

Babar Alam Varis vs State Of U.P. on 4 February, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15424

Court No. - 78

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 5495 of 2024

Applicant :- Babar Alam Varis

Opposite Party :- State of U.P.

Counsel for Applicant :- Khalid Mahmood

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Khalid Mahmood, learned counsel for the applicant, Sri Birendra Pratap Singh, learned AGA for the State and perused the records.

3. Learned counsel for the applicant while placing the order dated 13.07.2020 passed in Criminal Misc. Anticipatory Bail Application No.2060 of 2020 (Sarwar and 5 others vs. State of UP), a copy of which is annexed as S.A.I to the second supplementary affidavit dated 27.08.2024, has submitted that first anticipatory bail application of the applicant and other co-accused persons was dismissed for want of prosecution. Learned counsel for the applicant has placed paragraph no.29 of the affidavit filed in support of the anticipatory bail application to disclose and explain the criminal

history of the applicant and has further placed paragraph no.2 of the 5th supplementary affidavit dated 08.01.2025 for the same. It is submitted that co-accused Gulam Varis has been granted anticipatory bail vide order dated 30.11.2023 by this Court in Criminal Misc. Anticipatory Bail Application No.4992 of 2023 (Gulam Varis vs. State of UP), a copy of the order has been placed before the Court which reads as under :

"1. Matter taken up in the revised list.

2. Heard Sri Khalid Mahmood, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-1 for the State and perused the material on record.

3. This is the third Anticipatory Bail Application.

4. The pleadings have been completed.

5. The applicant Gulam Varis was granted interim anticipatory bail vide order dated 17.5.2023 by this Court. The said order is quoted herein below:-

"1. List revised.

2. Heard Sri Khalid Mahmood, learned counsel for the applicant and Sri S.B. Maurya, learned counsel for the State.

3. This is the third Anticipatory Bail Application. The first anticipatory bail application being Criminal Misc. Anticipatory Bail Application No.2060 of 2020 "Sarwar and 5 others Vs. State of U.P." in which Gulam Varis, the present applicant was at serial no.4, was dismissed for want of prosecution by this Court vide order dated 13.7.2020. Thereafter the second anticipatory bail application on behalf of the applicant was moved being Criminal Misc. Anticipatory Bail Application No.2563 of 2023 "Gulam Varis Vs. State of U.P." which was rejected by this Court vide order dated 5.4.2023 since the same did not contain the necessary material as it was filed after submission of charge sheet.

4. Learned counsel for the applicant argued that the applicant was not arrested during investigation. The trial court has rejected the anticipatory bail application of the applicant vide order dated 6.12.2022 by observing that after filing of charge sheet only summons have been issued against the applicant but no warrant has been issued against him and as such there is no apprehension of his arrest. It is submitted that since the applicant had cooperated in the investigation during it's pendency and was not arrested and now charge sheet has been submitted and he apprehends his arrest pursuant to summons issued by the trial court the applicant may be granted interim anticipatory bail.

5. Matter requires consideration.

6. Learned A.G.A. has accepted notice on behalf of State of U.P.

7. Issue notice to the first informant in accordance with law returnable within six weeks.

8. Steps be taken within a week.

9. Counter affidavits be filed by the first informant as well as learned counsel for the State within six weeks. Rejoinder affidavit, if any, may be filed by the applicants within three weeks thereafter.

10. List this case on 2.8.2023.

11. Till the next date of listing, in the event of arrest of the applicant-Gulam Varis, involved in Case Crime No.329 of 2018, under Sections 147, 323, 504, 506, 308 IPC, P.S. Patherwa, District Kushinagar, he shall be released on interim anticipatory bail on furnishing a personal bond of Rs. 50,000/- with two sureties (one of the surety should be of his family member) each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) 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.

(iii) the applicant shall not leave India without the previous permission of the Court and if he/she has passport, the same shall be deposited before the concerned court.

12. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled/vacated and the applicant shall be taken into custody, forthwith.

13. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same."

6. The order dated 17.5.2023 granting interim anticipatory bail to the applicant was subsequently extended vide orders dated 2.8.2023 and 20.9.2023 passed by this Court.

7. Learned counsel for the applicant raised arguments in the matter which were initially argued by him on 17.5.2023.

8. Since the applicant Gulam Varis has been granted interim anticipatory bail vide order dated 17.5.2023 and the said order was extended vide orders dated 2.8.2023 and 20.9.2023, the same is hereby made absolute during the period of trial for the reasons as given in the said order on his furnishing a fresh personal bond of Rs. 50,000/- with two sureties (one of the surety should be of his family member) each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(ii) 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.

(iii) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the concerned court.

9. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled/vacated and the applicant shall be taken into custody, forthwith.

10. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same.

11. The present anticipatory bail application is allowed."

4. It is submitted that the case of the applicant is identical to that of co-accused Gulam Varis, who has been granted anticipatory bail by this Court.

5. Learned counsel for the State does not dispute the said factual position.

6. In view of the same, since co-accused Gulam Varis has been granted anticipatory bail vide order dated 30.11.2023, the applicant - Babar Alam Varis be also released on anticipatory bail in Case Crime No.329 of 2018, under Sections 147, 323, 504, 506, 308 IPC, Police Station Patherwa, District Kushinagar, during the period of trial for the reasons as given in the said order on his furnishing a fresh personal bond of Rs. 50,000/- with two sureties (one of the surety should be of his family member) each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) the applicant shall appear before the court concerned within a period of two weeks from today and file certified copy of this order for its compliance.

(ii) the applicant shall make himself available on each and every date fixed in the matter by the court concerned.

(iii) 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.

(iv) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the concerned court.

7. In case, the applicant does not co-operate in the proceedings of the trial, this order shall stand automatically recalled/vacated and the applicant shall be taken into custody, forthwith.

8. Further, in default of any of the conditions, the court concerned is at liberty to pass appropriate orders for enforcing and compelling the same.

9. The present anticipatory bail application is allowed.

Order Date :- 4.2.2025 Priya (Samit Gopal, J.)