ANTICIPATORY BAIL

(U/S 438 CrPC & 482, BNSS)

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

1. Object of anticipatory bail: Object of anticipatory bail provided by Section 438 CrPC is to safeguard the personal liberty of the individual and to protect him from the possibility of being humiliated and unnecessarily harassed by police by taking him into custody. However, a delicate balance is required to be established between the right of personal liberty of an individual apprehending his arrest and the societal interest. See: P.Chidambaram Vs. Directorate of Enforcement, AIR 2019 SC 4198

2.1 Court must consider gravity of offence, impact on society and need for a fair and free investigation while granting anticipatory bail u/s 438 CrPC: The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and

presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome. See: Pratibha Manchanda Vs. State of Haryana, (2023) 8 SCC 181

2.2 Section 438 CrPC as adopted in UP: The provision under sub-section (1) of section 438 under the CrPC and the substituted provision as is applicable in Uttar Pradesh are same. The provision under sub-section (1-A) of the Central Act has been included verbatim under sub-section (3) of the U.P. Amendment. Likewise with respect to the conditions as may be imposed at the time of grant of anticipatory bail, both under the Central Act and the U.P. Amendment are on similar lines, as provided under sub-section (2) of both Acts. But with respect to other provisions, included under sub-section (2), the U.P. Amendment additionally provides that the High Court or, as the case may be, the Court of Session, at the time of making an interim order to grant anticipatory bail shall indicate the date, on which the application for grant of anticipatory bail shall be finally heard. Additionally, the explanation appended to sub-section (2) of U.P. Amendment provides- "The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code".

2.3 No restriction in UP under BNSS, 2023 to grant anticipatory bail for offences punishable with death and life imprisonment: Unlike the bar of Section 438 (6) CrPC, there is no restriction in UP u/s 482 of the BNSS, 2023 against the

grant of anticipatory bail for offences punishable with death and/or life imprisonment. See: Order dated 01.07.2025 passed by Justice C.D. Singh of Allahabad High Court in the case of Abdul Hamid Vs. State of UP.

2.1 **Power of granting anticipatory bail should be exercised with great degree of circumspection:** Power of granting anticipatory bail should be exercised with great degree of circumspection. Power to grant anticipatory bail u/s 438 CrPC should not be exercised in routine manner. See: Tusharbhai Rajnikantbhai Shah Vs Kamal Dayani, (2025) 1 SCC 753 (Paras 65-69)

2. Section 438 CrPC as amended in Uttarakhand and approach of Uttarakhand High Court with regard to anticipatory bail: Apprehending his arrest, the applicant moved an application for anticipatory bail before the learned Sessions Judge, Udham Singh Nagar in connection with FIR No. 79 of 2021, registered with Police Station Pulbhatta, District Udham Singh Nagar for the offence under Sections 188, 269, 270, 420 of IPC, Section 3 of the Epidemic Diseases Act, 1897 and Section 51 (b) of the Disaster Management Act, 2005. The learned Sessions Judge vide order dated 02.09.2021 rejected the application for anticipatory bail. The scheme of the Section 438 of the Code of Criminal Procedure is introduced by the State of Uttarakhand vide Act No. 22/2020. Section 438 of the Criminal Procedure Code, 1973 reads as follows:

(1) Where any person has reason to believe that he may be arrested on 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:—

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatorybail:

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grantof anticipatory bail shall be finally heard for passing an order thereon, as theCourt may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely:

(i) that the applicant shall make himself available for

interrogation by a police officer as and when required;

(ii) that 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 from disclosing such facts to the Court or to any police officer;

(iii) that the applicant shall not leave India without the previous permission ofthe Court; and

(iv) such other conditions as may be imposed under subsection (3) of section 437. as if the bail were granted under that section.

Explanation: the final order made on an application for direction under sub- section (1); shall not be construed as an interlocutory order for the purpose of this Code.

(3) Where the Court grants an interim order under subsection (l), it shall forthwith cause a notice being not less than seven days notice, together, with a copy ofsuch order to be served on the Public Prosecutor and the Superintendent ofPolice, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(4) On the date indicated in the interim order under subsection (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.

(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (l), within thirty days of the date of such

application;

Provisions of this section shall not be applicable,-

(a) to the offences arising out of-

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secrets Act, 1923;

(iv) the Uttarakhand (Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986;) Adaptation and Modification Order, 2002

(v) sub-section(3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Penal Code, 1860;

(vi) chapter 6 of the Penal Code, 1860, viz, offences against the state (except Section 129);

(vii) The Protection of Children from Sexual Offences (POCSO) Act, 2012;

(b) in the offences, in which death sentence may be awarded.

(6) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session.

3. Personal liberty under Article 21 of the Constitution of India is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

(i) Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case,

without expressing any opinion as to the merit of the case, this court directs that in the event of arrest, the applicant-accused Aman Goyal shall be released on bail on furnishing a personal bond of Rs. 30,000/- with two reliable sureties, each in the like amount to the satisfaction of the Investigating Officer/Arresting Officer with the following conditions:

(ii) The applicant shall make himself available at the time of interrogation by apolice officer as and when requires;

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

It is clarified that if the applicant misuses or violates any of the conditions, imposed upon him, the Investigating Officer will be free to move the Court for cancellation of the interim anticipatory bail. See**:** Aman Goyal Vs. State of Uttarakhand, 2021 SCC OnLine Utt 1170

6.1. **Guidelines of the Constitution Bench of the Supreme Court on anticipatory bail u/s 438 CrPC as issued in Sushila Aggarwal Vs. State, (NCT of Delhi), (2020) 5 SCC 1 (Five-Judge Bench):** In paragraph 92, the Constitution Bench of Hon'ble Supreme Court has issued following guidelines for courts for granting or refusing anticipatory bail u/s 438 CrPC:

> 92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC:
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> 92.1. Consistent with the judgment in Gurbaksh Singh Sibbia vs. State of Punjab, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) reliable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the

applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2. It may b be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose, conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, et While considering an application (for grant of anticipatory bail) the spurt 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 leaving the country), etc. The courts would be justified and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

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.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet fill end of trial.

92.6. An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection on arrest. It should be confined to the offence or incident, for which apprehension of arrest sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

92.8. The observations in Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565 regarding limited custody or "deemed custody" to facilitate the requirements the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, of discovery of a fact, which is relatable to a statement made during such even (i.e. deemed custody). In such event, there is no question for necessity of asking the accused to separately surrender and seek regular bail. Sibbia had observed that: (SCC p. 584, para 19).

> 19. if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. vs. Deoman Upadhyaya.

92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding non-cooperating during investigation, evasion, intimidation or inducement witnesses with a view to influence outcome of the investigation or trial, etc.

92.10. The court referred to in para 92.9 above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

92.11. The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See: Prakash Kadam vs. Ramprasad Viswanath Gupta: Jai Prakash Singh: State of U.P. vs. Amarmani Tripathi.) This does not amount to "cancellation" in terms of Section 439(2) CrPC.

92.12. The observations in Siddharam Satlingappa Mhetre vs. State of Maharashtra (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh vs. State of Maharashtra and subsequent decisions (including K.L. Verma vs. State, Sunita Devi vs. State of Bihar, Adri Dharan Das vs. State of W.B., Nirmal Jeet Kaur vs. State of M.P, HDFC Bank Ltd. vs. J.J. Mannan Satpal Single, State of Punjab and Naresh Kumar Yadav v. Ravindra Kumar) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail to a period of time are hereby overruled. **See: Sushila Aggarwal Vs. State, (NCT of Delhi), (2020) 5 SCC 1 (Five-Judge Bench).**

6.2 Law declared by Constitution Bench on anticipatory bail u/s 438 CrPC: A Constitution Bench of the Hon'ble Supreme Court while considering all the previous leading decisions of the Supreme Court has clarified the scope of grant or refusal of anticipatory bails by courts u/s 438 of CrPC as under:

(1) Consistent with the judgment in when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonable apprehends arrest, as well as his side of the story These are essential for the court which should consider his

application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(2) At the time of granting limited interim anticipatory bail depending on the seriousness of the threat of arrest, it is not advisable to issue notice to the public prosecutor.

(3) While considering the 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. The courts would be justified- and ought to impose conditions spelt out in Section 437 (3) CrPC. Other restrictive conditions may also be imposed if the case or cases warrant but should not be imposed in routine manner, in all cases.

(4) Whether to grant or not to grant the anticipatory bail is a matter of discretion; equally the imposition of special conditions are dependent on facts of the case, and subject to the discretion of the court.

(5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

(6) An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further

offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident.

(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

(8) The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court. See: State of U.P. Vs. Deoman Upadhyaya, AIR 1960 SC 1125.

(9) It is open to the police or the investigating agency to move the court which grants anticipatory bail, for a direction u/s 439 (2) to arrest the accused in the event of violation of any term, such as absconding, non-cooperative during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of investigation or trial, etc.

(10) The correctness of an order granting bail, can be considered and set aside if necessary by the appellate court on the ground that the court granting it did not consider material facts or crucial circumstances.

(11) It has been observed that no restrictive conditions at all can be imposed, while granting anticipatory bail has been overruled. Likewise, the decision in Salauddin Sheikh and subsequent decisions, which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time have also been overruled. See: Sushila Aggarwal Vs State (NCT of Delhi), AIR 2020 SC 831 (Five-Judge Bench)

6.3 Relevant considerations for grant or refusal of anticipatory bail u/s 438 CrPC: The relevant considerations for grant or refusal of anticipatory bail u/s 438 CrPC to an individual apprehending his arrest are as under:

(1) The limitations u/s 437 CrPC is not applicable to the grant of anticipatory bail u/s 438 CrPC.

(2) On the other hand, the object of using the words 'if it thinks fit' in section 438 (1) CrPC, which are absent in section 437 (1) CrPC, is to confer a wide discretion on the High Court and the Sessions Court to grant anticipatory bail because - (a) it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted; and (b) the intention was to give the higher courts a somewhat free hand in the grant of relief in the nature of anticipatory bail. See: Gurubaksh Singh Sibba Vs. State of Punjab, AIR 1980 SC 1632

(3) It is also for the petitioner to substantiate prima facie that the charge of serious non- bailable offence is groundless or that it has been leveled against him mala fide, e.g., for humiliating him. See: Gurubaksh Singh Sibba Vs. State of Punjab, AIR 1980 SC 1632

(4) Anticipatory bail cannot be denied merely on the ground that the investigation is yet not complete or that the name of the petitioner has not been mentioned in the FIR. See: Jagan Vs.

State of M.P. (1978) Cr LJ (NOC) 256 (MP)

(5) Anticipatory bail should be granted as a rule if it is used to oppress the political opponents or where there is no specific act attributed to the accused. See: Narinder Vs. State, (1977) CrLJ 596 (P & H)

(6) The power of anticipatory bail exercisable u/s 438 CrPC is somewhat extra-ordinary and it is only in exceptional cases that it can be used when it appears that the person may be falsely implicated in the offence or where there are reasonable grounds for believing that it is not likely to be misused. See: Adri Dharan Das Vs. State of W.B., AIR 2005 SC 1057 and D.K. Ganesh Babu Vs. P.T. Manokaran, (2007) 4 SCC 434

(7) The provision of section 438 CrPC should not be applied mechanically and anticipatory bail should not be granted in every case by mere asking of the accused. See: Suresh Vs State, 1958 CrLj 1750 (Rajasthan)

(8) An anticipatory bail intrudes in the sphere of investigation of crime. Some very compelling circumstances have to be made out for grant of anticipatory bail to the accused involved in serious offences. See: Pokar Ram Vs. State, AIR 1985 SC 969

(9) It is obligatory for the court to hear the Public Prosecutor before granting anticipatory bail finally, even though at initial stage interim order may be passed without hearing the Public Prosecutor.

(10) Reasons must be recorded, though briefly, as to why the anticipatory bail was being granted. See: State of Maharashtra Vs. Viswas, (1978) CrLj 1403 (Bombay) (DB).

6.4 Relevant considerations for grant of bail and anticipatory bail

u/s 438 CrPC: The factors to be taken into consideration, while condsidering an application for bail of the particular an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant or the time of trail or the likelihood of his abscondence, Character, behaviour and standing of the accused, and the circumstances which are peculiar to the accused and larger interest of the public or the State and similar other considerations. A Criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realize the dues of the complainant, and that too without any trial. See:

(i) Ramesh Kumar Vs. State NCT Delhi (2023) 7 SCC 461 (Para 23)

(ii) Dilip Singh Vs. State of M.P, (2021) 2 SCC 779 (Para 4)

6.4 Depositing cheated money as condition for grant of anticipatory bail u/s 438 CrPC cannot be imposed: Inclusion of a condition for payment of money by the accused for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail. See: Ramesh Kumar Vs. State NCT of Delhi, (2023) 7 SCC 461 (Para 25)

6.5 Direction of High Court to cancel sale-deed imposed as pre-condition for anticipatory bail held improper by Supreme Court: The High Court while allowing an application of the accused seeking anticipatory bail u/s 438 CrPC directed the accused to comply with the Condition No. (iii) with regard to cancellation of the registered

sale deed executed by him and return the money received from the complainant. The said condition is reproduced below:

> (iii)"The petitioner/accused shall cooperate in the investigation and shall furnish all the registered documents before the investigating authorities and he shall take steps to cancel the registered sale deeds executed in favour of the vendees within two months from today, and shall also return the consideration amount received through the said registered sale deeds within two months from today, failing which, liberty granted to the petitioner shall stand cancelled automatically and he shall be taken into custody forthwith."
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> The Supreme Court held that the High Court ought not to have imposed the said Condition No. (iii) while granting anticipatory bail to the accused as it would tantamount to adversely affect the rights of the parties to the registered documents which can be adjudicated upon by a Civil Court only. See: Syed Afsar Pasha Quadri Vs. State of Telangana, 2021 SCC OnLine SC 977

6. **Caution of Supreme Court regarding grant of bail during investigation of crime:** Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused know that he is protected by the order of the court Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the

respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail See: P.Chidambaram Vs. E.D., AIR 2019 SC 4198

7. **Long relationship of major female with accused entitled the accused to anticipatory bail:** The challenge in the present appeal before the Supreme Court was to an order passed by the High Court on 19.05.2022 whereby an application for pre-arrest bail under Section 438 CrPC for the offences under Sections 376(2)(n), 377 and 506 IPC was dismissed. It was admitted case of the complainant that she was in a relationship with the appellant for a period of four years. In view of the said fact, the complainant had willingly been staying with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376 (2)(n) IPC. The Supreme Court made it clear that the observations in the present order would be only for the purposes of deciding the pre-arrest bail application. The investigation shall proceed uninfluenced by the observations made in the present order. See: Ansaar Mohammad Vs. State of Rajasthan and Another, 2022 SCC OnLine SC 886.

8. **Anticipatory bail granted by Uttarakhand High Court for offences u/s 304, 201 and 120-B IPC:** Apprehending his arrest, the applicant moved an application under Section 438 CrPC seeking anticipatory bail in the event of his arrest in connection with Case Crime No. 73 of 2021, registered with Police Station

Joshimath, District Chamoli under Sections 304, 201 and 120-B of IPC. Personal liberty under Article 21 of the Constitution of India is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case, without expressing any opinion as to the merit of the case, this court directs that in the event of arrest, the applicant-accused Suraj Singh alias Suraj Thakur shall be released on bail on furnishing a personal bond of Rs. 30,000/- with two reliable sureties, each in the like amount to the satisfaction of the Investigating Officer/Arresting Officer with the following conditions:

(i) The applicant shall make himself available at the time of interrogation by a police officer as and when requires;

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

I. List on 16.02.2022 for arguments on the application of anticipatory bail. Meanwhile, counter affidavit may be filed.

See: Suraj Singh Vs. State of Uttarakhand, 2022 SCC OnLine Utt 65

9. **Anticipatory bail granted by Uttarakhand High Court for offence u/s 304-B IPC:** Apprehending his arrest, the applicant-accused Shiv Lal Arya aged about 60 years had moved an application for anticipatory bail before the Sessions Judge, Rudraprayag in connection with the FIR No. 32 of 2021 registered with Police Station Agustmuni, District Rudraprayag

for the offence under Section 304B of IPC. The learned Sessions Judge, Rudraprayag vide order dated 10.11.2021 rejected the said application for anticipatory bail. Present application has been filed under Section 438 of the Criminal Procedure Code, 1973 seeking anticipatory bail in the event of his arrest. Personal liberty under Article 21 of the Constitution of India is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case, this court directs that in the event of arrest, the applicant-accused Shiv Lal Arya shall be released on bail on furnishing a personal bond of Rs. 30,000/- with two reliable sureties of the same amount, to the satisfaction of the Investigating Officer/Arresting Officer on the following conditions:

The applicant shall make himself available for interrogation by the Investigating Officer as and when requires;

ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case. See: Shiv Lal Arya Vs. State of Uttarakhand, 2022 SCC OnLine Utt. 842

10. **Anticipatory bail granted by Uttarakhand High Court for offence u/s 376, 312, 506 IPC:** Apprehending his arrest, the applicant - accused, namely, Shahnoor alias Shanu Arun has moved an application for anticipatory bail under Section 438 CrCP seeking anticipatory bail in the event of his arrest in connection with the FIR No. 109 of 2022, registered with Police

Station Pant Nagar, District Udham Singh Nagar for the offence under Sections 376, 312 and 506 of IPC. The learned counsel for the applicant further argued that there is no other evidence against the present applicant. Personal liberty under Article 21 of the Constitution of India is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case, without expressing any opinion as to the merit of the case, this court directs that in the event of arrest, the applicant accused Shahnoor alias Shanu Arun shall be released on bail on furnishing a personal bond of Rs. 30,000/- with two reliable sureties, each in the like amount to the satisfaction of the Investigating Officer/Arresting Officer on the following conditions:

(i) The applicant shall make himself available for interrogation by the Investigating Officer as and when requires;

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case. See: Shahnoor Vs. State of Uttarakhand and Others, 2022 SCC OnLine Utt 897

11. **Supreme Court granting anticipatory bail for offence u/s 306 IPC**: Accused had enjoyed the relief of anticipatory bail granted by High Court for last more than three and half years and then rejected the same. Without making any comments on merits of the matter, the Supreme Court set aside the order of

the High Court and granted anticipatory bail to the accused. See: Dheeraj Bhadviya Vs. State of Rajasthan, (2022) 6 SCC 63

12. **Anticipatory bail cannot be denied to accused solely on ground that arrest of accused is necessary as police were ready to submit charge-sheet:** Arrest of the accused prior to taking charge-sheet on record is not mandatory as per Section 170 CrPC. Hence, anticipatory bail cannot be denied to accused solely on the ground that as police were ready to file charge-sheet, it was mandatory to arrest the accused, and for that reason, anticipatory bail could not be granted. Insistence of trial courts on arrest of accused 4 is a pre-requisite to take the charge-sheet on record is misplaced and contrary to the very intent of Section 170 CrPC. When police submits charge-sheet, it is the duty of court to take it on record and consider it in accordance with law regardless of whether accused has been arrested or not. This would especially be true in cases where Section 468 CrPC provides for a limitation period within which cognizance of offence must be taken. Section 170 CrPC does not impose an obligation on police to arrest each and every accused at the time of filing of the charge-sheet and therefore, if the IO does not believe that the accused will abscond or disobey summons, he need not be produced in custody. See: Siddarth Vs. State of U.P., (2022) 1 SCC 676

13. **No absolute bar against grant of anticipatory bail even if accused is a proclaimed offender:** There is no absolute bar against grant of anticipatory bail even if accused is a proclaimed offender. See: Order dated 06.01.2026 of Allahabad High Court passed in Monika Vs State of UP, 2026 LiveLaw (AB) 11.

14. **Anticipatory bail cannot be sought in complaint case merely on issue of process i.e. summons or BW:** Anticipatory bail u/s 482 of the BNSS, 2023 cannot be sought in complaint case merely on the issue of summons or BW. See: Ashish Kumar Vs. State of UP, 2025 SCC Online Allahabad 4518

15. **Anticipatory bail normally not to granted after issuance of NBW:** Anticipatory bail normally cannot to granted to accused after issuance of NBW**.** See:

    (i) Ashish Kumar Vs. State of UP, 2025 SCC Online Allahabad 4518

    (ii) Srikant Upadhyay Vs. State of Bihar, 2024 SCC Online SC 282

16. **Anticipatory bail not to granted after issuance of proclamation against accused u/s 82 CrPC:** Anticipatory bail cannot to granted after issuance of proclamation against accused u/s 82 CrPC.

    (i) Ashish Kumar Vs. State of UP, 2025 SCC Online Allahabad 4518

    (ii) Srikant Upadhyay Vs. State of Bihar, 2024 SCC Online SC 282

17. **Anticipatory bail order passed by High Court without considering nature of allegations against respective accused and their role set aside by Supreme Court:** In the case noted below, the Kerala High Court while granting anticipatory bail to four accused persons for the offences punishable u/s 120-B, 167, 218, 330, 323, 195, 348, 365, 477-A, 506 IPC had made some observations without considering the individual role played by the respective accused persons when they were working in the Kerala

Police(IB) and without considering the nature of allegations against them. The Supreme Court set aside the anticipatory bail granted to the accused persons and remanded the matter to the High Court to consider the anticipatory bail applications afresh. From the impugned judgments and orders passed by the High Court, it appeared that what had weighed with the High Court was the FIR that was filed after a number of years after the incident having occurred in 1994. However, the High Court had not appreciated at all that the FIR was lodged pursuant to the liberty granted by the Supreme Court in the judgment and order passed by it in the year 2021 and on the basis of the recommendations made by the Committee headed by Hon'ble Mr. Justice D.K. Jain, a former Judge of the Supreme Court. Therefore, the High Court had failed to appreciate that the present FIR was registered pursuant to the observations and the directions issued by the Supreme Court. While granting the anticipatory bail to the accused persons, the High Court had neither considered the allegations against the respective accused nor the role played by them nor the position held by them at the time of registering of the FIR in the year 1994 nor the role played by them during the investigation of Crime No. 225/1994/246/1994. In view of the above, the impugned judgments and orders passed by the High Court granting anticipatory bail to the accused persons deserved to be quashed and were set aside and the matters were remitted to the High Court to consider the anticipatory bail applications afresh and thereafter to pass appropriate orders in accordance with law and on their own merits and taking into consideration the observations made by the Supreme Court. See: Judgment dated

02.12.2022 of the Hon'ble Supreme Court in Criminal Appeal No. 2147-2149 of 2022 in CBI Vs. P.S. Jayaprakash.

18. **Discretionary power of grant of bail u/s 438 CrPC when and how to be exercised by courts?:** The Hon'ble Supreme Court in deliberating on the various conditions under which the discretionary power should be exercised by the appropriate court, has laid down the following guidelines:

(1) The object of anticipatory bail is to protect a person from unnecessary harassment or humiliation by the investigating agency. On the other hand, if the court intrudes into the sphere of investigation of crime without circumspection, faith of the public in the administration of justice would be completely shaken. Therefore, the court should strike a balance between protection of an individual from unnecessary humiliation and the faith of the public in the administration of justice.

(2) Anticipatory Bail is not confined to cases of actual malice. On the other hand, status in life, affluence or otherwise of the applicant are not relevant considerations u/s 438 CrPC.

(3) Since anticipatory bail intrudes into the sphere of investigation, the court should be circumspect in exercising this power in cases where a serious crime is alleged against the applicant.

(4) In this regard, it is highly relevant to refer to the observations of the Constitution Bench, Hon'ble Apex Court held that- "there is no offence, per se, which stands excluded from the purview of section 438, except the offences mentioned in section 438(4). In other words, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or statute, which

exclude relief under section 438(1) they would have to be duly considered." The court should exercise the discretion, "having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing justice (or not fleeing justice); likelihood of cooperation or non-cooperation with the investigating agency or police etc." The court has also observed that the role of the offender, circumstances relating to him, his likelihood of subverting justice (or fair investigation), are also to be considered and in accordance thereto the court may impose special conditions. See: Sushila Aggarwal Vs State (NCT of Delhi), AIR 2020 SC 831

19. **Presence of accused before court at the time of seeking anticipatory bail?:** With respect to the requirement of presence of the applicant seeking anticipatory bail, the Central Act, makes it obligatory only when an application to that effect as per sub-section (1-B) has been made by the Public Prosecutor and the court considers such presence necessary in the interest of justice. In this regard, the U.P. Amendment does not make any such provision in express terms, rather as per sub-section (4), it has been provided "the Court shall hear the Public Prosecutor and the Applicant and after due considerations of their contentions, it may either confirm, modify or cancel the interim order".

20. **Presence of accused whether required at the time of hearing on application for anticipatory bail?:** While the Central Act makes provision under sub-section (3) of Section 438 CrPC

with respect to the right of the applicant, if he is arrested without warrant by an officer-in-charge of a police station on such accusation, thereby providing that if the concerned person, is prepared to give ball, he shall be released on bail. The Central Act also makes provision that "*if a Magistrate taking cognizance of such offence decides that a warrant should issue 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)"* **The U.P. Amendment makes no such provision.**

21. **Application for anticipatory bail to be decided finally within 30 days:** The U.P. Amendment under sub-section (5) of Section 438 CrPC introduced vide Criminal Law (Amendment) Act, 2018, w.e.f. 21.04.2018 provides that the Court concerned shall finally dispose of an application for grant of anticipatory bail under sub-section (1) of Section 438 CrPC within 30 days of the date of such application. The Central Act makes no such provision.

22. **Offences wherein anticipatory bail cannot be granted u/s 438 CrPC:** Vide Criminal Law (Amendment) Act, 2018, w.e.f. 21.04.2018, a new provision in the form of sub-section (4) has been added under the Central Act which provides that Section 438 CrPC shall not apply to any case involving the arrest of any person on accusation relating to section 376(3) or section 376AB or section 376DA and section 376DB of the IPC. On the contrary, the U.P. Amendment under sub-section (6), has made provision regarding non- applicability to the offences arising out of:

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secret Act, 1923;

(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(b) in the offences, in which death sentence can be awarded.

Lastly, under sub-section (7), the U.P. Amendment makes a provision, which has not been provided under the Central Act. The provision as applicable in Uttar Pradesh is as under:

"(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session".

23. **Which court is competent to entertain application for anticipatory bail u/s 438 CrPC?:** Section 438 CrPC provides that the accused may apply to the Court of Session or to the High Court, thereby making it clear that the person concerned has a right to move either the High Court or the Court of Session and that their jurisdiction is concurrent. This right cannot be superseded by any rule of practice that the party must approach the Court of Session before coming to the High Court. Notably the U.P. Amendment under sub- section (7) provides that- "if an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session". Thereby meaning, that while, both the courts have concurrent jurisdiction, but if the applicant in the first instance chooses to approach the High Court and has accordingly submitted an application in that

court, the Session Court is barred from entertaining an application by the concerned person.

24. **Application for anticipatory bail cannot be ordinarily moved directly to High Court:** The Hon'ble Allahabad High Court has held that the bail application filed under Section 438 of CrPC is not maintainable before the High Court without exhausting remedy before the Court of Sessions, which has got concurrent jurisdiction. However, for extraneous or special reasons, the High Court can also exercise such power for grant of the remedy under the said provision. See: Harendra Singh Vs. State of U.P., Cri.Misc. Application no. 6478/2019(Bail)

25. **Guidelines of Allahabad High Court on entertaining applications for anticipatory bail by High Court and court of Sessions:** The Hon'ble Allahabad High Court in a later decision in elaborately dealing with the question of concurrent jurisdiction of the High Court and the Sessions Court has laid down the following legal preposition:

(1) Section 438 on its plain terms does not require a party to first approach Sessions Court before applying to the High Court for grant of anticipatory bail.

(2) Notwithstanding concurrent jurisdiction being conferred on the two courts, strong cogent, compelling and special circumstances must necessarily be found to exist for the High Court to be approached in the first instance.

(3) The existence of such factors be left for the court to consider in each individual matter.

(4) The words "exceptional" or "extraordinary" are understood to mean atypical, rare, out of ordinary, unusual or uncommon.

(5) Thus, an applicant can challenge the order of the Sessions Court in revision before the High Court, thereby providing him with another avenue to correct the mistake of the lower court. See: Vinod Kumar Vs. State of U.P., 2019 (12) ADJ 495

26. Five-Judge Bench judgment of Allahabad High Court on issue of jurisdiction to entertain application for anticipatory bail by High Court and Sessions Judge: The legal position on this question has been unequivocally settled by a five Judges Bench in *Ankit Bharti v. State of U.P, Crl. Misc. Anticipatory Bail Application u/s 438 CrPC No. 1094/2020 decided on 02.03.2020. The Hon'ble High Court in this judgment has approved the observations in Vinod Kumar case (supra).* Further the Hon'ble Bench has also laid that the special circumstances must necessarily be supported and established from the material on record. There must be strong foundation in support of the imminent threat of arrest. It may also be kept in mind that the Hon'ble Supreme Court has held that grant or refusal of bail being an interlocutory matter there is no finality in the matter. In this context, the U.P. Amendment under the Explanation attached to section 438 (2) has specifically provided that "The final order made on an application for direction under sub- section (1) shall not be construed as an interlocutory order for the purpose of this Code". See: Usmanbhai Dawoodbhai Memon Vs. State of Gujarat, (1988) 2 SCC 271

27. **Which court has jurisdiction to entertain application for anticipatory bail when offence committed in one state but accused resides in other state?:** There has been a controversy over the question as to the court to which the accused may apply for anticipatory bail when he resides in one State and the offence is committed in another State.

(i) The Karnataka, Bombay and Delhi High Courts have held that there is no bar to the applicant seeking redress from the court within whose jurisdiction he is apprehending arrest. See: Naidu Vs. State of Karnataka, 1984 CrLJ 757(Kant)

(ii) On the other hand, the Punjab, Jammu and Kashmir, Kerala, Madhya Pradesh and Patna High Courts have held that - (a) bail is incidental to the trial of an offence, (b) there being no special provision u/s. 438, the general rule enacted in section 177 CrPC should apply, so that only that High Court within whose jurisdiction the alleged offence was committed and which has jurisdiction to try the case has jurisdiction to grant anticipatory bail and not the High Court of the State where the applicant resides and apprehends arrest. See: Ravinder Vs. State of Punjab, 1984 CrLJ 714 (P & H)

(iii) The Calcutta High Court in a Full Bench judgment in Sailesh Jaiswal Vs. State, (1998) 2 CHN 81 has observed that exercise of jurisdiction for anticipatory bail by any court, beyond the local limits of the jurisdiction in which the offences have been committed is limited to the extent of consideration of bail for transitional period, but it has no jurisdiction to transgress. It is the limit of the local

jurisdiction of the Court within which the offence is alleged to have been committed.

(iv) In a case where, in respect of an offence committed by in the State of Assam, the petitioner obtained the anticipatory bail order from Bombay High Court on the ground that they were residing in the State of Maharashtra, the Hon'ble Supreme Court set aside such order of anticipatory bail passed by the Bombay High Court in State Vs. Krishnakumar, AIR 1998 SC 144. The court observed that the question of granting anticipatory bail to any person who is allegedly connected with the offence in question must for all practical purposes be considered by the High Court of Gauhati within whose territorial jurisdiction such activities should have been perpetrated. In the above mentioned two cases, even though the Hon'ble Supreme Court did not specifically deny the jurisdiction of the court to entertain the anticipatory bail application by a person within whose jurisdiction, he resides and apprehends arrest, but for all practical purposes conferred the jurisdiction on the High Court within whose jurisdiction the alleged offence had been committed by setting aside the orders of the High Court granting anticipatory bail of the Bombay High Court and transferred the anticipatory bail petition to be heard by the Division Bench of the Gauhati High Court.

28. Anticipatory bail when not to be granted u/s 438 CrPC?: Being an extraordinary remedy, it should be resorted to only in a special case and the petitioner must establish special circumstances, mere allegation of mala fides or claim of

innocence is not enough. He must adduce prima facie evidence in support of his allegation that a serious charge of a non-bailable offence has been brought against him out of malice. In addition to this, the conditions relevant to section 437, ante, must also be made out to obtain anticipatory bail. It follows that anticipatory bail should not ordinarily be granted:

(i) Where the charge is so serious as to be punishable with death or imprisonment for life. Unless the Court is satisfied at the very start of the investigation that the charge is false or groundless. The position of such person before arrest cannot be better than after arrest. See: Gurcharan Singh Vs. State, AIR 1978 SC 179 (para 23)

(ii) Where a legitimate case for remanding the offender to police custody for the purpose of investigation or a reasonable claim to secure incriminating material from the offender under S. 27 of the Evidence Act can be made out. The mere purpose of identification of the accused during investigation would not be a ground for refusal of bail. See: Burbaksh Vs. State of Punjab, AIR P&H 1 (FB)

(iii) In the case of serious economic offences, e.g. where the prosecution is for evading income-tax to the tune of lacks of rupees against the community, the investigation should not be stifled at the very threshold of the investigation, by granting anticipatory bail. In such cases, there is also the additional consideration of the likelihood of the offence being repeated. See: Somabhai Vs. State of Gujarat, (177) CRLj 1523

(iv) Anticipatory Bail in Economic Offences Matters: Power u/s 438 CrPC being an extraordinary remedy, has to be

exercised sparingly, more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of society. Where it was held that an economic offence, the accused is not entitled to anticipatory bail. The Hon'ble Apex Court has held as under. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view while collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest. See: Enforcement Directorate Vs. Ashok Kumar Jain, (1998) 2 SCC 105

(v) Where the offence involved is anti-social" and detrimental to poor people of a substantial dimension.

(vi) As a rule, anticipatory bail should not ordinarily be granted in the case of unnatural death of a daughter-in-law in the house of the father-in-law (popularly known as 'dowry death'), so long as the case is still under investigation. Where there is a case for remand for the purpose of investigation, not being a purpose of identification of the accused.

(vii) Anticipatory bail should not be granted in murder case when the investigation is still incomplete and the proper course of adopt is to leave the matter to the Trial Court when the accused applies for regular bail.

(viii) When the accused is alleged to have committed serious offence of murder and conspiracy to murder and the available evidence points out, the complicity of the accused in the crime, anticipatory bail to such an accused is improper. When the name of the petitioner transpired in FIR of a murder case, anticipatory bail should not be granted at the stage of investigation. See: State Vs. Deepak, 1999 CrLJ 162 (Guj)

(ix) When the mother-in-law poured kerosene oil on the body of the daughter in law but the victim has somehow survived the anticipatory ball in such attempt to murder charge should not be granted. See: Chandrakanti Vs. State, 2004 CrLJ (NOC) 259 (BOM)

(x) When the applicants are involved in offence under S. 498A and S.304B IPC and investigation of the offences regarding torture of the wife by the relatives of the husband are in progress, they should not be enlarged in the anticipatory bail.

(xi) When the High Court granted anticipatory bail to the accused relying on some contradictory statements in the statement of the witnesses, the Supreme Court set is aside holding it is not a fit case for grant of anticipatory bail." When the allegation of rape has been made against the police officers and there is every likelihood of the officers tampering with evidence if released on bail, anticipatory

bail should not be granted. See: Chunilal Vs. State, 1996 CrLJ 3864 (HP)

(xii) When prima facie offence of murder committed by the police officers against the innocent persons in false encounter piercing their innocent persons with bullets without any provocation, anticipatory bail should not be granted. See:

(xiii) When the accused is alleged to have committed of cheating the innocent job seekers taking huge amount from them on the false promise of giving job, such an accused needs police interrogation in the custody. So, the anticipatory bail should not be granted to him.

(xiv) The petitioner accused of torturing a village boy and there were as many of evidence injuries on the body of the boy. He had criminal antecedents. So, the anticipatory bail prayed for by him has been refused.

(xv)In view of fraudulent evasion of customs duty of Rs. 6.64 crores by way of mis-declaration and under-valuation in respect of import of MPEG Cords in the name of four persons, in view of the prima facie involvement in the offence anticipatory bail should not be granted." The case if pending against the petitioner for various offences under IPC read with S. 27 of the Arms Act. He is involved in eight other cases. In one case, even if he was granted statutory bail, he did not comply with the conditions of bail nor did he appear before the police to show his bona fide. So, he is not entitled to the anticipatory bail.

(xvi) In a murder case, the allegations against the petitioner is conspiracy to commit murder. Even though eye witness is

available co-accused implicates the petitioner, no anticipatory bail is to be granted. See: Sandeep Vs. State, 2008 CrLJ 4744 (Mad).

(xvii)In a case of cheating and forgery of the petitioner by performing eye operations of a number of persons without any medical degree, the custodial interrogation of the petitioner is necessary. So, no anticipatory bail should be granted. When the accused in collusion with others defrauded the bank to the tune of over two crores and is found to have master minded the entire transaction, he is not entitled to anticipatory bail. See: HDFC Bank Ltd. Vs. JJ Mannan, AIR 2010 SC 618.

29. **How long can an anticipatory bail granted u/s 438 CrPC survive?:** The line of judgments that anticipatory bail should not be for a limited period places its reliance on the Constitution Bench decision in Sri Gurbaksh Singh Sibbia case (supra). In Siddharam Satlingappa Mhetre (supra), the Supreme Court has taken the view that the Constitution Bench has held that anticipatory bail granted by the court should ordinarily continue till the trial of the case (See para 94 & 95). This judgment has been followed in. The other line of judgments is that orders of anticipatory bail should be of a limited duration. Relevant judgments in this regard are - Notably these cases have been decided without referring to the Constitution Bench judgment in Sri Gurbaksh Singh Sibbia case (supra). A latter judgment in has referred to a contention based on the Constitution Bench decision in Sibbia (supra) and yet it has taken a view that the protection under section 438 is only till the investigation is

completed and charge sheet is filed (See paragraphs 14 & 18 to 20). It has been followed in **Satpal Singh Vs. State of Punjab, (2018) SCC Online SC 415**. Recently a three- judge bench of the Hon'ble Supreme Court in SLP (Criminal) Nos. 7281-7282 of 2017, in Sushila Aggrawal & Ors. v. State (NCT of Delhi) & anr, in the light of conflicting views of the different Benches of varying strength, opined that the legal position needs to be authoritatively settled in clear and unambiguous terms. Therefore, framing the following questions, it was referred to the Hon'ble Chief Justice of India for referring the matter to the larger Bench:

(1) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the Trial Court and seek regular bail.
(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

30. Duration of anticipatory bail is not subject to any specific time limit: A Constitution Bench has ruled that under Section 438 CrPC, an anticipatory bail should not invariably be limited to a fixed period. The protection can be granted to the accused without any restriction on time. Normal conditions under Section 437(3) CrPC read with section 438(2) CrPC should be imposed; if there are specific facts or features in regard to any offence. It is open to the court to impose any appropriate condition including fixed nature of relief, or it being tied to an event etc. See: Sushila Aggarwal VS. State (NCT of Delhi), AIR 2020 SC 831. (Five-Judge Bench)

31. No blanket order of anticipatory bail to cover all offences likely to be committed by the accused in future can be passed by court u/s 438 CrPC:

(1) The court cannot pass a 'blanket order' of anticipatory bail to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'.

(2) The order of the court, granting the anticipatory bail, must also be clear and specific, with reference to the specific events and facts disclosed in the application.

(3) It is imperative for the court to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

32. Imposing condition of payment of maintenance by husband to wife for grant of anticipatory bail held proper by Supreme Court: While granting anticipatory bail to the petitioner, in the complaint case, for offences punishable inter alia under Section 4 of the Dowry Prohibition Act, imposing conditions in addition to those mentioned under Section 438(2) of the CrPC, directed the petitioner/applicant "in view of the facts and circumstances..... and the divorce case between the parties is pending as such till any order is passed, this application is disposed of with direction that till any order is passed, the petitioner shall pay Rs. 20,000/- per month to the opposite party no. 2". The order was challenged before the Hon'ble Supreme Court, on the plea that no such condition, regarding payment of monthly maintenance can be made while granting anticipatory bail. The Supreme Court held the

condition valid and dismissed the petition filed against grant of anticipatory bail. See: Order dated 16.10.2020 of the Hon'ble Supreme Court passed in SLP (Crim.) Diary No. 20961/2020, Mohan Murari Vs. The State of Bihar (Three-Judge Bench)

33. **Conditional order of anticipatory bail: In the context of conditions under section 438(2) CrPC, the Supreme Court has observed that:** While exercising power under Section 438 of the Code, the Court is duly bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed Under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed. In the same refrain, the Hon'ble Apex Court, with respect to restrictions on the applicant to travel abroad has made valuable

observations in many of its judgments. It has observed that, "the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case……. At best, the condition for seeking prior permission before travelling abroad could have been regulated, not deleted altogether. The Supreme Court has passed multiple orders allowing an accused enlarged on bail to travel abroad. The Supreme Court allowed an accused-applicant to travel abroad for medical treatment by modifying its earlier bail order on ground of medical exigency. An accused- appellant was allowed to travel abroad to meet in the exigencies of family situation. In the accused-petitioner was permitted to travel to Indonesia in connection with his employment and to return once the work was completed. Reiterating the long held legal principles the Hon'ble Supreme Court in permitted the accused-appellant to travel to the U.S. The Court has observed - The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case. See: Sumit Mehta Vs. State of Delhi(NCT of Delhi), (2013) 15 SCC 570

34. **Regular bail by subordinate court versus interim or anticipatory bail by High Court:** The Hon'ble Supreme Court in an order dated 03 August, 2017 in the case has observed as under: When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned trial court and seek regular bail. The predicament of the subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre- arrest bail by the superior Court meaningless. If this is a practice that is prevailing in some of the subordinate Courts in the Country and we have had notice of several such cases, time has come to put the learned subordinate Courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged. We, therefore, direct that a copy of this order be forwarded to the Director of all Judicial Academies in the country to be brought to the notice

of all judicial officers exercising criminal jurisdiction in their respective States. See: of Rukmani Mahato Vs. State of Jharkhand, Special Leave to Appeal (Civil) no. 2411/2016

35. **No anticipatory bail u/s 438 CrPC for offence under SC&ST (Prevention of Atrocities) Act, 1989:** Section 18 of the SC&ST (Prevention of Atrocities) Act, 1989 (Now 2015 Act) provides: Section 438 of the Code not to apply to persons committing an offence under the Act- Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. With respect to anticipatory ball vis-à-vis the Act of 1989, the Hon'ble Supreme Court in" held that "there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prime facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. Taking note of the above and other findings of the Supreme Court, Section 18-A has been added to the Act of 1989, which inter alia provides-

The provisions of Section 438 of the Code shall not apply to a case under this Act notwithstanding any judgment or order or direction of any court. The Hon'ble Supreme Court upheld in State of M.P. Vs. Ram Krishna Balothia, AIR 1995 SC 1198 the validity of Section 18 of the Act of 1989. Decision to the same effect was rendered in Vilas Pandurang Pawar v. State of Maharashtra (2012) 8 SCC 795: AIR 2012 SC3316. In case of Prithvi Raj Chauhan Vs. Union of India, AIR 2020 SC 1036 dealing with the legality of insertion of Section 18-A, has observed- Concerning the applicability of provisions of Section

438 CrPC, it shall not apply to the cases under the Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. While considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. This was also clarified by the Hon'ble Court in the review petition - Union of India v. State of Maharashtra, AIR 2019 SC 4917

36. **Anticipatory bail for offences under SC/ST Act can be granted by court if the abusive words were made over telephone/ mobile phone, and not in public view, as the provisions of SC/ST Act would not be attracted:** If the abusive remarks were made over the telephone/ mobile phone and not in public view, the provisions of the SC/ST Act would not be attracted. In such a case, the accused can move his regular bail application or anticipatory bail application in accordance with law before the jurisdictional court. See: Judgment dated 22.12.2025 of the Calcutta High Court passed in CRM (A) 4050 of 2025, Nurul Alas Vs State of West Bengal.

37. **Police custody remand for a likely discovery u/s 27 of Evidence Act during anticipatory bail:** The Hon'ble Supreme Court in Gurubaksh Singh Sibba Vs. State of Punjab, AIR 1980

SC 1632 has taking note of such an eventuality has laid down That in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of UP. v. Deoman Upadhyaya, AIR 1960 SC 1125, 1961(1) SCR 14.

38. **Limited custody, deemed custody and Section 27 of Evidence Act: In the light, the Hon'ble Apex Court in Sushila Aggarwal has elaborated:** Therefore, the "limited custody" or "deemed custody" to facilitate the requirement of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sushila Aggarwal Vs State (NCT of Delhi), AIR 2020 SC 831 (Five-Judge Bench)

39. **Application of Section 438 CrPC to juvenile:** The Madhya Pradesh High Court in has held that provisions of section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000 do not provide the power to grant anticipatory bail to the JJ

Board. Therefore, the JJ Board has no jurisdiction to entertain application under section 438 of CrPC. The High Court held that a 'juvenile in conflict with law' can make an application for bail only before the JJ Board and accordingly such a juvenile is not entitled to maintain an application for grant of anticipatory bail u/s 438 of CrPC. Similar opinion has been expressed in another judgment of the High Court of Madhya Pradesh. See: Kamlesh Gurjar Vs. State of M.P., M.Cr.C no. 10345 of 2009

(i) However, the following the judgment of the same High Court held that the provision of anticipatory bail as provided under section 438 CrPC is applicable to a juvenile in conflict with law and accordingly an application submitted by such person before the appropriate court is maintainable.

(ii) This issue has been also examined by the Allahabad High Court in ***Shahaab Ali (Minor) v. State of U.P, Crl. Misc. Anticipatory Bail Application u/s 438 CrPC No. 597/2020***, decided on 20.01.2020. The court has examined the question from two perspectives- (1) Position where the minor approaches the court after registration of FIR and (ii) Position where a minor apprehends arrest and detention prior to the registration of FIR. Examining the legal provisions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and in particular the non obstante clause under section 1(4) of the II Act, the court held that the provisions under section 438 CrPC are excluded by the JJ Act. Therefore, once an FIR is registered or information is otherwise recorded by the concerned authority with regard to a child in conflict with law, the provision of

section 438 stand impliedly excluded. Thus, post registration of FIR anticipatory bail cannot be granted to a child covered under the JJ Act. However, as the provision regarding bail under the JJ Act comes into play only after the recording of the report regarding an offence, therefore, prior to that a child apprehending detention may invoke the provision regarding anticipatory bail before the Sessions or High Court.

35.1 No anticipatory bail for offences under NDPS Act: Anticipatory bail cannot be granted to a person apprehending arrest for the offences under the NDPS Act, 1985. See: Order dated 07.07.2025 passed by the Supreme Court in SLP (Criminal) no. 9540/2025, Dinesh Chander Vs. State of Haryana

35.2 Anticipatory bail to accused can be granted for offences under NDPS Act: Anticipatory bail to accused can be granted u/s 438 CrPC (now Section 482 BNSS) for offences under the NDPS Act, 1985: See: Judgment dated 30.05.2025 passed by Lucknow Bench of Allahabad High Court in Criminal Misc. Anticipatory Bail Application u/s 438 CrPC No. 447 of 2025, Sudhir Vs. State of UP

36. Only authorization, not Vakalatnama, is required with bail application: CrPC does not contain any Section that makes filing a Vakalatnama mandatory for filing a bail application, whether it is regular bail, anticipatory bail and suspension of sentence after conviction. The CrPC only requires that the accused be represented by a duly authorized advocate. Moreover, though CrPC does not mandate, however, the courts require some form of authorization for an advocate to act on behalf of the accused or convict and the providing of an NOC by the earlier counsel is a matter of 'good practice' rather than a matter of right, especially in criminal cases wherein life and liberty of a detenu is an issue and an accused or convict has a fundamental right guaranteed by Article

22(1) of the Constitution of India and reiterated in Section 303 and 41-D of the CrPC to be represented by an advocate of his or her choice as has been held by the Supreme Court in the case of Subedar Vs. State of UP, (2020) 17 SCC 765. See: Order dated 21.11.2025 passed by Division Bench of Lucknow Bench of Allahabad High Court in Criminal Appeal No. 1283/2021, Manorama Shukla Vs. State of UP

37. Recovery of incriminating material by police to be mandatorily made by audio - video recording: Allahabad High Court has directed the DGP of Uttar Pradesh to issue detailed SOP as required by Rule 18(5) of the Uttar Pradesh BNSS Rules, 2024 for mandatory conducting audio vedio recording of search, seizure or possession of property or other incriminating material including the preparation of list of articles or property seized as well as signature of witnesses on E-Sakshya Portal and uploading the same or through other audio video electronic means including mobile phone of the police officer on duty and direction may also be issued that failing to comply with the mandatory requirement of Section 105 of the BNSS read with Rule 18 of the BNSS Rules, 2024 may attract disciplinary proceedings against the concerned police officer so that on the one hand it would save innocent persons from false recovery of property or articles and on the other hand to prepare foolproof evidence against the criminals for hearing the bail application as well as during trial. See: Judment dated 05.01.2026 of the Allahabad High Court passed on Criminal Misc. Bail Application No. 40989 of 2025, Shadab Vs State of UP, (2026 LiveLaw

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