

of a Magistrate, the Magistrate has to proceed with the trial, record evidence, form an opinion that the accused is guilty and thereafter form an opinion that the accused should be given a punishment higher than that which he is empowered to inflict. Thereafter that he can submit the proceedings to the Chief Judicial Magistrate, who may commit the proceedings to the Court of Sessions. Therefore, trial of the offence by a Magistrate does not mean that the accused cannot be inflicted with the maximum punishment for the offence prescribed by law.

15. Therefore, the submission of learned counsel for the applicant that if the case is tried by the Magistrate, the applicant can be punished with a sentence of imprisonment up to seven years only and transfer of trial to the special court would prejudice the applicant as in that case he may be awarded a punishment of seven years is misconceived.

16. No other submission was advanced by the learned Counsel for the applicant.

17. In view of the foregoing discussion, no case for any interference in the impugned order dated is made out. The application under Section 528 BNSS lacks merit and the same is *dismissed*.

(2025) 4 ILRA 738

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 01.04.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Criminal Misc Anticipatory Bail Application u/s
438 CR.P.C. No. 118 of 2025

Tatheer Jafri & Ors.

...Applicants

Versus

State of U.P.

...Respondent

Counsel for the Applicants:

Anjani Kumar Mishra, Nadeem Murtaza,
Shashank Tilhari

Counsel for the Respondent:

G.A.

Criminal Law -Criminal Procedure Code,1973-Section 438-BNSS,2023-Section 482-U.P. Gangsters and Anti Social Activities(Prevention) Act,1986-Maintainability-The applicant sought anticipatory bail in connection with a case registered under Gangster act-The State opposed the application , citing the U.P. Amendment to the CrPC,1973 which barred anticipatory bail in Gangster Act cases-the application was not maintainable since the chargsheet and bailable warrants were issued before the BNSS 2023 came into effect on 1st july 2024-The Court rejected the objection, holding that the second bailable warrant issued on 2nd july 2024(post enforcement of BNSS 2023) constituted a fresh cause of action and anticipatory bail would be governed by section 482 BNSS 2023 which permits such applications-Relying on the Deepu Vs. St. of UP and Eera Vs. St., the court emphasized that anticipatory bail is a beneficial provision linked to Article 21 and must be interpreted broadly-Finding only one previous case against the applicants, in which bail was earlier granted, the Court granted anticipatory bail subject to condition-Thus, Anticipatory bail application is maintainable under BNSS 2023.(Para 1 to 24)

The application is allowed. (E-6)

List of Cases cited:

1. Deepu & ors. Vs St. of U.P. & ors. (Cri.M.W.P. No. 12287 of 2024)

2. Eera Vs St. (NCT of Delhi) & anr. (2017) 15 SCC 133

3. M. Ravindran Vs Intelligence Officer, Dir. of Revenue Intelligence (2021) 2 SCC 485

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Nadeem Murtaza and Mr. Anjani Kumar Mishra, learned counsel for applicants and Mr. Ranvijay Singh, learned Additional Government Advocate appearing on behalf of opposite party no.1.

2. First Anticipatory Bail Application has been filed with regard to Case Crime no.632 of 2023, under Section 3(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, P.S. Kotwali Nagar, District Barabanki.

3. Mr. Ranvijay Singh, learned AGA, at the very outset, has raised a preliminary objection regarding maintainability of this anticipatory bail application. He submits that the FIR in question has been registered in the year 2023 with a single case having been shown as Case Crime No. 102 of 2021 against the applicants under Sections 419, 420, 467, 468, 471, 379, 504, 506 IPC in District Barabanki. He further submits that charge sheet in the said case had been filed on 11.2.2024 with summoning order being issued on 25.4.2024 and the first bailable warrant was issued on 30.5.2024 whereas second bailable warrant was issued on 2.7.2024. He has adverted to The Code of Criminal Procedure (U.P. Amendment) Bill, 2022, particularly Section 2 thereof to submit that under the aforesaid provision, an anticipatory bail application is not maintainable with regard to U.P. Gangsters and Anti Social Activities (Prevention) Act,

1986. It is, therefore, submitted that since at the time of filing of charge sheet, taking cognizance by the Trial Court and issuance of bailable warrant, the Bharatiya Nagarik Suraksha Sanhita (BNSS 2023) had not come into force, with the same coming into force from 1.7.2024, the case of applicants would be governed by the said notification whereby the present anticipatory bail application is not maintainable.

4. Mr. Nadeem Murtaza, learned counsel for applicants has refuted submissions advanced by learned AGA with the submission that under the BNSS, 2023, provision for anticipatory bail has been clearly indicated under Section 482 Cr.P.C. and would apply when any person has reason to believe that he may be arrested for an accusation of having committed a non bailable offence. It is, therefore, submitted that the date of filing of charge sheet and issuance of summoning order by the Trial Court would be irrelevant, since it is only the apprehension of arrest which would be relevant. Moreover, since apprehension of arrest in the present case also pertains to the second bailable warrant, which was issued on 2.7.2024, i.e., after the enactment of BNSS, 2023, the present anticipatory bail application is maintainable.

5. Learned counsel for applicants has placed reliance upon a Division Bench Judgement of this Court in the case of **Deepu and others Vs. State of U.P. and others (Criminal Misc. Writ Petition No. 12287 of 2024)**.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is discernible that at the time of filing of charge sheet, issuance of summoning order

and issuance of first bailable warrant, the provisions of BNSS, 2023 had not come into application and the applicants case, at that time was to be governed by the Code of Criminal Procedure (U.P. Amendment) Bill, 2022 whereby the anticipatory bail applications were specifically barred with regard to provisions of Gangster Act.

7. However, it is also evident that subsequent to implementation of BNSS, 2023 on 1.7.2024, a second bailable warrant was issued on 2.7.2024.

8. It is admitted by learned AGA that no fresh prohibition as indicated in the Code of Criminal Procedure (U.P. Amendment) Bill, 2022 has subsequently been notified with regard to BNSS, 2023.

9. A perusal of Section 482 BNSS, 2023 indicates that it provides a mechanism for grant of anticipatory bail. Sub section 1 of the aforesaid Section clearly indicates that such an application would be maintainable when a person has reason to believe that he may be arrested.

10. Upon application of the said provision in the present facts and circumstances, such an apprehension of applicants clearly came into force at the time of issuance of first bailable warrant on 30.5.2024. It is, however, also relevant that the second bailable warrant was issued against applicants on 2.7.2024. It is also an admitted fact that applicants have not yet been arrested in terms of either of the two bailable warrants.

11. The wordings of Section 482 BNSS, 2023 do not indicate any aspect as to when a person would have reason to believe that he may be arrested.

12. It is relevant that Section 438 Cr.P.C., regarding provision of anticipatory bail, was omitted for the State of U.P. by U.P. Act No. 16 of 1976 and has thereafter been reincorporated by means of U.P. Act No. 4 of 2019. The statement of objects and reasons for such reincorporation is that there was a continuous demand for its revival for which writ petitions had also been filed before this Court. The State Law Commission also in its third report in 2009 recommended revival of the said provisions, which were also reiterated by a committee constituted under chairmanship of Principal Secretary to the Government of U.P., Home Department.

13. The aforesaid statement of objects and reasons clearly indicates the continuous demand for reincorporation of provisions of anticipatory bail which are directly relatable to Article 21 of the Constitution of India. The purpose as indicated in the statement of objects and reasons and recommendations for revival of provisions of anticipatory bail clearly are to safeguard the life and liberty of the accused who should not be arrested merely on the basis of allegations leveled against them in a first information report unless and until there is some cogent evidence against them.

14. The Hon'ble Supreme Court in the case of **EERA Vs. State (NCT of Delhi) and another** (2017) 15 SCC 133 has adverted to purposive interpretation of a statute in the following manner:"

"41. On a proper analysis of the aforesaid authority, it is clear as crystal that when two constructions are reasonably possible, preference should go to one which helps to carry out the beneficent purpose of the Act; and that apart, the said

interpretation should not unduly expand the scope of a provision. Thus, the Court has to be careful and cautious while adopting an alternative reasonable interpretation. The acceptability of the alternative reasonable construction should be within the permissible ambit of the Act. To elaborate, introduction of theory of balance cannot be on thin air and in any case, the courts, bent with the idea to engulf a concept within the statutory parameters, should not pave the path of expansion that the provision by so stretch of examination envisages.

47. In *Deepak Mahajans*, the Court referred to a passage from *Maxwell on Interpretation of Statutes*, 10th Edn., at p. 229 which is extracted below: (SCC□ p. 454, para 25)

"25. ... 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

The Court also referred to various other decisions and finally ruled that it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and

the legislative exercise and its scope and object may not become futile. As the aforesaid statement would show that the Court has been inclined to adopt a functional approach to arrive at the legislative intention. Needless to emphasise, there has to be a necessity to do so.

64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the "colour", "content" and the "context of statutes" and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and

pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

65. I have perceived the approach in Hindustan Lever Ltd. and Deepak Mahajan, Pratap Singh and many others. I have also analysed where the Court has declined to follow the said approach as in R.M.D. Chamarbaugwalla and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the statute. If the meaning is intelligible, the said principle has no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires."

15. Learned counsel for the applicants has placed reliance on paragraph 17.9 of the judgement rendered by the Hon'ble Supreme Court in the case of M. Ravindran Vs. Intelligence Officer, Directorate of

Revenue Intelligence reported in (2021) 2 SCC 485 which reads as under:

"17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."

16. Upon applicability of the aforesaid judgments in the present facts and circumstances of the case, it is evident that provision of anticipatory bail is in the nature of a beneficial provision in order to prevent a person being taken into custody merely on the basis of an accusation made in the first information report. It is also evident that the purpose of a provision of statute is required to be given wide amplitude in order to provide effective interpretation of such a statute instead of stifling the said provision.

17. In view of the aforementioned definitions of law as laid down by the Hon'ble Supreme Court, it is evident that the provisions of anticipatory bail as indicated in Section 482 of the BNSS, 2023 are required to be given widest amplitude for their effective implementation, particularly in light of the maxim that a person is assumed to be innocent unless proved guilty.

18. In the present case, since it is evident that the applicants were not taken into custody in terms of the first bailable warrant dated 30.5.2024, the apprehension

of applicants for being taken into custody would, in the considered opinion of this Court, be a continuing cause of action pertaining to such apprehension particularly, since they have not been taken into custody even after issuance of second bailable warrant dated 2.7.2024.

19. The aforesaid aspect has also been considered by a Division Bench of this Court in terms of Section 531(2)(a) BNSS, 2023 in the case of Deepu (Supra) in the following manner:

"16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same

will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

20. The aforesaid provision of Section 531 as taken into consideration by Division Bench of this Court also indicates that repeal of earlier provisions would save only pending investigation, trial, appeal, application and enquiry. It, therefore, naturally follows that the repeal clause would save only the applications which were pending as on the date of implementation of BNSS, 2023 and since in the present case, no anticipatory bail application had been filed prior to enforcement of BNSS, 2023, the aforesaid provision of repeal and saving clause would not apply in the present case which would in fact be governed by BNSS, 2023.

21. In view of the aforesaid discussions, the preliminary objection raised regarding maintainability of the present anticipatory bail application is hereby **rejected**.

22. On the merits of issue, a perusal of gangchart clearly indicates that only a single case indicating involvement of applicants in Case Crime No. 102 of 2021, as indicated hereinabove, in which, this

Court had initially granted interim anticipatory bail to the applicants vide order dated 3.3.2023 passed in Crl. Misc. Anticipatory Bail Application No. 650 of 2023 and the said order was thereafter made absolute vide order dated 19.7.2023 and the anticipatory bail application was allowed. It is also relevant that earlier this Court had granted protection to the applicants vide order dated 19.6.2023 in Crl. Misc. Writ Petition No. 4726 of 2023 which, however, was dismissed as withdrawn vide order dated 5.12.2024 due to filing of charge sheet.

23. In view of the above, it is provided that in the event of arrest, the applicants **Tatheer Jafri (in FIR-Tatheer Jafri @ Allika), Roshani Rizvi and Sayyad Naseem** shall be released on anticipatory bail in aforesaid Case Crime number on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned with the following conditions:-

(1) The applicant(s) shall cooperate in the investigation and they will not influence the witnesses.

(2) The accused-applicant(s) will remain present as and when the arresting officer/I.O./S.H.O. concerned call(s) for investigation/interrogation.

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

(4) In case of default, it would be open for the investigating agency to move application for vacation of this interim protection.

24. The application stands **disposed of.**

(2025) 4 ILRA 744
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc Bail Application No. 8027 of 2024

Rajeev Yadav @ Rinku **...Applicant**
Versus
State of U.P. **...Respondent**

Counsel for the Applicant:

Karunesh Singh, Arun Sinha, Ram Chandra Singh, Vijay Pratap Singh

Counsel for the Respondents:

G.A., Rina Pandey, Sanjay Shankar Pandey

Criminal Law - Criminal Procedure Code, 1973-Section 439- Indian Penal Code, 1860-Section 302/34-The applicant sought bail regarding the murder of the deceased-The prosecution primarily relied on the custodial confessional statement of a co-accused and a disputed dying declaration inferred from a witness statement under section 161 CrPC- The only material directly linking the applicant was the co-accused's confession, which is not sufficient alone for conviction-Santosh Yadav's statement, claimed to be a dying declaration, lacked crucial details such as timing and direct threat from the applicant-The court found that the statement did not specifically implicate the applicant, nor was it proximate in time or content to the deceased's death, thus affecting its evidentiary weight-The court also held that subsequent FIR alleging witness threats did not involve the applicant directly-Questions of admissibility and evidentiary value should be examined during the trial-Bail could be granted subject to conditions.(Para 1 to 26)

The application is allowed. (E-6)