



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S
482 BNSS No. - 1205 of 2026

Brajpal @ Birjju @ Bijendra and another
.....Applicant(s)

Versus

State of U.P. and another
.....Opposite Party(s)

Counsel for Applicant(s)	: Sunil Kumar Mishra
Counsel for Opposite Party(s)	: G.A., Ram Babu Tiwari

Along With

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 10034 of 2025

Sushil Kumar and another
.....Applicant(s)

Versus

State of U.P. and another
.....Opposite Party(s)

Counsel for Applicant(s)	: Ram Neta Singh
Counsel for Opposite Party(s)	: G.A.

And

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 10776 of 2025

Sahib
.....Applicant(s)

Versus

State of U.P. Though It Principal Secretary (Home) and 3 others
.....Opposite Party(s)

Counsel for Applicant(s)	:	Atul Kumar
Counsel for Opposite Party(s)	:	G.A.

And

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 461 of 2026**

Pooran
.....Applicant(s)

Versus

State of U.P. and 3 others
.....Opposite Party(s)

Counsel for Applicant(s)	:	Kumar Beenu Singh
Counsel for Opposite Party(s)	:	G.A.

And

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 1796 of 2026**

Pramod and 2 others
.....Applicant(s)

Versus

State of U.P. and 3 others
.....Opposite Party(s)

Counsel for Applicant(s)	:	Bhuvnesh Kumar Singh
Counsel for Opposite Party(s)	:	Raghvendra Prakash, G.A.

And

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 1890 of 2026**

Prathbi Raj
.....Applicant(s)

Versus

State of U.P. and another
.....Opposite Party(s)

Counsel for Applicant(s)	:	Sarthak	Srivastava,	Shailendra
			Srivastava	
Counsel for Opposite Party(s)	:	G.A.		

And

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 919 of 2026

Shivam
.....Applicant(s)

Versus

State of U.P. and 3 others
.....Opposite Party(s)

Counsel for Applicant(s)	:	Amit Kumar,	Krishna Kumar
Counsel for Opposite Party(s)	:	G.A.	

And

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 9017 of 2025

Faiyaz Hussen
.....Applicant(s)

Versus

State of U.P. and another
.....Opposite Party(s)

Counsel for Applicant(s)	:	Ramesh	Chandra	Yadav,	Sanjeev
			Kumar	Yadav	
Counsel for Opposite Party(s)	:	Upendra Kumar	Pandey,	G.A.	

Court No. - 71**HON'BLE RAJIV LOCHAN SHUKLA, J.**

1. These matters are posted today for consideration of the preliminary objection raised with respect to the maintainability of these anticipatory bails in view of the decision of this Court dated 01.08.2025 in **Criminal Miscellaneous Anticipatory Bail Application u/S 482 B.N.S.S. No. 4464 of 2025, Asheesh Kumar v. State of U.P. and Another.**

2. As all the cases raise a similar issue, hence, with the consent of the counsels for the parties, the same are being decided by this common order.

3. Heard learned counsel for the applicant(s) as well as learned counsel for the complainant in the respective matters, Sri Anoop Trivedi, learned Senior Advocate, Amicus Curiae, and Sri Paritosh Malviya, learned A.G.A. for the State.

4. Shri Trivedi has contended that this Court in its decision in **Asheesh Kumar (supra)**, which is although restricted to a complaint case in paragraph Nos. 15 and 16, has distinguished 'arrest' from 'custody' and has also opined in paragraph 21 that the observations of the Supreme Court in **Shri Gurbaksh Singh Sibbia & Ors. vs. State of Punjab (1980) 2 SCC 565** and **Sushila Aggarwal & Ors. vs. State NCT of Delhi & Anr. (2020) 5 SCC 1**, do not suggest that an anticipatory bail is maintainable upon issuance of summons after the concerned Court takes cognizance on the charge sheet or complaint.

5. Sri Trivedi has stated that the consideration made in the judgment of **Asheesh Kumar (supra)**, even though the same is limited to a complaint case, proceeds on the assumption that once a Court summons an accused post-filing of a charge sheet or inquiry in

a complaint case, he does not suffer from any apprehension of arrest, as such an anticipatory bail would not lie.

6. Sri Trivedi contends that the consideration of this Court and thereafter its final determination in the above-mentioned decision that an anticipatory bail is not maintainable in complaint cases is at variance with the ratio of the decisions of the Supreme Court in **Bharat Chaudhary and another vs State of Bihar and another (2003) 8 SCC 77** and **Directorate of Enforcement vs Deepak Mahajan and another (1994) 3 SCC 440**.

7. Before proceeding to deliberate on the legal issues raised, this Court deems it appropriate to refer to certain paragraphs of the decision of this court in **Asheesh Kumar (supra)**, which have led to the present legal issue being raised before this Court.

8. Paragraph nos. 13 to 16, 21, 31 and 32 of the judgment in **Asheesh Kumar (supra)** are quoted herein below :

*“13. In Section 482 B.N.S.S., the word is ‘arrest’, not ‘custody’. The Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** has also observed that for anticipatory bail if the proposed accusation appears to be stemmed not from motive of furthering the ends of justice but from some ulterior motive, the object being injure and humiliate the applicant by having him **arrested**, a direction for the release of the applicant on bail in the **event of his arrest** would generally be made.*

14. The term “arrest” has not been defined in either B.N.S. or B.N.S.S. though Section 43 B.N.S.S. lays down the mode of arrest. Black’s Law Dictionary, (5th Edition, 1979) defines “arrest” as follows :-

“To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All

that is required for an “arrest” is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer; no formal declaration of arrest is required.”

15. Similarly, the term “custody” is also not defined in either B.N.S. or B.N.S.S. But the definition of “custody” can be borrowed from the *Corpus Juris Secundum* (Vol. 25 at p. 69) and the same is as follows :-

“When it is applied to persons, it implies restraint and may or may not imply physical force sufficient to restrain depending on the circumstances and with reference to persons charged with crime, it has been defined as meaning on actual confinement or the present means of enforcing it, the detention of the person contrary to his will. Applied to things, it means to have a charge or safe-keeping, and connotes control and includes as well, although it does not require, the element of physical or manual possession, implying a temporary physical control merely and responsibility for the protection and preservation of the thing in custody. So used, the word does not connote dominion or supremacy of authority. The said term has been defined as meaning the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the prisoner to whose custody it is subjected; charge; charge to keep, subject to order or direction; immediate charge and control and not the final absolute control of ownership.”

16. From the perusal of the definition of “arrest” and “custody”, it is clear that “arrest” is different from “custody”. Therefore, the term “arrest” used in Section 482 B.N.S.S. cannot be equated with the term “custody” which the police takes after arrest or the court can take on surrendering or producing an accused before it.”

....

21. Sometimes confusion arises from the observations made in the case of **Sushila Aggarwal (supra)** in paragraph no. 7.6, wherein the Apex Court while considering the observations of Constitution Bench of Apex Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** regarding imposition of condition for limiting the period of anticipatory bail, that for limiting the period of anticipatory bail, the court may consider the circumstances especially the stage for filing

*the anticipatory bail whether at the stage before F.I.R. is filed or after filing of F.I.R. or at the stage when the investigation is complete and charge-sheet is filed. However, the above observations in **Sushila Aggarwal (supra)** do not suggest that anticipatory bail is maintainable upon issuance of a summons after the concerned court takes cognizance on the charge-sheet or complaint. Even otherwise, the Apex Court in the case of **Union of India Vs. Amrit Lal Manchanda and Another, (2004) 3 SCC 75** and **Jitendra Kumar Singh and Another Vs. State of U.P. and Others, (2010) 3 SCC 119** observed that observations of the court are neither to be read as Euclid's theorem nor as a provision of statute and that too taken out of their context and isolated observation in a judgement cannot be treated as a precedent dehors the fact. The discussion in a judgement is meant to explain, not to define.*

...

*31. So far as the judgement of the Apex Court in **Bharat Chaudhary and Another Vs. State of Bihar and Another, (2003) 8 SCC 77**, judgement of Division Bench of Delhi High Court in the case of **P.V. Narsimha Rao (supra)** and judgement of Patna High Court in the case of **Muni Khatoon (supra)** relied upon by learned counsel for the applicant are concerned, this Court with great respect submits that these judgements are against the ratio of Constitution Bench judgement of Supreme Court in the case of **Shri Gurbaksh Singh Sibbia (supra)** as well as **Sushila Aggarwal (supra)** wherein it is clearly observed that apprehension of arrest in Section 438 Cr.P.C. (482 B.N.S.S.) must involve an arbitrary and unwanted arrest by the police. Therefore, when a person is taken into custody by the court upon appearing before it, in response to a summons, this cannot be classified as an arrest as mentioned in Section 482 B.N.S.S.*

32. Therefore, on the basis of above analysis, this Court holds the following :

(i) In a complaint case involving accusation of a non-bailable offence, anticipatory bail is not maintainable upon the issuance of a summons, as there is no apprehension of arrest by the police without warrant;

(ii) in the aforementioned complaint case, when a bailable warrant is issued, although the accused may fear the arrest in pursuance of bailable warrant but he will be released on bail on his readiness to provide it. Therefore, in such cases also, the anticipatory bail is not maintainable as there is no apprehension of arrest and detention.

*(iii) In the event of a non-bailable warrant or proclamation issued in the above complaint case, anticipatory bail is typically not maintainable. However, in view of the judgement of the Apex Court in **Srikant Upadhyay (supra)**, the court may grant pre-arrest bail in exceptional circumstances in the interest of justice.”*

9. A perusal of the reasoning given by this Court while coming to a conclusion that an anticipatory bail is not maintainable when an accused is summoned by the Court in a complaint case, in the opinion of this Court, is not in consonance with the law laid down by the Supreme Court.

10. The Supreme Court in **Sumit vs. State of U.P. & Another 2026 INSC 145**, again approved the observations made in **Bharat Chaudhary (supra)**. The Supreme Court in **Bharat Chaudhary (supra)** was considering the maintainability of an anticipatory bail after cognizance had been taken and has observed as follows:

"5. If the arguments of the learned counsel for the respondent State are to be accepted then in each and every case, where a complaint is made of a non-bailable offence and cognizance is taken by the competent court then every court under the Code including this Court would be denuded of its power to grant anticipatory bail under Section 438 of CrPC.

6. We do not think that was the intention of the legislature when it incorporated Section 438 in CrPC which reads thus:

“438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

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.

....

11. This judgment in our opinion does not support the extreme argument addressed on behalf of the learned counsel for the respondent State that the courts specified in Section 438 of CrPC are denuded of their power under the said section where either the cognizance is taken by the court concerned or a charge-sheet is filed before the appropriate court. As stated above, this would only amount to defeat the very object for which Section 438 was introduced in CrPC in the year 1973."

11. It appears that while considering the maintainability of anticipatory bail in complaint cases where an accused is summoned to face trial, this Court was not apprised of relevant provisions, which mandate remanding of an accused to custody subject to provisions of bail in Sessions triable offences. The three genres of complaint cases provided in the Code are, (i) warrant trials; (ii) summons cases (a sub-genre of summons cases being summary trials); and (iii) Sessions triable Cases.

12. When an accused is summoned under Section 204 Cr.P.C. or 227 B.N.S.S., certain consequences ensue once the accused appears. In Sessions triable offences, Sections 208 and 209 of the Code of

Criminal Procedure and Sections 231 and 232 of the BNSS provide for the procedure to be followed on appearance of the accused.

13. Section 208 and 209 Cr.P.C. read as under :-

“Section 208 – Supply of copies of statements and documents to accused in other cases triable by Court of Session.- *Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:*

- (i) the statements recorded under section 200 or section 202, or all persons examined by the Magistrate;*
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;*
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:*

Provided *that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.*

“209. Commitment of case to Court of Session when offence is triable exclusively by it.- *When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—*

- (a) as soon as may be after complying with the provisions of section 207, commit the case to the Court of Session;*
- (b) subject to the provisions of the Code relating to bail, remand the accused to the custody until commitment of the case under clause (a) and thereafter during and until the conclusion of the trial.*
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”*

14. Section 231 and 232 of the B.N.S.S. read as under :-

“231. Supply of copies of statements and documents to accused in other cases triable by Court of Session. - Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 227 that the offence is triable exclusively by the Court of Session, the Magistrate shall forthwith furnish to the accused, free of cost, a copy of each of the following:

-
- (i) the statements recorded under section 223 or section 225, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 180 or section 183;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided further that supply of documents in electronic form shall be considered as duly furnished.

232. Commitment of case to Court of Session when offence is triable exclusively by it.— When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

- (a) commit, after complying with the provisions of section 230 or section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;
- (b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session:

Provided that the proceedings under this section shall be completed within a period of ninety days from the date of taking cognizance, and such period may be extended by the Magistrate for a period not

exceeding one hundred and eighty days for the reasons to be recorded in writing:

***Provided further** that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case.”*

15. A perusal of the provisions referred to above, clearly indicate that once a person is summoned to face trial by a Magistrate on having committed an offence, which is triable by a Court of Session, then subject to the provisions of bail, he has to be remanded into custody.

16. The word ‘custody’ has not been defined and ‘arrest’ is also similarly not defined in the Code or the B.N.S.S.. Only how arrest is to be made has been defined under Section 46 Cr.P.C. and 43 B.N.S.S. The Supreme Court in **Directorate of Enforcement vs. Deepak Mahajan & Others (supra)** has stated that the power to arrest is not only there with a police officer but also a Magistrate. Defining the word ‘arrest’, the Supreme Court in paragraph Nos.45 to 49 held as under.

45. The first limb of Sub-section (1) of Section 167 uses the expression "person is arrested and detained in custody". The word "accused" occurring in the second limb of Sub-section (1) and in Sub-section (2) of Section 167 refers only that person "arrested and detained in custody".

46. The word 'arrest' is derived from the French 'Arreter' meaning 'to stop or stay' and signifies a restraint of the person. Lexicologically, the meaning of the word 'arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J as he then was being the Judge of the High Court of Madras) in Roshan Beevi v. Joint Secretary, Government of Tamil Nadu, 1985 CrL. L.J. had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various text books and dictionaries, the New Encyclopedia Britannica, Halsbury's Laws of England, 'A Dictionary of Law' by L.B. Curzon, Black's Law Dictionary and

Words and Phrases'. On the basis of the meaning given in those text books and lexicons, it has been held that

"the word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go wherever he pleases. When used in the legal sense in connection with criminal offences, an 'arrest' consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by seizure or detention of the person in the manner known to law, which is so understood by the person arrested."

47. There are various Sections in Chapter V of the Code titled "Arrest of persons" of which Sections 41, 42, 43 and 44 empower different authorities and even private persons to arrest a person in given situation. Section 41 deals with the power of a police officer to arrest any person without an order from a Magistrate and without a warrant. Section 42 deals with the power of a police officer to arrest any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence and who refuses on demand "to give his name and residence or gives a name or residence which such officer has reason to believe to be false." Section 43 empowers any private person to arrest any person who in his presence commits a non cognizable offence, or any proclaimed offender, Section 44 states that when any offence is committed in the presence of a Magistrate whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon subject to the provisions contained in the Code as to bail commit the offender to custody.

48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into

judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice-versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi (supra).

49. While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in Niranjan Singh v. Prabhakar Rajaram Kharote (1980) 2 SCC 559, 563 : 1980 SCC (Cri) 508] observed that: (SCC p. 563, para 9)

“He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.”

17. It is evident from the judgment of the Supreme Court, referred to above, that for the Magistrate to take the accused in custody, arrest is required. It appears to this Court that the decision of the Supreme Court in **Deepak Mahajan (supra)** was also not brought to the notice of the Court while determining the ratio in **Asheesh Kumar (supra)**.

18. As has been stated above, the Supreme Court recently in **Sumit (supra)** has again approved the law laid down with respect to maintainability of an anticipatory bail application, once cognizance has been taken on the complaint or the investigation agency has filed a charge-sheet as declared in **Bharat Chaudhary (supra)**. Then the determination that the anticipatory bail in complaint cases would not be maintainable, in the opinion of this Court, does not lay down the correct law.

19. The observations of the Supreme Court are absolutely clear leaving no room for doubt regarding maintainability of an anticipatory bail post taking of cognizance on complaint or filing of charge sheet.

20. The apprehension of arrest must be treated to be distinct from actual arrest. The Supreme Court in the case of **Mahdoom Bava vs. Central Bureau of Investigation 2023 SCC OnLine SC 299**, while considering an appeal from a decision of this Court, has observed as follows:

"10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals."

21. The statutory provisions regarding Session triable cases clearly mandate that subject to provisions of bail the accused is to be remanded to custody as provided under Sections 208 and 209 Cr.P.C. and 231 and 232 BNSS.

22. The Lucknow Bench of this Court vide order dated 19.04.2023 passed in **Criminal Misc. Anticipatory Bail Application u/S 438 Cr.P.C. No.752 of 2023 (Rishabh Singh v. State of UP through the Principal Secretary Home, Lucknow)**, while considering the impact of maintainability of anticipatory bail after submission of charge sheet, has held as under :-

"In the considered opinion of this Court, the apprehension of being arrested by the Court become more stronger, once the cognizance has been taken by the Court and the process has been issued for the

appearance of the accused. Therefore, it could not be said that when an accused person has been arrested during the course of investigation, apprehension of being arrested is not available to him after submission of charge sheet. In the considered opinion of this Court, the Code of Criminal Procedure does not give power of arrest only to a police officer but also to a Magistrate or trial court as when an accused person appears before a Magistrate or trial court in answer to the process issued against him and surrenders voluntarily, he is taken into custody by the Magistrate or the trial court and he is dealt with in accordance with law. Thus, the arrest of a person appears to be a condition precedent for taking him into judicial custody and thus, there is no harm in concluding that the Magistrate or the trial court on surrender of an accused person can arrest an accused person appearing before it. In this regard, the law laid down by the Hon'ble Supreme Court in 'Directorate of Enforcement Vs. Deepak Mahajan 1994 SCC (Criminal) 785' may be taken into consideration."

23. After a consideration of the law, referred to above, in the opinion of this Court, the law laid down in **Asheesh Kumar (supra)** appears to be not in consonance with the law laid by the Supreme Court in **Bharat Chaudhary and another (supra)** and **Directorate of Enforcement vs Deepak Mahajan and another (supra)**.

24. The cases at hand, which have been heard on the objection regarding maintainability of an anticipatory bail in a complaint case, range from Magistrate triable offences, offences which relate to Sessions trials and even offences where Special Acts mandate trial by Special Judges, in cases like the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as "POCSO Act"*). The consequences which follow summoning post cognizance in Magistrate triable offences and Sessions triable offences are different and the maintainability of an anticipatory bail application with respect to complaint cases cannot be decided, in the opinion of this Court, without taking into account the different kinds of complaint cases, which may be brought before the Courts.

25. The cases at hand relate to different kinds of complaint cases. Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.1205 of 2026 relates to Sections 504, 506, 406 IPC; and, Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.9017 of 2025 relates to Sections 420, 467 and 468 IPC, which are Magistrate triable offence whereas, Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.10034 of 2025 relates to Sections 307, 452, 504, 506 IPC; Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.10776 of 2025 relates to Section 376 IPC and Sections 7/8 of the POCSO Act; Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.461 of 2026 relates to Sections 354Kha, 376, 323, 504, 506 IPC and 3/4 of the POCSO Act; Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.1796 of 2026 relates to Sections 74, 75, 76, 64(1)/62 of the Bharatiya Nyaya Sanhita, and Sections 7/8, 18 of the POCSO Act; Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No.1890 of 2026 relate to Section 304B IPC; and Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. 919 of 2026 relates to Sections 354Kha, 376, 323, 504, 506 IPC and Sections 3/4 of the POCSO Act, which are Sessions triable offence. Therefore, in the opinion of this Court, the different kinds of complaint cases must be taken into account when considering the maintainability of anticipatory bail in complaint cases.

26. In view of the above, considering the larger issue involved, it would be appropriate that this matter is considered by a Larger Bench on the following question of law:

“Whether the judgment of this Court in **Asheesh Kumar (supra)** holding that an anticipatory bail is not maintainable in a complaint case involving accusation of a non-bailable offence, upon issuance of a summons, as there is no apprehension of

arrest by the police without warrant, lays down the correct law?”

27. Let the papers be placed before Hon’ble the Chief Justice for constitution of a Larger Bench for decision on the question, as aforesaid.

28. The interim orders passed in the above mentioned cases shall continue until further orders.

(Rajiv Lochan Shukla,J.)

March 18, 2026

Kushal