2026 INSC 145

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 830 OF 2026
(Arising out of SLP(Crl.)No.1536/2026)

SUMIT — Appellant

VERSUS

STATE OF U P & ANR. — Respondent(s)

O R D E R

J.B.PARDIWALA & K.V.VISWANATHAN, JJ.

1. Leave granted.

2. This appeal arises from the order passed by the High Court of Allahabad dated 07.01.2026 in Criminal Misc. Anticipatory Bail Application No.11038/2025 by which the anticipatory bail application preferred by the appellant came to be rejected.

3. We heard Mr. Varinder Kumar Sharma, the learned counsel appearing for the appellant and Mr. Ankit Goel, the learned counsel appearing for the respondent-State.

4. It appears from the materials on record that the First Information Report bearing No.560/2024 came to be registered with the Akbarpur Police Station, District Kanpur Dehat, State of Uttar Pradesh for the offence punishable under Section

80(2)/85 BNS and Sections 3 and 4 respectively of the Dowry Prohibition Act, 1961.

5. The appellant before us is the brother-in-law (devar) of the deceased.

6. The deceased was married to the brother of the appellant past 7 months.

7. The deceased died under mysterious circumstances at her matrimonial home. Accordingly, the FIR came to be lodged by the mother of the deceased.

8. The case at hand as alleged seems to be one of dowry death.

9. The appellant before us apprehending arrest had earlier preferred an application before the High Court seeking anticipatory bail being application no.3992/2025.

10. The High Court while granting anticipatory bail passed a very unusual order which reads thus:-

> ***"(1) The present Criminal Miscellaneous Anticipatory Bail Application has been filed on behalf of the applicant Sumit in FIR No. 560 of 2024, under Section 85/80 BNS and 3/4 Dowry Prohibition Act, Police Station Akbarpur, District Kanpur Dehat, seeking anticipatory bail with the prayer that in case of arrest, the applicant may be released on bail.***
> ***(2) Heard the learned counsel for the applicant and the learned Additional Government Advocate and perused the file.***
> ***(3) The applicant's learned counsel argued that the applicant is innocent and has been implicated in the aforementioned sections with malicious intent to harass and intimidate him. He fears that he may be arrested in the aforementioned case, despite the lack of credible evidence against him. The applicant has been accused of the crime simply because he is her brother-in-law. The First Information Report contains no direct allegations against the applicant. The deceased was allegedly beaten and strangled on October 21, 2024, but no complaint was filed at any police station, nor was a medical examination conducted. The***

deceased committed suicide after staying at her parents' home for a month. He also stated that the applicant has no criminal history and no coercive proceedings have yet been initiated against him. He further states that the applicant undertakes to cooperate during the trial and investigation and that he will be present at the time required by the investigating agency or the Court and it is assured on behalf of the applicant that he is ready to cooperate in the process of law and he will honestly make himself available before the Court as and when required and he is also ready to accept all the conditions which the Court may impose on him.

(4) The learned Additional Government Advocate argued against the accused anticipatory bail, arguing that the offense committed by the applicant is of a serious nature. Considering the facts and circumstances of the case, there is no sufficient basis for the accused release on anticipatory bail. Therefore, the accused should not be released on anticipatory bail.

(5) It may be stated that in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694, it has been held by the Hon'ble Supreme court that while adjudicating on an anticipatory bail application, the Court must consider the nature and gravity of the charges, the possibility of the accused fleeing the judicial process and that the Court must carefully evaluate all the material available against the accused and also consider the actual role of the accused.

(6) In the present case, having regard to the settled principles of law relating to anticipatory bail and having regard to the submissions of learned counsel for the parties, the nature of the allegations, the role of the applicant and all the facts and circumstances of the case, the prayer for anticipatory bail is liable to be allowed without any further consideration of the merits of the case. Accordingly, the anticipatory bail application is allowed.

(7) In case of arrest of the applicant involved in the above case crime number, he will be released on anticipatory bail (till the filing of the police charge sheet) on furnishing a personal bond of Rs. 50,000/- and two sureties of the same amount to the satisfaction of the officer in charge of the concerned police station, subject to the following conditions:-

1. ***The applicant shall, if required, be present at the required time for examination by the police officer.***

2. The applicant shall not make any threat, promise or inducement, directly or indirectly, to any person acquainted with the facts of the case, or to any police officer to agree not to disclose such facts before the Court or to any police officer.
3. The applicant will cooperate during the investigation and trial and will not misuse the freedom of bail. In case of violation of the above conditions, the Investigating Officer/Prosecutor shall issue notice to the applicant shall be at liberty to file an appropriate application for cancellation of the anticipatory ball granted.

(8) Accordingly, this anticipatory bail application is finally disposed of with the above observations.

11. A plain reading of the order referred to above would indicate that the anticipatory bail was granted by the High Court as prayed for but the same was limited only upto filing of the chargesheet. Once the chargesheet was filed, the protection earlier granted came to an end and in such circumstances, the appellant once again prayed for anticipatory bail by way of a fresh application which came to be rejected by the High Court.

12. We fail to understand what is the idea in restricting the grant of anticipatory bail upto the stage of completion of investigation and filing of the chargesheet.

13. Either the Court may grant anticipatory bail or may decline. However, once having exercised its discretion in favour of the accused upon consideration of the overall matter, there was no good reason for the High Court to restrict it upto the stage of filing of the chargesheet.

14. In the earlier order passed by the High Court referred to above in para 10 the High Court observed that having regard to

the nature of the allegations, the role of the applicant and all the facts and circumstances of the case, the accused could be said to have made out a case for grant of anticipatory bail.

15. If the aforesaid be so, then the High Court should have indicated while declining to grant anticipatory bail by way of the impugned order as to what was so particular or what was so gross that the High Court thought fit not to grant anticipatory bail.

POSITION OF LAW

16. In *Bharat Chaudhary and Anr. vs. State of Bihar and Anr.* reported in (2003)8 SCC 77, this Court held that there is no restriction in Section 438 Cr.P.C. to grant anticipatory bail even when charge sheet has been filed and cognizance is taken. The relevant part of the said decision reads as thus:-

> *"7. From the perusal of this part of Section 438 of CrPC, we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or a charge-sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet, would not by itself, in our opinion, prevent the courts concerned from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Session, High Court or this Court has the necessary power vested in them to grant*

anticipatory bail in non-bailable offences under Section 438 of CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so."...

[Emphasis supplied]

17. The very same view as aforesaid came to be reiterated in *Ravindra Saxena vs. State of Rajasthan*, reported in (2010) 1 SCC 684. In the said case the High Court had rejected the application seeking anticipatory bail on the ground that the chargesheet had been filed, such approach was held to be erroneous. The Court observed that a Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab,* reported in (1980) 2 SCC 565, clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested:

"7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented.

8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in its Forty-first Report dated 24-9- 1969. The recommendations were considered by this Court in a Constitution Bench decision in Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 CrPC by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or the Court of Session it must apply its own mind on the question and decide when the case is made out for granting such relief."

[Emphasis supplied]

18. In *Sushila Aggarwal & Ors. vs. State (NCT of Delhi) & Anr.* reported in (2020) 5 SCC 1, the following questions were referred to the larger Bench of five judges:

i. Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail?

ii. Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court?

19. The Constitution Bench answered the reference as under:

> ***" 91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.***
>
> ***91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so."***
>
> **[Emphasis supplied]**

20. The following observations made by the Constitution Bench in paras 77.3 and 77.4 respectively of *Sushila Aggarwal (supra)*

are also relevant which reads as under:

> ***"77.3. In these circumstances, the mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge-sheet, he is necessarily to surrender or/and apply for regular bail. The analogy to "deemed bail" under Section 167(2) with anticipatory bail leads this Court to conclude that the mere subsequent event of the filing of a charge-sheet cannot compel the accused to surrender and seek regular bail. As a matter of fact, interestingly, if indeed, if a charge-sheet is filed where the accused is on anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behaviour requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge-sheet is filed, the natural implication is that there is no occasion for a direction by the court that he be arrested and further that he had cooperated with the investigation.***
>
> ***77.4. At the same time, however, at any time during the investigation were any occasion to arise calling for intervention of the court for infraction of any of the conditions imposed under Section 437(3) read with Section 438(2) or the violation of any other condition imposed in the given facts of a case, recourse can always be had under Section 439(2)."***
>
> **[Emphasis supplied]**

21. In the *High Court of Delhi vs. CBI* reported in *2004 SCC OnLine Del 53*, somewhat similar question arose whether Section 170 Cr.P.C. prevents the Trial Court from taking a charge-sheet on record unless the accused is taken into custody. The Delhi High Court observed as under:

> ***"15. Word "custody" appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release***

a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

xxxx xxxx xxxx

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."

[Emphasis supplied]

22. The aforesaid decision of the Delhi High Court received *imprimatur* of this Court in *Siddharth vs. State of Uttar Pradesh & Anr.*, reported in (2022) 1 SCC 676, wherein it was observed as under:

"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed nonbailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the chargesheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

xxxx xxxx xxxx

12. In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven years of registration of the FIR we can think of no reason why at this stage he must be arrested before the chargesheet is taken on record. We may note that the learned counsel for the appellant has already stated before us that on summons being issued the appellant will put the appearance before the trial court."

23. Further, this Court in *Satender Kumar Antil vs. CBI*

reported in (2022) 10 SCC 51 said in clear terms that the mandate laid down in *Siddharth (supra)* should be strictly complied with.

24. In *Md. Asfak Alam vs. State of Jharkhand and Another* reported in 2023 SCC OnLine SC 892 under a similar situation where the appellant therein had been granted interim protection by the High Court under Section 438 CrPC and the charge-sheet was filed before the application seeking pre-arrest bail was finally heard, the High Court rejected the pending anticipatory bail and directed the appellant to surrender before the competent authority and seek regular bail. In this backdrop, this Court observed as under:

> ***"14. ……What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside….."***
>
> **[Emphasis supplied]**

25. Thus, the position of law is well settled: once anticipatory bail is granted, it ordinarily continues without

fixed expiry. The filing of a charge-sheet, taking of cognizance, or issuance of summons does not terminate protection unless special reasons are recorded. The Constitution Bench in the case of *Sushila Aggarwal (supra)* held that duration is a matter of judicial discretion and cannot be confined by arbitrary timelines. In the case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra,* reported in *(2011)1 SCC 694*, this Court similarly cautioned that anticipatory bail should not hinge on procedural milestones.

26. Risk management can be taken care of by way of imposing conditions of cooperation, attendance, and non-tampering, not by imposing time limits. Where circumstances change, modification or cancellation may be sought under the BNSS, 2023, but expiry clauses inserted at inception are unsustainable.

27. In such circumstances referred to above, the impugned order passed by the High Court is set aside.

28. We order that in the event of arrest of the appellant in connection with the offence enumerated above, he shall be released on anticipatory bail subject to the terms and conditions that the Investigating Officer deem fit to impose.

29. Once the appellant is released by the Investigating Officer, he shall thereafter appear before the Trial Court and furnish fresh bail bond.

30. Before we close this matter, we would like to clarify something important. Take a case, wherein an accused has been released on bail, pending the investigation, and later upon

completion of the investigation, chargesheet is filed with addition of new cognizable and non-bailable offences, then what would be the position?

31. The aforesaid question was looked into and answered by this Court in *Pradeep Ram vs. State of Jharkhand and another* reported in 2019 Crl. L.J. 3801, wherein this Court after discussing various decisions, more particularly, the decision in *Prahlad Singh Bhati vs. NCT Delhi and another* reported in (2001) 4 SCC 280 held that with the addition of a new cognizable and non-bailable offence more particularly of a serious nature, the accused becomes disentitled to the liberty earlier granted to him in relation to the offences for which the FIR came to be registered.

32. In such circumstances, the correct approach of the Court concerned should be to apply its mind afresh as to whether the accused is entitled for grant of bail in the changed circumstances.

33. In *Prahlad Singh Bhati* (supra), the FIR initially was registered under Sections 306 and 498A of the IPC respectively. But, subsequently, the chargesheet showed that the accused had committed offence under Sections 302 of the IPC. This Court took the view that with the change of the nature of the offence, the accused could be said to have become disentitled to the liberty granted to him in relation to the offence for which the FIR was registered, more particularly, if the offence is altered for an

aggravated crime.

34. In such circumstances referred to above, we arrive at following conclusions in respect of a circumstance whereafter the grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In the event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Sections 437(5) or 439(2) of Cr.P.C. respectively for arrest of the accused and his custody.

(iii) The Court, in exercise of its power under Sections 437(5) or 439(2) of Cr.P.C. respectively, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of its power under Section 437(5) as well as Section 439(2) respectively can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the Court which had granted the bail.

35. The appeal is accordingly, disposed of.

36. Pending application(s), if any, also stand disposed of.

37. Registry shall forward a copy of this order to the Registrar General, High court of Allahabad, who in turn shall place this order before Hon'ble the Chief Justice of High Court.

……J.
(J.B. PARDIWALA)

……J.
(K.V. VISWANATHAN)

NEW DELHI
09TH FEBRUARY 2026