

**IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, AT BALLARI.**

**PRESENT: GUDI VASUDEV RADHAKANT,
B.Com., LL.M.,**

**III ADDL. DISTRICT & SESSIONS JUDGE BALLARI AND
I/c. II ADDL. DISTRICT & SESSIONS JUDGE BALLARI**

DATED THIS THE 10th DAY OF JULY, 2026

Crl.Misc.No. 685/2026

PETITIONERS/: 1. H.M.Uday Shankar S/o. S.M.Veera
Accused- 1 to 4 Shivacharya, aged about 53 years,
Business, R/o. 4th Cross, Nehuru Colony,
Opposite to OP Police Station,
Basaveshwara Nagar, Ballari.

2. N.S.Aneesh Kumar, S/o. Sudhakar, aged
about 45 years, working as Accountant,
R/o. Plot No.120, 1st Floor, Pyramid
Greenwood Apartment, behind L & T,
Byatampura, Bengaluru.

3. Basaiah Halemath S/o. Shivaputraiah
Halemath, aged about 26 years, business,
R/o. Ashraya Plots, H.S.Venkatapura
Village, Gadag Taluk and District.

4. H.M.Kiran Kumar S/o. S.M.Veera
Shivacharya, aged about 51 years, R/o. 4th
Cross, Nehuru Colony, opposite to OP
Police Station, Basaveshwara Nagar, Ballari.

(By Sri.H.M.Ankalaiah, Advocate)

//Vs//

RESPONDENT: The State by Inspector of Police,
Gandhinagar Police Station, Ballari.

(By Learned Public Prosecutor)

ORDER

This petition is filed by petitioners/accused Nos.1 to 4 U/Section 482 of Bharatiya Nagarika Suraksha Sanhita, 2023 seeking anticipatory bail in the event of their arrest in Crime No.89/2026 registered by Gandhinagar Police Station, Ballari for the offences punishable U/Section 61, 319(2), 318(2) r/w. Sec.3(5) of Bharathiya Nyaya Sanhitha, 2023 and U/Section 66-D of Information and Technology Act, 2000.

2. The brief facts of the petition are that information was filed by one K.Virupakshappa, P.S.I. of Gandhinagar Police Station, which are to the effect that accused Nos.1 to 4 are collecting the amount from the persons having interest in investment in the Company by making calls through cell phones and did not refund the amount and thereby cheated the public. By these acts, accused have committed the alleged offences.

3. Accused have filed the present petition on the grounds that they are innocent, peace loving citizens and they have not committed any offence as alleged by the informant. Informant has conveniently narrated the false facts, which is a

result of concoction and introduction of afterthought version. Informant has suppressed the true and material facts just to gain unfair advantage. Though the alleged offences are non-bailable, not punishable with death or imprisonment for life. They are ready to abide by any conditions may be imposed by the Court. They will not tamper with the witnesses of Prosecution and also will not abscond from the Court. Hence, prayed to grant anticipatory bail in the interest of justice.

4. Learned Public Prosecutor has filed objections along with Police Report interalia denying the entire contents of the petition. It is contended that there are no bonafide grounds to grant anticipatory bail. Accused have cheated the public by collecting money by making phone calls and did not refund the money and thereby committed the heinous offences. Still substantial investigation should be done and investigating agency has to collect the relevant documents and evidence. If accused are released on anticipatory bail, they may pose threat to the prosecution witnesses, commit similar offence and may not co-operate for investigation. Therefore, prayed to reject the petition.

5. Heard the arguments of learned counsel for the petitioners/accused Nos.1 to 4 and learned Public Prosecutor for the State.

6. The Points that arise for my consideration are :

- 1. Whether the petitioners/accused Nos.1 to 4 are entitled for anticipatory bail?**
- 2. What order ?**

7. My answer to the above points are ;

Point No.1 : In the Affirmative

**Point No.2 As per final order,
for the following:**

REASONS

8. **POINT NO.1:-** At the outset, it is necessary to cull out the principles governing the grant of anticipatory bail. While considering an application for grant of anticipatory bail in a suitable case, the court must consider the settled factors, which emerge from the precedents of higher echelons of judiciary. These factors can be summarized as follows:-

- 1) The nature of alleged offence, the nature of accusation and the severity of the punishment in the case of conviction.
- 2) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.

3) Possibility of securing the presence of accused at the trial or likelihood of the accused fleeing from the justice.

4) Antecedents of circumstances, which are peculiar to the accused.

5) Whether prima-facie the ingredients of the offences can be made out on the basis of allegations as they stand in the FIR or Charge Sheet and the significant interest of the public or the State and other similar considerations.

9. Constitution Bench of Hon'ble Supreme Court of India in a decision reported in **(2020) 5 SCC 1 (Sushila Aggarwal and others versus State (NCT of Delhi) and others)** has further laid down guidelines to be followed by the courts while granting anticipatory bail to accused. Those guidelines are culled out herebelow:-

78. Having regard to the above discussion, it is clarified that the court should keep the following points as guiding principles, in dealing with applications under Section 438, Cr. PC:

(a) As held in *Sibbia*, when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general

allegations) relatable a specific offence or particular of offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which considering the application, to extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition 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.

(b) The court, before which an application under Section 438, is filed, depending on the seriousness of the threat (of arrest) as a measure of caution, may issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(c) Section 438 Cr. PC does not compel or oblige 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, etc. While weighing and considering an 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), Cr.PC [by virtue of Section 438 (2)]. The necessity to impose other restrictive conditions, would have to be weighed 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.

(d) Courts ought to be generally guided by the considerations such nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing 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.

(e) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial. Also orders of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect

of a future incident that involves commission of an offence.

(f) Orders of anticipatory bail do 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.

(g) 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 in [State of U.P. v Deoman Upadhyaya](#)."

(h) It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, 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

to witnesses with a view to influence outcome of the investigation or trial, etc. The court – in this context is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(i) 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 & Etc. [Etc vs Ramprasad Vishwanath Gupta & Anr](#)⁵²; [Jai Prakash Singh](#) (supra) State through C.B.I. vs. Amarmani Tripathi⁵³). This does not amount to “cancellation” in terms of Section 439 (2), Cr. PC.

(j) The judgment in Mhetre (and other similar decisions) restrictive conditions cannot be imposed at all, at the time of granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin and subsequent decisions (including K.L. Verma, Nirmal Jeet Kaur) which state that such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

79. In conclusion, it would be useful to remind oneself that the rights which the citizens cherish deeply, are fundamental- it is not the restrictions that are fundamental. Joseph Story, the great jurist and US Supreme Court judge, remarked that “personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice.”

10. Keeping these principles in mind, let me proceed to decide the present petition.

11. Now turning to the factual scenario of the present case as can be discernible from the records of the case, Gandhinagar Police have registered the case against accused for the offences punishable U/Sec.61, 319 and 318(2) R/w. Section 3(5) of Bharathiya Nyaya Sanhitha, 2023 and U/Section 66-D of Information and Technology Act, 2000. It is the accusation made by the prosecution that accused have collected amount from the public and failed to refund the same and thereby committed the alleged offences. As per Sections quoted in FIR, they are bailable in nature. However, on perusal of averments of First Information Statement and FIR, it appears that they are covered by Section 318(4) of Bharathiya Nyaya Sanhitha, 2023.

12. Even though alleged offences are non-bailable in nature, but they are not punishable with death or imprisonment for life. Nevertheless the alleged offences are triable by the court of Judicial Magistrate. Apprehensions of the prosecution can be meted out by imposing reasonable conditions.

13. It is well settled by a plethora of decisions of Hon'ble Supreme Court of India that criminal proceedings are not for realization of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on facts and

circumstances of the particular case. Process of criminal law cannot be utilized for arm twisting and money recovery, particularly while opposing the prayer for bail. A direction cannot be issued to accused to deposit the cheated money. This principle of law gets its strength from the decision of Hon'ble Supreme Court of India reported in **(2023) 7 SCC 461 (Ramesh Kumar Versus State of NCT Delhi)**, which reads as under:-

27. Turning to the facts here, what we find is that the version in the FIR, even if taken on face value, discloses payment through cheques of Rs.17,00,000/- (Rupees seventeen lakh) in the name of the appellant and not Rs.22,00,000/- (Rupees twenty-two lakh). We have not been able to comprehend how the High Court arrived at the latter figure as payable by the appellant and why the appellant's counsel as well agreed with such figure. Prima facie, there appears to be some sort of a calculation error. Also, prima facie, there remains some doubt as regards the conduct of the appellant in receiving cheques from the complainants without there being any agreement inter se. Be that as it may, the High Court ought to have realized that having regard to the nature of dispute between the parties, which is predominantly civil in nature, the process of criminal law cannot be pressed into service for settling a civil dispute. Even if the appellant had undertaken to make payment, which we are inclined to believe was a last ditch effort to avert losing his liberty, such undertaking could not have weighed in the mind of the High Court to decide the question of grant of anticipatory bail. The tests for

grant of anticipatory bail are well delineated and stand recognized by passage of time. The High Court would have been well-advised to examine whether the appellant was to be denied anticipatory bail on his failure to satisfy any of such tests. It does seem that the submission made by counsel on behalf of the appellant before the High Court had its own effect, although it was far from being a relevant consideration for the purpose of grant of bail.

28. It also does not appear from the materials on record that the complainants have instituted any civil suit for recovery of money allegedly paid by them to the appellant. If at all the offence alleged against the appellant is proved resulting in his conviction, he would be bound to suffer penal consequence(s) but despite such conviction he may not be under any obligation to repay the amount allegedly received from the complainants. This too is an aspect which the High Court exercising jurisdiction under [section 438](#) of the Cr. PC did not bear in mind.

14. As per the decision of **Hon'ble Supreme Court of India in Sushila Aggarwal** (referred supra), grant of anticipatory bail does not amount to halting or causing impediment to investigation process. It is not in the nature of an injunction to investigation process.

15. The alleged offences are punishable with imprisonment that may not exceed 7 years. As per decision of Hon'ble Supreme Court of India in **AIR 2014 SC 2756 (Arnesh**

Kumar v/s State of Bihar), accused can not be arrested in case of imprisonment which may not exceed 7 years. On this count also, accused is entitle for anticipatory bail.

16. In the present petition, accused No.1 to 4 have undertaken that they will not tamper with the prosecution witnesses. Considering all these aspects and totality of the circumstances, I am of the opinion that accused Nos.1 to 4 are entitled for anticipatory bail subject to reasonable conditions, as keeping them in custody amounts to pre-trial conviction. Hence, I answer the Point No.1 in the Affirmative.

17. **Point No.2 :-** In the result, I proceed to pass the following :

ORDER

Petition filed by petitioners/accused No.1 to 4 U/Sec.482 of Bharatiya Nagarika Suraksha Sanhita, 2023 is hereby allowed.

Petitioners/accused Nos.1 to 4 in the event of their arrest in Crime No.89/2026 registered by Gandhi Nagar Police Station, Ballari for the offences punishable U/Sec. 61, 318(2) and 319(2) R/w. Section 3(5) of Bharathiya Nyaya Sanhitha, 2023 and under

Section 66-D of Information and Technology Act, 2000 shall be released on anticipatory bail on execution of personal bond for Rs.1,00,000/- each along with one surety for like-sum subject to following conditions:

1. They shall not involve in any criminal activities.
2. They shall not directly or indirectly make any inducement, thereat or promise to any witnesses acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any Police Officer.
3. They shall not obstruct or hamper the Police investigation and not to play mischief with the evidence collected or yet to be collected by the Police.
4. They shall regularly remain present during the trial and co-operate with the court to complete the trial for the above said offences.
5. They shall at the time of execution of bond furnish their address and mobile number to the Investigating Officer and the concerned authority and shall not change the residence till the final disposal of the case. If in any circumstances, accused changes the residence and

mobile number, she shall inform the same to the concerned Police forthwith.

6. They shall surrender their passports if any before the Investigating Officer within a week, if they do not possess, they shall file an affidavit to that effect before the Investigating Officer.

7. They shall not leave India without prior permission of trial/committal court.

If breach of any of the above conditions is committed, the prosecution is at liberty to seek for cancellation of anticipatory bail.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this **10th day of July 2026**)

(GUDI VASUDEV RADHAKANT)
I/c. II Addl. District & Sessions Judge,
Ballari.