

Neutral Citation No. - 2025:AHC:102975

A.F.R.

Reserved On 27.05.2025

Delivered On 03.07.2025

Court No. - 32

Case :- CRIMINAL MISC. ANTICIPATORY BAIL
APPLICATION U/S 482 BNSS No. - 2756 of 2025

Applicant :- Abdul Hameed

Opposite Party :- State of U.P.

Counsel for Applicant :- Pradeep Kumar Rai,Prakhar Saran
Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Chandra Dhari Singh,J.

FACTUAL MATRIX

Occurrence of the Offence and FIR Lodging

1. On 13.08.2011, at approximately 08:15 AM, an incident occurred in Village Girdharpur, Police Station Devrania, District Bareilly, Uttar Pradesh , leading to the lodging of FIR No. 647/2011 under Sections 302, 307, 323, and 504 the Indian Penal Code, 1860 (hereinafter “IPC”). The FIR was lodged by the informant, Firoz , alleging that the accused persons, including Abdul Hameed (applicant herein), along with one Javed Anwar, Anwar Jameer, and Babu, armed with licensed pistols, attacked the informant and his family members. The FIR alleged that the accused fired indiscriminately, resulting in the death

of Guddu @ Zakir Husain, the informant's uncle, who succumbed to a gunshot injury. The motive was attributed to prior animosity arising from Zila Panchayat elections and contractual disputes. The deceased was declared dead at Shri Ram Murti Hospital, and the postmortem conducted on 13.08.2011 revealed a single bullet injury with entry and exit wounds.

Investigation and Charge Sheet

2. The investigation was conducted by the police, and the charge sheet was filed on 07.11.2011 under Sections 302, 307, 323, and 504 of the IPC against three accused persons (Javed Anwar, Anwar Jameer, and Babu). Notably, the applicant, Abdul Hameed, was not charge-sheeted as the investigating officer found the allegations against him to be false. During further investigation, villagers submitted affidavits stating that the applicant was not present at the scene, and their statements were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC"), corroborating his absence.

Trial Proceedings and Summoning Under Section 319 of the CrPC.

3. The trial commenced, and the informant was examined as PW-1. During his cross-examination, he allegedly introduced a new version of events, alleging that the accused fired from a rooftop, contradicting the FIR and his earlier statements. Based on this testimony, an application was filed under Section 319 of the CrPC. to summon the applicant as an additional accused. Accordingly, the

learned ASJ, Court No. 3, Bareilly, allowed the application on 22.05.2019, summoning the applicant to face trial.

Litigation History

4. Application under Section 482 of the CrPC bearing No. 23900/2019 was filed whereby the applicant challenged the summoning order dated 22.05.2019 before the Coordinate Bench of this Court. On 28.06.2019, the Coordinate Bench disposed of the said application, directing the applicant to file a discharge application before the trial court and granted interim protection from coercive measures until its disposal.
5. Thereafter, it appears from the record that the applicant filed a discharge application, which was rejected by the learned Trial Court on 12.05.2022. This rejection was challenged before a Coordinate Bench of this Court in Application under Section 482 of the CrPC bearing No. 18901/2022, which was dismissed on 16.09.2022, upholding the Trial Court's order.
6. Subsequent to the aforesaid events, on 14.10.2022, the learned Trial Court issued a non-bailable warrant against the applicant. This was challenged in another Application under Section 482 of the CrPC bearing No. 12669/2023, wherein a Coordinate Bench of this Court, on 12.04.2023, directed the applicant to surrender and apply for bail, staying the warrant for two weeks.
7. Meanwhile, in Special Leave Petition (Criminal) No. 21956/2023, the applicant approached the Hon'ble

Supreme Court against the High Court's order dated 16.09.2022. The Hon'ble Supreme Court initially stayed the trial on 10.07.2023 but ultimately dismissed the said SLP on 10.12.2024, vacating the stay.

Anticipatory Bail Applications

8. The applicant filed his first anticipatory bail application (ABAIL No. 1554/2023), under Section 438 of the CrPC before a Coordinate Bench of this Court, which was rejected on 10.02.2023 as barred under Section 438(6) of the CrPC (since Section 302 IPC attracts punishment up to death, therefore, the application being not maintainable).
9. After the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS"), the applicant filed a anticipatory bail application under Section 482 of BNSS before the Sessions Judge, Bareilly, which was rejected on 10.03.2025.

Submissions on behalf of the applicant/petitioner

10. The applicant has now filed the present second anticipatory bail application under Section 482 of the BNSS before this Court, registered as Criminal Misc. 2nd Anticipatory Bail Application No. of 2765/2025. The grounds contended on behalf of the applicant include:

- I. Learned counsel appearing on behalf of the applicant/petitioner submitted that during the course of investigation, while the informant reiterated the version of the FIR in his statement (Annexure A-5),

the injured witnesses namely Zamiul Hasan and Zakir Ali did not name the applicant. A perusal of the statements of the injured witnesses makes it evident that the applicant was neither present nor was a part of the alleged incident. Accordingly, the IO found the allegations against the applicant to be false and thus, he was not chargesheeted.

- II. The applicant has been assigned an ornamental role as per the FIR and statement of the informant. There is no specific allegation in the FIR or the statement of the informant that the applicant mounted any assault. The deceased suffered a single bullet injury with one entry and one exit wound. The evidence recorded during the trial was nothing more than the statement which was already there under Section 161 of the CrPC, at the time of investigation of the case. As such, no fresh material was before the learned Trial Court, on the basis of which it could have summoned the applicant under Section 319 of the CrPC.
- III. It is submitted that earlier, the applicant had filed his anticipatory bail application, however, it was rejected being barred by Section 438 (6) of the CrPC. After the enactment of BNSS, w.e.f., 01.07.2024, the applicant's right to file such anticipatory bail application prevails as there is no such bar under Section 482 (4) of the BNSS. Moreover, no State Amendment has been brought in force amending the provisions of Section 482 of the BNSS.

- IV. It is further submitted that maintainability of second anticipatory bail application is no longer *res integra*. The Coordinate Benches of this Court has, in various decisions, held that subsequent anticipatory bail application may be filed under changed circumstances. Reliance has been placed upon ***Anurag Dubey v. State of UP***¹.
- V. It is vehemently submitted that the present application is being filed under changed circumstances. On 10.02.2023, the first anticipatory bail was dismissed being not maintainable as was filed prior to the enactment of the BNSS. Thereafter, the trial was stayed by the Hon'ble Supreme Court thereby culminating the apprehension of arrest. It is only when the said SLP was dismissed on 01.12.2024, that the warrants were issued on 01.02.2025, giving rise to the apprehension of arrest. As such, the present anticipatory bail application, being filed under the changed circumstances and the reason for rejecting the first anticipatory bail application has been washed off.
- VI. It is contended that as per the judgment of the Division Bench of this Court in ***Deepu & others vs. State of U.P. & others***², any application filed after 01.07.2024 will have to be proceeded as per the BNSS. Since the present application has been instituted much after 01.07.2024, it will be governed

1. Order dated 20.09.2022, passed in A BAIL No.1327/2022

2. 2024 (10) ADJ 370,

by provisions of Section 482 of the BNSS. Learned counsel avers that the aforesaid decision supports the applicant's case as the Division Bench in the said case granted benefit of anticipatory bail provided by the CrPC, Criminal Procedure (Uttar Pradesh Amendment) Act, 2018 (UP Act No. 4 of 2019), notified on 06.06.2019, in a case where the incident occurred on 27.04.2014. The Court held that being a beneficial legislation, it cannot be restricted in its operation to offences committed subsequent to enactment of Act, 2019 and it will be available to all the persons 'apprehending arrest' after enactment of the Amendment Act, 2018, even if the offence was committed prior to enactment of the Amendment Act, 2018.

VII. Bail and anticipatory bail, being matters of procedural law, are by nature applied retrospectively. However, if the right to seek bail is recognized as a substantive right, even then, it would apply retrospectively being advantageous to the accused applicant. The law in this regard is fairly well settled. The rule of beneficial construction requires that even *ex post facto* law providing benefit to the accused should be applied to mitigate the rigor of the law. If any subsequent legislation downgrades the harshness of the sentence for the same offence, it is the salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.

VIII. It is submitted that the applicant has no criminal antecedents, and no useful purpose would be served by his incarceration as police investigation has already been concluded, and he is not a flight risk. Additionally, issuance of proclamation under Section 82 of the CrPC shall not be a bar to grant anticipatory bail in terms of *Asha Dubey v. State of MP*³. Further, he could not surrender because of his illness since the applicant is 78 years old man suffering from lung failure and other old age ailments, however, upon instructions, the learned counsel undertakes that if granted bail, the applicant shall abide by all the terms and conditions imposed upon him by this Court.

Submissions on behalf of the State of UP/respondent

11. *Per Contra*, learned AGA appearing on behalf of the State of UP, vehemently opposed the instant bail application submitting to the effect that present second anticipatory bail application is not maintainable either in law or on facts and deserves outright rejection by this Court. The applicant, Abdul Hameed, is facing trial in respect of heinous and grave offence punishable under Section 302 of the IPC. The following contentions have been advanced:

I. It is pertinent to note that following the examination of witnesses during trial, the learned Trial Court vide order dated 22.05.2019, acting upon the material brought on record during the deposition of

PW-1, summoned the present applicant under Section 319 CrPC, having found prima facie involvement in the offence. Thereafter, the applicant's challenge under Section 482 of the CrPC was rejected and the matter even reached the Hon'ble Supreme Court which stood dismissed on 10.12.2024, thus affirming the validity of the summoning order and refusal to discharge.

- II. It is submitted that after the rejection of the first anticipatory bail application on 10.02.2023 under Section 438 of the CrPC, the present second application is a clear attempt to re-litigate the same issue under the guise of changed circumstances.
- III. The Coordinate Bench of this Court had earlier rejected the bail plea relying upon the statutory bar contained in Section 438(6) CrPC, introduced by the U.P. State Amendment Act No. 4 of 2019, which prohibits grant of anticipatory bail in cases punishable with death or life imprisonment, such as offences under Section 302 IPC. The applicant now seeks to circumvent this statutory embargo by invoking Section 482 of the newly enacted BNSS, which does not contain a similar bar. However, it is submitted that the offence in question was committed in 2011, and the charge sheet was filed under the CrPC regime, and the entire proceedings are governed by CrPC and not the BNSS, as cognizance was taken well prior to the BNSS coming into force on 01.07.2024. Therefore, BNSS cannot retrospectively override the bar under

Section 438(6) of the CrPC applicable through the U.P. State Amendment.

IV. Furthermore, mere change in law does not automatically revive a right once extinguished by a judicial order, especially in a case where the first anticipatory bail application was rejected specifically on grounds of non-maintainability. Once the application is rejected under a statutory bar, the maintainability of a second application under a different statute (BNSS) would offend the doctrine of finality and judicial discipline, unless there is an amendment to that effect, which does not exist in the present case. It is further submitted that no amendment has been introduced in BNSS adopting or harmonizing the U.P. State Amendment Act No. 4 of 2019, and therefore, Section 438(6) CrPC continues to operate in the State of U.P. in respect of prosecutions already initiated under the CrPC.

V. Reliance placed by the applicant on *Deepu (Supra)*, is misplaced and distinguishable, as in that case, the Court was concerned with proceedings initiated post 01.07.2024, and the question of retrospective applicability of BNSS to cases already governed by CrPC was not conclusively adjudicated. Moreover, the applicant's argument of 'changed circumstances' stemming from the dismissal of SLP and issuance of fresh NBW and proclamation under Sections 82/83 of the CrPC is not a ground for the grant of anticipatory bail, especially in view of well-

established precedents such as *Lavesh v. State (NCT of Delhi)*⁴, which clearly lays down that once a person is declared an absconder under Section 82 of the CrPC, his entitlement to anticipatory bail is negated. The issuance of proclamation under Section 82 CrPC on 01.03.2025 is a statutory acknowledgment that the applicant is deliberately evading the process of law.

VI. The State further relies upon the principle laid down by the Hon'ble Supreme Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*⁵, which states that successive bail applications are maintainable only if there is a substantial change in circumstances or law, neither of which is truly demonstrated in the present case. The applicant seeks to take benefit of Section 482 BNSS, while the trial is still governed by the CrPC, and the offence continues to remain triable under CrPC, as the offence occurred and cognizance was taken well before 01.07.2024.

VII. Finally, it is submitted that the merits of the case remain grave and serious. The applicant was summoned under Section 319 of the CrPC on the basis of sworn evidence in court, where the eyewitnesses attributed a direct role to him. The reliance placed on the age and health of the applicant or absence of criminal antecedents cannot

4. *[(2012) 8 SCC 730]*

5. *[(2005) 2 SCC 42]*

override the nature of the offence (Section 302 IPC), the postmortem findings, and the gravity of allegations, which involve cold-blooded murder by firearm. The applicant's conduct in evading process and delaying surrender also militates against any grant of discretionary relief. Hence, in these circumstances, the State opposes the grant of anticipatory bail and prays for dismissal of the present application.

Analysis

12. Heard the learned counsel for the parties and perused the material placed on record. From the above submissions, the issues that emerge for adjudication by this Court are ‘(i) whether the second anticipatory bail application is maintainable under the BNSS given the prior rejection under Section 438 (6) CrPC and the absence of explicit retrospective applicability of BNSS to pending CrPC proceedings?, ‘(ii) whether Section 482 BNSS can be invoked for an offence (2011) and proceedings (summoning in 2019) initiated under CrPC, absent explicit legislative clarity?’, ‘(iii) whether the dismissal of the SLP, enactment of BNSS, and issuance of NBW qualify as ‘substantive changed circumstances’ to justify a second bail application?, and ‘(iv) whether the applicant's health and post-proclamation conduct justify overriding the strictures of Section 82 of the CrPC?’

ISSUE NO. 1: Whether the present second anticipatory bail application under Section 482 of the BNSS is maintainable in view of the earlier rejection of the first

anticipatory bail application under Section 438(6) of the CrPC?

13. The maintainability of the present second anticipatory bail application presents a complex legal question that requires examination through the lens of statutory interpretation, judicial precedent, and the doctrine of changed circumstances.
14. The applicant's first anticipatory bail application bearing ABAIL No. 1554/2023 was rejected on 10.02.2023 by a Coordinate Bench of this Court. The rejection was not on merits but purely on the grounds of maintainability due to the statutory prohibition contained in Section 438(6) of the CrPC, as introduced by the Uttar Pradesh State Amendment Act No. 4 of 2019. This provision categorically prohibits the grant of anticipatory bail in cases where the offence is punishable with death or imprisonment for life, including offences under Section 302 of the IPC.
15. The legal landscape underwent a fundamental transformation with the enactment of the BNSS w.e.f. 01.07.2024, which repealed the CrPC in its entirety. Section 482 of the BNSS, which governs anticipatory bail applications, significantly does not contain any prohibition akin to Section 438(6) of the CrPC. This omission cannot be considered inadvertent but appears to be a conscious legislative decision to remove the bar that existed under the earlier State Amendment. The absence of such prohibition in the new enactment assumes greater significance when viewed against the backdrop of the

specific inclusion of this bar in the State Amendment to CrPC.

16. The Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav***⁶, has established the settled legal position regarding subsequent bail applications. The Hon'ble Court observed that while the filing of successive bail applications on the same facts and circumstances is impermissible and constitutes an abuse of the process of law, subsequent bail applications are maintainable where there is a material change in the fact situation or in law which requires the earlier view to be interfered with, or where the earlier finding has become obsolete. The Court specifically noted that 'even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with.'

17. In the present case, the enactment of BNSS constitutes a fundamental change in law that satisfies the test laid down in ***Kalyan Chandra Sarkar (Supra)***. The earlier rejection was predicated solely on the statutory bar under Section 438(6) of the CrPC, which bar no longer exists under the new statutory regime. The legal foundation upon which the first application was rejected has been completely obliterated by the subsequent legislation.

6. (2005) 2 SCC 42,

18. This is not merely a procedural modification but a substantive change in the statutory framework governing anticipatory bail applications.
19. This Court also finds persuasive support from the Coordinate Bench decision in *Sudhir Kumar Chaurasia vs State of U.P.*⁷, wherein, it was specifically observed that ‘there is no specific intention indicated in the subsequent enactment of BNSS 2023 to continue with the State amendment made by means of Act No.4 of 2019’ and that it was consciously decided by the Parliament to do away with the prohibitions indicated in Section 438(6) of the CrPC. The Court further held that the re-enacted provisions can be said to have been deliberately obliterated by Parliament while enacting Section 482 in the BNSS.
20. The factual matrix of the present case also demonstrates clear changed circumstances that warrant fresh consideration. When the first anticipatory bail application was filed and rejected, the applicant’s apprehension of arrest had subsequently subsided when the Hon’ble Supreme Court stayed the trial proceedings vide order dated 10.07.2023 in SLP (Criminal) No. 21956/2023.
21. However, upon dismissal of the said SLP on 10.12.2024 and consequent vacation of the stay, fresh warrant proceedings were initiated, culminating in the issuance of non-bailable warrant on 01.02.2025. This renewed apprehension of arrest under the new statute constitutes a

7. (Cri. Misc. Anti. Bail Appl. No. 447/2025)

material change in circumstances that justifies fresh consideration of the application for anticipatory bail.

ISSUE NO. 2: Whether the provisions of Section 482 BNSS would apply retrospectively to cases where the offence was committed prior to its enforcement, and the doctrine of beneficial legislation?

22. The question of retrospective application of procedural law and the *doctrine of beneficial legislation* forms the cornerstone of this analysis. The Hon'ble Supreme Court in *Hitendra Vishnu Thakur & Others vs. State of Maharashtra & Others*⁸, laid down comprehensive principles governing the retrospective application of statutory provisions. The Hon'ble Court categorically held that '*a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application.*' The Court further observed that '*every litigant has a vested right in substantive law but no such right exists in procedural law.*'

23. The distinction between substantive and procedural law assumes critical importance in the present context. Section 482 of the BNSS, being a procedural provision governing anticipatory bail applications, falls squarely within the ambit of procedural law.

8. (1994) 4 SCC 602

24. The provision does not create new offences, prescribe punishments, or alter the substantive rights of the parties. Instead, it provides the procedural mechanism for seeking anticipatory bail. Therefore, following the principle established in *Hitendra Vishnu Thakur (Supra)*, Section 482 of the BNSS would apply retrospectively unless there is a contrary legislative intention explicitly expressed or necessarily implied from the statutory scheme.
25. The absence of any saving clause or transitional provision in BNSS indicating continuation of the Section 438(6) of the CrPC bar demonstrates that Parliament intended the new regime to apply universally, irrespective of when the offence was committed. Had the Parliament intended to preserve the effect of State amendments to the CrPC, specific provisions to that effect would have been incorporated in the BNSS or in the accompanying notification or rules.
26. The doctrine of beneficial legislation, as enunciated by the Hon'ble Supreme Court in *T. Barai v. Henry Ah Hoe*⁹, mandates that when a later statute imposes different punishment or varies the procedure, the accused must have the benefit of the reduced punishment or ameliorated procedure. This principle recognizes that the law should evolve in favour of the liberty of the individual, and when Parliament enacts more liberal provisions, the benefit thereof should be available to all persons who may be affected, regardless of when their cases originated.

9. (1983) 1 SCC 177

27. The Hon'ble Supreme Court in *Trilok Chand v. State of Himachal Pradesh*.¹⁰ reiterated this principle, observing that the rule of beneficial construction requires that even *ex post facto* law of such a type should be applied to mitigate the rigour of the law. The Court emphasized that where the subsequent legislation provides more favourable treatment to accused persons, they are entitled to claim the benefit of such provisions even if the offence was committed under the earlier regime.

28. More recently, in *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*¹¹, the Hon'ble Supreme Court emphasized 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' and that this principle 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.

29. The present case presents a paradigmatic example of beneficial legislation. The removal of the statutory bar contained in Section 438(6) of the CrPC from the new statutory framework under the BNSS represents a conscious legislative decision to expand the scope of anticipatory bail and enhance the protection of personal liberty.

30. The applicant, whose offence was committed on 13.08.2011, with FIR No. 647/2011 lodged under Sections

10. (Cri. Appeal No. 1831/2010)

11. (2021) 2 SCC 485

302, 307, 323, and 504 of the IPC, is entitled to the benefit of the more liberal provisions introduced by BNSS. The charge sheet was filed on 07.11.2011, and the applicant was subsequently summoned under Section 319 of the CrPC on 22.05.2019. The procedural framework governing bail applications has undergone transformation with BNSS, and the applicant cannot be denied the benefit of these beneficial changes merely because the offence antedated the enactment of the new law.

31. At this juncture, this Court finds it imperative to the decision of the Division Bench of this Court in *Deepu & others vs. State of U.P. & others*,¹² which has been relied upon by both the parties to support their respective arguments. The said judgment provides crucial guidance on the application of BNSS to cases where offences were committed prior to its enforcement.

32. In *Deepu (Supra)*, the Division Bench was confronted with the question of whether BNSS provisions would apply to cases pending at the time of its enforcement, particularly where the offences had been committed under the earlier statutory regime. The Court, after extensive analysis of the statutory scheme and relevant precedents, held that any application filed after 01.07.2024 shall be proceeded with as per BNSS, regardless of when the underlying offence was committed. This ruling was based on the fundamental principle that procedural laws apply to pending proceedings unless specifically excluded by the legislature.

12. [2024 (10) ADJ 370]

33. In the context of the present case, the *Deepu (Supra)* judgment provides direct support for the applicant's contention. The present application, filed after 01.07.2024, falls squarely within the ambit of BNSS, and the applicant is entitled to the benefit of the more liberal provisions thereof. The absence of the Section 438(6) bar in BNSS, as interpreted in *Deepu (Supra)*, removes the primary impediment that led to the rejection of the first anticipatory bail application.

ISSUE NO. 3: Whether the changed circumstances subsequent to dismissal of the first anticipatory bail application justify fresh consideration on merits?

34. The doctrine of changed circumstances, as crystallized in *Kalyan Chandra Sarkar (supra)*, finds complete application in the present case. The Supreme Court's jurisprudence recognizes that the law is not static and that changed circumstances, whether factual or legal, may warrant reconsideration of earlier judicial decisions.

35. Multiple factors constitute changed circumstances that warrant fresh consideration in the present case. First and foremost, the legislative change brought about by BNSS has fundamentally altered the legal landscape governing anticipatory bail applications. The statutory bar under Section 438(6) of CrPC, which was the sole ground for rejection of the first application, no longer exists under the new statutory framework. This constitutes a material change in law that renders the earlier finding completely obsolete. The legal foundation upon which the first application was rejected has been entirely removed by

subsequent legislation, creating a situation where the earlier order has lost its legal basis.

36. Second, the factual circumstances have undergone significant transformation since the rejection of the first application. When the first anticipatory bail application was rejected on 10.02.2023, the applicant's immediate apprehension of arrest was subsequently allayed by the stay granted by the Hon'ble Supreme Court on 10.07.2023 in SLP (Criminal) No. 21956/2023. This stay provided temporary relief to the applicant and removed the immediate threat of arrest that necessitated the filing of the anticipatory bail application.

37. However, the situation changed dramatically upon dismissal of the said SLP on 10.12.2024 and consequent vacation of the stay. Following the dismissal of the SLP, fresh warrant proceedings were initiated by the trial court, culminating in the issuance of non-bailable warrant on 01.02.2025. This development has created renewed and immediate apprehension of arrest, which is the foundational requirement for maintaining an anticipatory bail application. The fresh issuance of non-bailable warrant represents a material change in the factual matrix that justifies the filing of a fresh application.

38. Third, the procedural posture of the case has changed significantly. The first application was dismissed on purely maintainability grounds without any consideration of merits. The Court was precluded from examining the substantive aspects of the case due to the statutory bar contained in Section 438(6) of CrPC. The present

application, being filed under a different statutory regime (BNSS), presents an opportunity for adjudication on merits for the first time. This represents a fundamental change in the procedural context that justifies fresh consideration.

39. The coordinate bench decisions in *Anurag Dubey v. State of UP*¹³ and *Tatheer Jafri & Ors. vs. State of U.P.*¹⁴ have recognized that subsequent anticipatory bail applications may be filed under changed circumstances, particularly where there is a change in the statutory framework or where new facts emerge that were not available at the time of the earlier application.

40. The principle underlying the doctrine of changed circumstances is rooted in the concept of fairness and the recognition that the law must be capable of adapting to evolving situations. Where the legal or factual foundation of an earlier decision has been altered by subsequent developments, the doctrine permits fresh consideration of the matter. This principle ensures that individuals are not permanently prejudiced by earlier adverse orders that have been rendered obsolete by changed circumstances.

ISSUE NO. 4: Whether the applicant has made out a prima facie case for grant of anticipatory bail considering the role attributed to him and the evidence on record?

41. The examination of the role attributed to the applicant in the alleged offence reveals several mitigating factors that weigh significantly in favour of grant of anticipatory bail.

13. (Order dated 20.09.2022, passed in ABAIL No.1327/2022)

14. (decided on 01.04.2025)

The investigation conducted by the police presents a compelling narrative that supports the applicant's case for anticipatory relief.

42. The investigating officer, after thorough investigation, found the allegations against the applicant to be false and consequently did not include his name in the charge sheet filed on 07.11.2011. This initial exoneration by the investigating agency assumes critical importance as it indicates the absence of credible evidence against the applicant at the stage of investigation. The investigating officer's decision not to chargesheet the applicant was based on the material collected during investigation, including witness statements and other evidence. This professional assessment by the investigating agency cannot be lightly disregarded when considering the merits of the anticipatory bail application.

43. The applicant was subsequently summoned, at a later stage, under Section 319 of the CrPC vide order dated 22.05.2019, based on the testimony of PW-1 (the informant Firoz) during cross-examination. However, a careful analysis of the evidence reveals several factors that cast doubt on the reliability and sufficiency of this testimony. The injured witnesses, namely Zamiul Hasan and Zakir Ali, in their statements under Section 161 CrPC recorded during investigation, did not name the applicant as one of the assailants. This omission is significant because these witnesses, being injured in the incident, would have been in the best position to identify the perpetrators of the offence.

44. The FIR itself assigns what can be characterized as an ‘ornamental role’ to the applicant, with no specific allegation of direct assault by him. The FIR does not attribute any specific overt act to the applicant that would constitute his active participation in the commission of the offence. The vague and general allegations in the FIR, without specific details of the applicant’s role, suggest that his inclusion may have been more a matter of suspicion rather than concrete evidence.
45. The post-mortem examination conducted on 13.08.2011 revealed that the deceased suffered a single bullet injury with one entry and one exit wound. This medical evidence is relevant to understanding the nature of the incident and the manner of commission of the offence. The fact that the fatal injury was caused by a single bullet raises questions about the number of active participants in the commission of the offence and the specific role attributed to the applicant herein.
46. The evidence recorded during trial, which formed the basis for summoning under Section 319 of the CrPC, was essentially the same as the statement already on record under Section 161 of the CrPC during investigation. No fresh material evidence emerged during trial and it does not appear to have added any new dimension to the case that was not already available during investigation.
47. The Hon’ble Supreme Court in a catena of judgments has laid down important guidelines for grant of anticipatory bail. The Court has held that while considering anticipatory bail applications, the court must examine the

nature of the offence, the role of the applicant, and whether the accused was added in supplementary charge sheet with no further investigation or custodial interrogation required. In the present case, the facts for primary consideration are that the applicant was initially found to be falsely implicated during investigation and was later introduced based on testimony that did not add substantial new evidence to the prosecution case.

48. The applicant's personal circumstances also merit serious consideration. Abdul Hameed is a 78-year-old man suffering from lung failure and other age-related ailments. His advanced age and medical condition, coupled with the absence of any criminal antecedents, indicate that no useful purpose would be served by his custodial interrogation, particularly when the police has already filed its final report under Section 173 of the CrPC.

49. Moreover, the delay factor assumes significance in the present case. The incident occurred on 13.08.2011, over thirteen years ago, and the FIR was registered the same day. The charge sheet was filed on 07.11.2011, and the applicant was summoned only on 22.05.2019, indicating substantial delay in proceedings. Such prolonged delay in itself creates a case for bail, as the applicant has been living under the shadow of criminal proceedings for an extended period.

Conclusion

50. Upon comprehensive analysis of the legal and factual matrix, this Court concludes that the present second

anticipatory bail application under Section 482 of BNSS is manifestly maintainable.

51. The enactment of BNSS has created material changed circumstances, both in law and fact, that justify fresh consideration on merits. The removal of the statutory bar contained in Section 438(6) of CrPC represents a fundamental change in the legal framework that obliterates the foundation upon which the first application was rejected.

52. The doctrine of beneficial legislation and the presumption in favour of retrospective application of procedural law strongly support the applicant's case. The applicant is entitled to the benefit of the more liberal provisions introduced by BNSS, regardless of when the alleged offence was committed.

53. The applicant has made out a *prima facie* case for grant of anticipatory bail, considering his peripheral role in the alleged offence, the absence of credible evidence during investigation as evidenced by his non-inclusion in the initial charge sheet, his advanced age and medical condition, and the substantial delay in proceedings. The fact that the IO initially found the allegations to be false and did not charge-sheet the applicant weighs heavily in his favour.

54. The changed circumstances subsequent to the dismissal of the first application, including the enactment of BNSS, vacation of the stay by the Hon'ble Supreme Court, and

fresh issuance of non-bailable warrant, justify fresh consideration on merits.

55. Accordingly, the instant bail application is allowed. It is held that in the event of arrest in the instant Case Crime No. 647 of 2011, the applicant shall be released on bail, upon him furnishing a personal bail bond in the sum of Rs. 1,00,000/- along with two solvent sureties of like amount subject to the satisfaction of the concerned trial Court i.e. Additional Sessions Judge, Court No.3, District Bareilly on the following terms and conditions:

- I. Applicant shall not leave the territory of Uttar Pradesh without prior permission of this Court and shall ordinarily reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the concerned trial Court by way of an affidavit.
- II. Applicant shall surrender his Passport to the trial Court concerned, within three days. If he does not possess the same, he shall file an affidavit before the trial Court concerned to that effect within the stipulated time.
- III. Applicant shall appear before the Court concerned as and when the matter is taken up for hearing.
- IV. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or

any member of the victim's family or tamper with the evidence of the case.

- V. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned.

56. It is clarified that the observations made herein are *prima facie* in nature only for the purposes of deciding the present application for grant of anticipatory bail and thus, need not be construed as an expression on merits of the matter.

57. Copy of the present order be sent to the concerned IO for necessary information and compliance thereof.

Order Date:03.07.2025/AKT

(Chandra Dhari Singh, J.)