

the District Judge or the designated judicial officer so as to reckon their appointment as *persona designata*. The thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who, undeniably, is a pre-existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise the powers of the civil court.

59. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Articles 226 and 227 of the Constitution of India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, the Bombay City Civil Court at Mumbai) as an Appellate Officer is an order of the subordinate court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226.***"

(emphasis supplied)"

18. Upon due consideration of the aforesaid including the expression "Court having jurisdiction to try an offence under this Act" in Section 16 of the Act of 1986, this Court is of the firm view that the 'Court' while exercising the power under Section 16 of the Act of 1986, related to the matters connected with Sections 14 and 15 of the Act of 1986, being an authority under the Act of 1986, would be inferior Criminal Court in relation to High Court. Therefore, the application for expeditious disposal of the

proceedings under Section 16 of the Act of 1986 would be maintainable under Section 483 Cr.P.C. (now repealed) or Section 529 BNSS, as the case may be.

19. Having held as above, after considering the period of pendency of the case(s) and also the right to enjoy the property available to the concerned, the application(s) under consideration are *disposed of* with a direction to the concerned Court(s), indicated in prayer(s), quoted above, to conclude the proceedings of the case(s) most expeditiously, if already not concluded.

20. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

(2025) 5 ILRA 1662
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Anticipatory Bail Application U/S
 482 B.N.S.S. No. 487 of 2025

Nafees Ahmad ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
 Brijesh Kumar Yadav , Bal Keshwar
 Srivastava

Counsel for the Opposite Party:
 G.A

**Criminal Law-The Bharatiya Nagarik
 Suraksha Sanhita,2023-Section 482---**
 Application seeking anticipatory bail in Case

Crime No.34 of 2025 under Sections 110, 191(2), 191(3), 115(2), 352, 351(2), 351(3), 109, 103(1), 118(1) of B.N.S.--- That a co-accused person was taken into custody and he has been enlarged on regular bail, does not affect the right of the applicant to seek anticipatory bail and he cannot be compelled to first surrender to custody and thereafter apply for his release on bail--- The deceased died two months and eighteen days after the incident and the cause of death has been opined to be cardiopulmonary arrest due to chronic lung disease; that the applicant is a 55 years old person and the person against whom the allegation of making assault with an axe has been levelled has already been granted bail by the Session Court whereas the allegation against the applicant is of exhortation only and the other persons have received simple injuries-- Applicant is entitled to be granted on anticipatory bail.

Application allowed. (E-15)

List of the cases referred:-

1. Satender Kumar Antil Vs Central Bureau of Investigation & anr., (2022) 10 SCC 51

2. Sushila Aggrawal Vs St. (NCT of Delhi), (2020) 5 SCC 1

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Bal Keshwar Srivastava and Shri Trideep Narayan Pandey, the learned counsel for the applicant and Shri Alok Kumar Tiwari, the AGA for the State.

2. The instant application has been filed by the applicant seeking anticipatory bail in Case Crime No.34 of 2025 under Sections 110, 191(2), 191(3), 115(2), 352, 351(2), 351(3), 109, 103(1), 118(1) of B.N.S. registered at Police Station-Kudwar, District- Sultanpur.

3. The learned AGA has raised a preliminary objection that a co-accused

person has been granted a regular bail by the Session Judge and, therefore, the applicant should also file an application for regular bail.

4. Replying to the aforesaid preliminary objection, the learned counsel for the applicant has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of **Satender Kumar Antil v. Central Bureau of Investigation & Anr.**, (2022) 10 SCC 51 and **Sushila Aggrawal v. State (NCT of Delhi)**, (2020) 5 SCC 1.

5. In **Satender Kumar Antil** (Supra), the Hon'ble Supreme Court held that :-

"93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal

court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

95. *This Court in Arnab Manoranjan Goswami v. State of Maharashtra [Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834] , has observed that : (SCC pp. 471-72, para 67)*

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC ‘or prevent abuse of the process of any court or otherwise to secure the ends of justice’. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to

constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law

does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.” (emphasis supplied)

96. We wish to note the existence of exclusive Acts in the form of Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:

“General right to bail of accused persons and others.—

4. (1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.”

97. Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.

98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an

exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

6. In **Sushila Aggrawal** (Supra), the Hon'ble Supreme Court held that :-

“47. Section 438 CrPC provides for the issuance of directions for the grant of bail to a person apprehending arrest. The Criminal Procedure Code, 1973 replaced the old Code of 1898. The old Code did not provide for any corresponding provision to Section 438 of the Code of 1973. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question as to whether courts had the inherent power to pass an order of bail in anticipation of arrest. The predominant position was that courts did not have such a power. Subsequently, the need for various amendments to make the Code more comprehensive resulted in the enactment of the Code of Criminal Procedure in 1973. Interestingly, Section 438 does not expressly use the term “anticipatory bail”; its language instead empowers the court concerned to issue directions for grant of bail.

48. The Law Commission of India, in its 41st Report of 1969, noted that the necessity for granting anticipatory bail arises mainly due to influential persons attempting to implicate their rivals in false cases, or disgracing them by getting them detained in jail. The Report further noted that apart from false cases, **where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to be no justification to require him first to submit**

to custody, remain in prison for some days and then apply for bail. *The Report recommended that a provision be included for the direction to grant bail in such cases, and that this power vests in the High Courts and Courts of Session only. The Report, however, did not include the conditions for grant of anticipatory bail in the suggested language for the provision. Certain conditions that courts may include were, however included in the provision that was enacted as Section 438 CrPC, 1973."* **(Emphasis added)**

7. In view of the aforesaid discussion, I am of the considered view that the mere fact that a co-accused person was taken into custody and he has been enlarged on regular bail, does not affect the right of the applicant to seek anticipatory bail and he cannot be compelled to first surrender to custody and thereafter apply for his release on bail.

8. Accordingly, I turn down the aforesaid preliminary objection and hold that the application for anticipatory bail is maintainable.

9. The aforesaid case has been registered on the basis of an F.I.R. lodged on 23.01.2025 against eight persons, including the applicant, stating that earlier, the informant's father had given a complaint against the applicant regarding delivering lesser quantity of ration from his fair price shop, due to which all the accused persons kept animosity against him. While the informant's brother was going to his fields at about 11:30 AM on 23.01.2025, they started abusing him. Upon his opposition, co-accused Parvez assaulted on his head on the exhortation of the applicant. When a relative Gufran ran to save him, the accused persons assaulted him also.

10. The injury form of Mohd. Nazar prepared on 23.01.2025 mentions an incised wound of size 6 cm X 1 cm on middle forehead, a contusion on left forehead and a contusion on left side lower back. The injuries were fresh in nature caused by a hard and sharp object. The X-ray examination report reveals no abnormality. Mohd. Nazar died during treatment on 11.04.2025. The postmortem examination report mentions a healing punctured wound of tracheostomy and bed sore over his back. The cause of death has been mentioned as Cardiopulmonary arrest due to chronic lung disease.

11. Mohd. Athar had suffered a lacerated wound on left side of head, a contusion on left forehead and complain of pain on right thumb joint. His X-ray examination report also reveals no abnormality and the injuries were simple in nature. Another person Gufran Ahmad also received a simple injury.

12. In the affidavit filed in support of the bail application, it has been stated that the applicant is a 55 years old innocent person and he has been falsely implicated in the present case. The learned AGA has pointed out involvement of the applicant in another criminal case and a supplementary affidavit has been filed stating that the Investigation Officer has submitted a closure report against the applicant in that case.

13. Co-accused Parvez Khan has been enlarged on bail by means of an order dated 25.04.2025 passed by the Session Judge, Sultanpur.

14. The learned AGA has produced a copy of the statement of the Doctor who has conducted the postmortem examination of the

