



2026:AHC:141330

A.F.R.

Judgment Reserved On 06.07.2026

Judgment Delivered On 14.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.
- 5334 of 2026**

Mashu @ Aman Joshi

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Amar Nath, Deepak Singh
Counsel for Opposite Party(s) : G.A., Manoj Mishra, Shashank Mishra

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Deepak Singh, learned counsel for the applicant, Sri Shashank Mishra, learned counsel for the informant and Sri Rabindra Kumar Singh, learned A.G.A. for the State and perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No. 20 of 2026, under Sections 108 of B.N.S., Police Station - Chhatta, District Agra, with a prayer to grant him anticipatory bail.

3. The prosecution case, in brief, is that a First Information Report was lodged on 01.02.2026 at 19:20 hours in respect of alleged incident dated 31.01.2026, at Police Station Chhatta, District Agra. The F.I.R. was registered as Case Crime No. 20 of 2026, under Section 108 of B.N.S. The applicant was nominated in the F.I.R. which was lodged by the first

continuous mental cruelty. Furthermore, during a telephonic conversation, the applicant explicitly stated that he would not solemnize marriage with the victim under any circumstances, regardless of the consequences. The applicant further admitted that he established physical relationship on the pretext of marriage. After hearing this, the victim committed suicide on 31.01.2026.

4. The post-mortem report was prepared on 01.02.2026 and ligature mark of size 30 cm X 02 cm was found all around the upper part of neck. The cause of death was asphyxia as a result of ante-mortem hanging.

5. The investigating officer commenced investigation and recorded statements of the informant, wherein he reiterated the F.I.R. version.

6. It is submitted by the learned counsel for the applicant that the applicant is an innocent person and has no concern with the present offence. The allegations levelled against the applicant, are false. It is further submitted that the applicant has falsely been implicated in the present case. It is further submitted that the applicant has apprehension of his arrest by the police. It is also contended that no offence whatsoever is made out against the applicant. It cannot be said that the applicant, by breaking up the relationship with the deceased, had intended to abet the deceased to commit suicide. The deceased came under mental stress and thereafter on 31.01.2026, she herself committed suicide and the applicant had nothing to do with the act of the deceased. It is further submitted that the basic ingredients to constitute the offence under Section 108 of B.N.S. are missing inasmuch as the intention of the accused to aid or instigate or to abet the deceased to commit suicide is must for attracting section 108 of B.N.S. In cases of abetment of suicide, there must be proof of direct or indirect acts of incitement to commit suicide. The alleged harassment meted out to her should have left the victim with no other alternative but to put an end to her life. It is further contended that the deceased had option to settle down in her life with some other boy. There is

30.01.2024.

8. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer and submitted that the applicant filed a Crl. Misc. Writ Petition No. 9763 of 2026, for quashing of the F.I.R. The aforesaid writ petition was not entertained by the Division Bench of this Court and the same was dismissed vide order dated 14.05.2026 with a direction that in case the applicant/petitioner appears before the court concerned and applies for bail, then in that eventuality his bail application shall be considered by the court concerned in the light of law laid down by Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and Another (2021) 10 SCC 773**.

9. It is further submitted by the learned counsel for the informant that in pursuance of order dated 14.05.2026, the applicant did not appear and no bail application was filed before the court concerned. Thereafter, the proceedings were initiated against him under Section 82 of Cr.P.C. Being aggrieved by the initiation of the proceedings under Section 82 of Cr.P.C., the applicant filed an application under Section 528 B.N.S.S. No. 22011 of 2026, which was disposed of vide order dated 27.05.2026 on the assurance of applicant that he will cooperate with the concerned investigating officer for concluding the investigation. Upon assurance extended by the learned counsel for the applicant, this Court set-aside the impugned notice under Section 82 of Cr.P.C. which was attached by the police personnel of Police Station Chhatta, District Agra, in connection with the present case.

10. Learned counsel for the informant has drawn attention of this Court on the notice dated 28.06.2026, issued by the Sub-Inspector Abhay Singh of Police Station Chhatta, Commissionerate Agra, wherein it is mentioned that the applicant is neither cooperating with the investigation nor is appearing before the investigating officer. It is next submitted that the applicant did not appear before the investigating officer in pursuance of aforesaid order dated

12. It is not a disputed fact that the proceedings were initiated against the applicant under Section 82 of Cr.P.C. in connection with the present case crime number. The applicant was declared as a proclaimed offender and the impugned notice under Section 82 of Cr.P.C. was challenged by the applicant by way of filing of an application U/S 528 B.N.S.S. No. 22011 of 2026. It was ordered by this Court that the applicant will cooperate with the concerned investigating officer for concluding the investigation, but as per the police report, the applicant has not appeared before the investigating officer for recording his statement.

13. The conduct of the applicants drags them 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

been considered by the High Court very seriously and not casually."

14. 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.

15. 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."

16. 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

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."

17. 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 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. "

18. Further, in the pronouncement of the Hon'ble Apex Court in **State of**

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 Lavesch 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 Lavesch (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] ... "'

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

21. 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.

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

(Vivek Kumar Singh,J.)

July 14, 2026
A.P. Pandey