled against the applicant. The FIR was registered against him and three unknown persons on the basis of specific and categorical allegations, wherein the first informant alleged that the applicant, along with his associates, caused firearm injuries to the injured. Pellets were found on the person of the injured. Therefore, it cannot be said that the injured did not sustain any firearm injury on his person. In view of the specific overt act attributed to the applicant and the nature of the weapon allegedly used by him, this Court is of the view that it is not a fit case for grant of anticipatory bail. The alleged delay of three days in lodging the

counsel for the applicant has failed to demonstrate that the case registered against him is false. At this stage, there is no material on record to hold that a prima facie case is not made out against the applicant. The material that has come on record and the preliminary investigation, appear to establish a reasonable basis for the accusations.

14. Considering the facts and circumstances of the case, nature of allegation and role of the applicant, no case for anticipatory bail is made out. The present anticipatory bail application lacks merit and deserves to be dismissed. Accordingly, the present anticipatory bail application is **dismissed**.

15. Interim order, if any, stands vacated.

(Vivek Kumar Singh,J.)

July 13, 2026
Radhika