

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

04th AUGUST, 2025

ANTICIPATORY BAIL APPLICATION NO. 133 OF 2025

Harish Kumar Prajapati Applicant

Versus

Central Bureau of Investigation, Anti Corruption Branch,
DehradunRespondent

Counsel for the Applicant : Mrs. Prabha Nainthani,
Advocate.

Counsel for the Respondent : Mr. Piyush Garg,
Advocate.

With

ANTICIPATORY BAIL APPLICATION NO. 261 OF 2025

Vijaypal Applicant

Versus

State of UttarakhandRespondent

Counsel for the Applicant : Mr. Bhupesh Kandpal,
Advocate.

Counsel for the Respondent : Mr. Pradeep Lohani,
Brief Holder.

Counsel for the Informant : Mr. Sanjay Raturi,
Advocate
(through video conferencing).

With

ANTICIPATORY BAIL APPLICATION NO. 447 OF 2025

Kirti Ballabh Nainwal and two Others Applicants

Versus

Central Bureau of Investigation, Anti Corruption Branch,
DehradunRespondent

Counsel for the Applicants : Mr. Piyush Sammal,
Advocate.

Counsel for the Respondent : Mr. Piyush Garg,
Advocate.

With

ANTICIPATORY BAIL APPLICATION NO. 562 OF 2025

Ramnaresh Tyagi and Another Applicants
Versus

State of UttarakhandRespondent

Counsel for the Applicants : Mr. A.S. Rawat, Senior
Advocate assisted by Mr.
Anchit Khokher, Advocate.

Counsel for the Respondent : Mr. Pradeep Lohani,
Brief Holder.

With

ANTICIPATORY BAIL APPLICATION NO. 617 OF 2025

Sameer Choudhary Applicant
Versus

Narcotics Control Bureau, DehradunRespondent

Counsel for the Applicant : Mr. Rakesh Chahar,
Advocate with Mr. Naveen
Singh Bisht, Advocate
(both through video
conferencing).

Counsel for the Respondent : Mr. Shobhit Sahari,
Advocate.
(through video conferencing)

With

ANTICIPATORY BAIL APPLICATION NO. 623 OF 2025

Smt. Anjali Sharma Applicant
Versus

State of UttarakhandRespondent

Counsel for the Applicant : Mr. Lalit Sharma,
Advocate with Mr. Rajat
Mittal, Advocate.

Counsel for the Respondent : Mr. Pradeep Lohani,
Brief Holder.

With

ANTICIPATORY BAIL APPLICATION NO. 728 OF 2025

Smt. Anamika Maithani alias Suman Applicant
Versus

State of UttarakhandRespondent

Counsel for the Applicant : Mrs. Prabha Naithani,
Advocate.

Counsel for the Respondent : Mr. Pradeep Lohani,
Brief Holder.

Hon'ble Alok Kumar Verma, J.

Apprehending his arrest, the applicant-Harish Kumar Prajapati has filed the Anticipatory Bail Application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, "Sanhita, 2023") in FIR No.RCOO72021S0009 of 2021, registered at Anti Corruption Branch, Dehradun under Section 302 of the Indian Penal Code, 1860 (in short, "IPC") (Section 120B, Section 34 and Section 218 IPC are added during the course of the investigation).

2. Applicant - Vijaypal has filed the Anticipatory Bail Application under Section 482 of the Sanhita, 2023 in FIR No.02 of 2023, registered at Police Station Chamba, District Tehri Garhwal under Section 376(3),

Section 506 IPC and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short, "Act, 2012").

3. Applicant – Kirti Ballabh Nainwal and two others have filed the present Application under Section 482 of the Sanhita, 2023 in FIR No.RC0072021S0009, registered at Anti Corruption Branch, Dehradun under Section 302 read with Section 34 IPC.

4. Applicants Ramnaresh Tyagi and Avneet Tyagi have filed the present Application under Section 482 of the Sanhita, 2023 in Case Crime No.281 of 2022, registered at Police Station Perm Nagar, District Dehradun under Section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (as applicable in the State of Uttarakhand).

5. Applicant – Sameer Choudhary has filed the present Application under Section 482 of the Sanhita, 2023 in NCB/DDN/2/2022, registered at NCB Zone, Dehradun, under Section 8 read with Section 20 and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. Applicant - Smt. Anjali Sharma has filed the present Application under Section 482 of the Sanhita, 2023 in Case Crime No.144 of 2025, registered at

Police Station Raipur, District Dehradun under Section 2 read with Section 3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (as applicable in the State of Uttarakhand).

7. Applicant- Smt. Anamika Maithani alias Suman has filed the present Application under Section 482 of the Sanhita, 2023 in FIR No.60 of 2025, registered at Kotwali Kotdwar, District Pauri Garhwal under Section 2 read with Section 3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (as applicable in the State of Uttarakhand).

8. Anticipatory Bail Application No.133 of 2025 is being treated as a leading file.

9. Heard learned counsel for the parties.

10. Placing reliance on an order dated 21.09.2024, passed by the Coordinate Bench of this Court in Anticipatory Bail Application No.897 of 2024, "Mukesh Singh Bora vs. State of Uttarakhand", Mr. Piyush Garg, Advocate appearing for the Central Bureau of Investigation and Mr. Pradeep Lohani, Brief Holder for the State of Uttarakhand have raised a preliminary objection regarding maintainability of these anticipatory bail applications. They further argued that

the anticipatory bail applications are not maintainable under Section 438 of the Code of Criminal Procedure, 1973 (in short, "Code") as amended by the State of Uttarakhand and even in terms of Section 531 of the Sanhita, 2023.

11. Per contra, learned counsel appearing for the applicants have argued that these anticipatory bail applications are maintainable.

12. The Anticipatory Bail Application No.897 of 2024, "Mukesh Singh Bora Vs. State of Uttarakhand", was filed by the applicant Mukesh Singh Bora seeking anticipatory bail in Case Crime No.170 of 2024, registered at Police Station Lalkuan, District Nainital under Sections 376(2)(n), 506 IPC and Section 9(m) read with Section 10 of the Act, 2012.

13. It was argued by the learned counsel for the State in the said matter that the anticipatory bail application is not maintainable in view of the State of Uttarakhand Notification dated 11.08.2020, which, inter alia, provides that the provision of anticipatory bail shall not be applicable to the offences under the Act.

14. The relevant portion of the said order dated 21.09.2024 reads :-

"6. The provisions of anticipatory bail are not applicable to the offences under the Act. The investigation in the instant matter is pending under the provisions of the Act. It is stated that even the victim child has been examined during investigation. In view of it, the anticipatory bail application is not maintainable. It deserves to be rejected accordingly.

7. The anticipatory bail application is rejected".

15. In terms of the repeal and savings clause under Section 531 of the Sanhita, 2023, the Code of Criminal Procedure, 1973 stands repealed with enforcement of the Sanhita, 2023. July 01, 2024, the date on which the Sanhita came into force.

16. Section 531 of the Sanhita, 2023 is as follows:-

"531. Repeal and savings.- (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the

provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

- (b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;
- (c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita

by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

17. The scheme of Section 438 of the Code was introduced by the State of Uttarakhand vide Act No.22 of 2020 (Notification dated 11.08.2020). Section 438 of the Code, as introduced by the State of Uttarakhand, reads as follows: -

“438. Direction for grant of bail to person apprehending arrest- (1) Where any person has reason to believe that he may be arrested on 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court

may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely;

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not leave India without the previous permission of the Court; and
- (iv) such other conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

Explanation: the final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code.

(3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together, with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.

(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application;

(6) Provisions of this section shall not be applicable,-

(a) to the offences arising out of, -

- (i) the Unlawful Activities (Prevention) Act, 1967;
- (ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (iii) the Official Secrets Act, 1923;
- (iv) the Uttarakhand (Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986;) Adaptation and Modification Order, 2002
- (v) sub-section(3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code;

- (vi) chapter 6 of the Indian Penal Code, 1860, viz, offences against the state (except Section 129);
- (vii) The Protection of Children from Sexual Offences (POCSO) Act, 2012;
- (b) in the offences, in which death sentence may be awarded.
- (7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session."

18. Learned counsel appearing for the applicants argued that the anticipatory bail is a substantive right, not merely a procedure. In the Sanhita, 2023, there is no express bar prohibiting anticipatory bail for the offences under Section of IPC and other Acts, even if committed before the commencement of the Sanhita, 2023. The Sanhita, 2023 must be read in a manner that protects rather than restricts the rights of the accused. In the case of similar nature, (CR.P.C. No.1710 of 2024, "Raman Sahni vs. State of Uttar Pradesh") on 28.05.2025, the Hon'ble High Court of Judicature at Allahabad held that the provisions of Section 482 of the Sanhita, 2023 would prevail over the State amendment.

19. The main question in these matters revolves around the applicability of Section 438 of the Code, as amended by the State of Uttarkahand, and the Sanhita,

2023 to ongoing investigations and legal proceedings initiated before 01.07.2024 or after 01.07.2024.

20. The provision of anticipatory bail is rooted in the fundamental right to personal liberty. It is a pre-emptive measure to safeguard personal liberty against false accusation or misuse of the law. Anticipatory bail is a safeguard against arbitrary arrest. Liberty is the very quintessence of a civilized existence. The Sanhita, 2023 is also upholding the importance of protecting personal liberty. The restrictions on granting anticipatory bail under Section 438(6) of the Code (as amended by the State of Uttarakhand) are no longer in effect.

21. The principle of implied repeal also called repeal by necessary implication may be applied to determine repugnancy for the purpose of Article 254(2) of the Constitution of India. If the Parliament, in exercising its power under proviso to Article 254(2) makes a law adding, amending or repealing the law, predominance secured by the State law by the assent of the President is taken away and the repugnant State law though it became valid by virtue of President's assent would be void.

22. No amendment has been brought by the State of Uttarakhand in Section 482 of the Sanhita, 2023 after the enactment of the Sanhita, 2023. Therefore, it seems clear that the State Government has taken a conscious decision to do away with the prohibition indicated in Section 438(6) of the Code of Criminal Procedure, 1973.

23. In **M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485**, 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.

24. **T. Barai vs. Henry Ah Hoe, (1983) 1 SCC 177**, mandated 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 the benefit should be

available to all persons who may be affected, regardless of when their cases originated.

25. When the Parliament enacts more liberal provisions, the benefit thereof should be available to all persons who may be affected, regardless of when their cases originated. Therefore, this Court is of the opinion that the accused is entitled to the benefit of the more liberal provisions introduced by the Sanhita, 2023.

26. Hence, I am in respectful disagreement with the view taken by the Coordinate Bench. The matter is referred to a larger Bench by formulating the following question: -

“Whether the provision of Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 would prevail over the Uttarakhand State Amendment under Section 438 of the Code of Criminal Procedure, 1973 and since the provisions of the Sanhita, 2023 are beneficial to the accused, can it be applied with respect to earlier cases (regardless of when the case of the accused originated)?”

27. The Registry is directed to place the matter before the Hon’ble Chief Justice of this Court for an appropriate order.

28. A copy of this order be placed on the records of the connected anticipatory bail applications.

ALOK KUMAR VERMA, J.

Date : 04.08.2025
JKJ/Pant