

# **Bal Kumar Patel Alias Raj Kumar vs State Of U.P And Another on 9 December, 2022**

**Author: Samit Gopal**

**Bench: Samit Gopal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

(ALLAHABAD)

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APPLICATION U/S 482 No. -10778 of 2022

Decided on : December 9, 2022

Bal Kumar Patel Alias Raj Kumar

.....Applicant

Through:- Mr. Satya Dheer Singh Jadaun, Advocate

Vs.

State of U.P. and Another

.....Respondents

Through:- Mr. Sanjay Kumar Singh, Additional Government Advocate for respondent no. 1

Mr. Jitendra Prasad Mishra, Advocate for respondent no. 2

With

CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. -8945 of 2020

Bal Kumar Patel Alias Raj Kumar

.....Applicant

Through:- Mr. Satya Dheer Singh Jadaun, Advocate

Vs.

State of U.P. and Another

.....Respondents

Through:- Mr. Sanjay Kumar Singh, Additional Government Advocate for respondent no. 1

Mr. Jitendra Prasad Mishra, Advocate for respondent no. 2

CORAM : HON'BLE SAMIT GOPAL, JUDGE

ORDER

1. Heard Sri Satya Dheer Singh Jadaun, Advocate learned counsel for the applicant, Sri Jitendra Prasad Mishra, Advocate learned counsel for the first informant and Sri Sanjay Kumar Singh, Advocate learned Additional Government Advocate for the State of U.P. and perused the records.
2. These two petitions are connected together as they relate to the same case and are of the same accused and as such are being decided by a common order.
3. Criminal Misc. Application U/S 482 Cr.P.C. (hereinafter referred to as "the 482 petition") has been filed by the applicant- Bal Kumar Patel @ Raj Kumar with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this application and quash the proceedings of Criminal Case No. 02 of 2022 arising out of Case Crime No. 0831 of 2020 under Sections 419, 420 and 406 I.P.C. Police Station Kotwali Nagar District Banda on which cognizance was taken up on 2.11.2021 following the submission of charge sheet against the applicant on 29.9.2021 by the police of Police Station Kotwali Nagar District Banda and also further be pleased to pass an interim order in favour of the applicant, granting protection from arrest by directing the investigative authorities not to take any coercive action against him; so that justice be done.

3. That it is further prayed that during the pendency of the present criminal misc. application, the proceedings of Criminal Case No. 02 of 2022 arising out of Case Crime No. 0831 of 2020 under Sections 419, 420 and 406 I.P.C. Police Station Kotwali Nagar District Banda on which cognizance was taken up on 2.11.2021 following the submission of charge sheet against the applicant on 29.9.2021 by the police of Police Station Kotwali Nagar District Banda may remain stayed and also further be pleased to pass an interim order in favour of the applicant, granting protection from arrest by directing the investigative authorities not to take any coercive action against him and / or be pleased fit and proper to pass such order as the Hon'ble Court deem fit and proper in the facts and circumstances of the present case; so that justice be done."

4. Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. (hereinafter referred to as "the anticipatory bail application") has been filed by the applicant- Bal Kumar Patel @ Raj Kumar with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to allow the application and direct that in the event of the applicant's arrest in Case Crime No. 831 of 2020 u/s 419, 420 and 406 I.P.C., registered at Police Station Kotwali Nagar, District Banda, he may be released on anticipatory bail.

It is further prayed that during the pendency of this application before this Hon'ble Court the interim order be issued directing the P.S. Kotwali Nagar, District Band (or any other investigating agency of the State of U.P.) not to apprehend the applicant in Case Crime No. 831 of 2020 u/s 419, 420 and 406 I.P.C., And/or may pass such other & further order as this Hon'ble Court, may deem, just and proper in the facts and circumstances of the case."

5. A counter affidavit dated 21.05.2021 has been filed in the anticipatory bail application which has been sworn by Mohammad Akram Sub-Inspector, Police Station Kotwali Nagar, District Banda. In the said counter affidavit paragraph 10 & 12 referred to the applicant having criminal history and thereby stating in both the paragraphs that he is a habitual criminal. Paragraph 10 & 12 of the said counter affidavit is quoted herein-below:-

"10. That the contents of paragraph No. 14 of the affidavit are wrong and as such are denied. The true fact is that the applicant is named accused and man of habitual criminal and has long criminal history. Photostat copy of the criminal history of the applicant is being filed herewith and marked as Annexure No. C.A.1 to this affidavit.

12. That the contents of paragraph No. 16, 17, 18 & 19 of the affidavit are wrong and as such are denied. The true fact is that the applicant is named accused and he taken money from the informant on the false pretext of sand business and he did not return the money of the informant and has committed fraud. It is further submitted that the applicant is habitual criminal and has long criminal history."

6. Annexure-CA-1 to the said counter affidavit is stated to be the criminal history of the applicant. A perusal of the same shows that there are 18 criminal cases against him. Annexure-CA-1 to the said counter affidavit is extracted herein-below:-

|     |               | ₹                         | ₹        | ₹   | ₹   |
|-----|---------------|---------------------------|----------|-----|-----|
|     |               | ₹                         | ₹        | ₹   | ₹   |
| 1.  | ४-६१/७९       | -147,148,149,302          | ' ४ ४ ४  | -   | “   |
| 2.  | ४-०५/८४       | -399,402                  | ' ४ ४ ४  | -   | “   |
| 3.  | ४-६८/८४       | - 216«                    | ' ४ ४    | -   | “   |
| 4.  | ४-१५५/८५      | -3 ₹                      | < «      | ,   | - “ |
| 5.  | ४-१५८/८५      | - 506                     | ' ४ ४ ४  | -   | “   |
| 6.  | ४-७०/८४       | -364,395,120              | ' ४ ४ ४  | -   | “   |
| 7.  | ४-१४७/०६      | -142,504                  | ' ४ ४ ४  | -   | “   |
| 8.  | ४-२४५/८४      | -216«                     | ' ४ ४ ४  | -   | “   |
| 9.  | ४-६५२/०७      | -419,420,467,468,147      | ' ४ ४ ४  | -   | “   |
| 10. | ४-६५३/०७      | -419,420,467,468,147      | ' ४ ४ ४  | -   | “   |
| 11. | ४- ६५४/०७     | -25,27,30«                | «        | -   | “   |
| 12. | ४- ६५५/०७     | -25,27,30«                | «        | -   | “   |
| 13. | ४- ६५६/०७     | -25,27,30«                | «        | -   | “   |
| 14. | ४- ६५८/०७     | -147,148,447,448,504,506  | ' ४ ४ ४  | 2/3 | “   |
|     | « ,           | -                         | “        |     |     |
| 15. | ४- ७२८/०७     | - 147,148,467,468,471     | ' ४ ४ ४  | -   | “   |
| 16. | ४- ८६०/०७     | -406                      | ' ४ ४ ४, | -   | “   |
| 17. | ४ ४ ४-४६/०७   | - 147,148,349,364,302,120 | ' ४ ४ ४  | -   | “   |
| 18. | ४ ४ ४- १७३/०९ | - 2/3                     | « ,      | -   | “   |

7. A rejoinder affidavit dated 20.08.2022 to the counter affidavit dated 21.05.2022 of the State has been filed in the anticipatory bail application explaining the criminal history of the applicant.

8. In the 482 petition a counter affidavit of the State dated 10.06.2022 has been filed which is sworn by Brahmdev Goswami, Sub-Inspector, Police Station Kotwali Nagar, District Banda. In para no.12 of the said affidavit which is in reply to para 19 and 20 of the affidavit in support of the 482 petition, it is stated that the accused applicant has no criminal history to his credit. The said para is quoted herein-below:-

"12. That the contents of paragraph no.19 & 20 of the affidavit are wrong and denied. In reply, it is stated that accused applicant and co-accused in premeditated manner committed collusive fraud and cheating with the informant and during the course of investigation, investigating officer recorded statement of informant and witnesses who have supported prosecution story beyond all reasonable doubts and the investigating officer after thorough investigation collected credible and concrete evidence and submitted charge sheet dated 21.09.2021 against the accused applicant under Section 419, 420, 406 IPC and the learned Magistrate has taken cognizance on the charge sheet vide order dated 02.11.2021 and the case was registered as Criminal Case No.02 of 2022 and the case was pending in the court of Chief Judicial Magistrate, Banda.

According to DCRB and CCTNS reports, the accused applicants has no criminal history to his credit. Copies of the DCRB and CCTNS reports are being file herewith and marked as Annexure No.C.A.-1 to this affidavit."

9. Phased with the averment in the 482 petition with regards to the criminal history of the applicant particularly the fact that the applicant states to be having criminal history but the counter affidavit of the State stating that he has no criminal history to his credit, this Court passed an order on 28.07.2022 with regards to the same. The same is extracted herein below:-

"Heard Sri Durgesh Kumar Singh, learned counsel for the applicant, Sri Jitendra Prasad Mishra, learned counsel for the first informant and Sri Gyan Prakash Singh, learned counsel for the State.

Learned counsel for the applicant has provided copy of the petition and counter affidavit filed by State to learned counsel for the State today in Court as due to unfortunate incident of fire on 17.07.2022 in the office of the Advocate General, many files have been burnt and it was impossible to locate the file due to the extensive fire in the record rooms.

Learned counsel for the first informant states that the applicant has criminal history of 11 cases to which learned counsel for the applicant states that the present case is a case in which the applicant has been falsely implicated. He states that although in para no.20 of the affidavit filed in support of present application under Section 482

Cr.P.C. it is stated that the applicant has criminal history and it has been disclosed in his anticipatory bail application but in the counter affidavit filed on behalf of the State, in para no.12, there is a specific recital that the applicant has no criminal history. Para no.20 of the affidavit filed in support of present application under Section 482 Cr.P.C is quoted here-in-below:-

"20. That, the applicant has dutifully explained his criminal history in his anticipatory bail application which is already pending before this Hon'ble Court. It is irrelevant for the purpose of deciding the present petition."

The counter affidavit of the State dated 10.06.2022 is on record which has been sworn by Brahmdev Goswami in the capacity of Sub-Inspector, Police Station Kotwali Nagar, District Banda. In para no.12 of the said affidavit which is in reply to para 19 and 20 of the affidavit in support of the application under Section 482 Cr.P.C., it is stated that the accused applicant has no criminal history to his credit. The said para is quoted here-in-below:-

"12. That the contents of paragraph no.19 & 20 of the affidavit are wrong and denied. In reply, it is stated that accused applicant and co-accused in premeditated manner committed collusive fraud and cheating with the informant and during the course of investigation, investigating officer recorded statement of informant and witnesses who have supported prosecution story beyond all reasonable doubts and the investigating officer after thorough investigation collected credible and concrete evidence and submitted charge sheet dated 21.09.2021 against the accused applicant under Section 419, 420, 406 IPC and the learned Magistrate has taken cognizance on the charge sheet vide order dated 02.11.2021 and the case was registered as Criminal Case No.02 of 2022 and the case was pending in the court of Chief Judicial Magistrate, Banda.

According to DCRB and CCTNS reports, the accused applicants has no criminal history to his credit. Copies of the DCRB and CCTNS reports are being file herewith and marked as Annexure No.C.A.-1 to this affidavit."

This Court is at loss to appreciate the contents of para no.12 of the counter affidavit as on the own pleadings of the applicant, he has his criminal history which has been explained in his anticipatory bail application which is stated to be pending before this Court. The first impression which the Court gets from the said counter affidavit is that the deponent of the counter affidavit is trying to conceal the criminal history for the reasons best known to him, he is trying that the accused may not disclose his entire criminal history in the matter and to the contrary, prima-facie is giving a wrong statement in para no.12 of the same in which he states that the applicant has no criminal history to his credit.

In these circumstances, let the matter be taken up by Superintendent of Police, Banda forthwith who shall file his personal affidavit in the matter within seven days from today disclosing the criminal history of the applicant and also disclosing as to why the same has not been disclosed in the counter

affidavit filed earlier in the matter. He is free to initiate any action against the deponent of the counter affidavit for the contents of para 12 if he finds it to be untrue. If any action is taken, the same shall also be disclosed in his personal affidavit. If the said personal affidavit is not filed, Superintendent of Police, Banda shall be personally present before this Court on the next date.

If the criminal history of the applicant is found, the Court may further consider to proceed against the deponent of the counter affidavit for filing false affidavit.

Let the matter be listed on 06.08.2022 as fresh.

The Registrar General of this Court and learned counsel for the State shall communicate this order by tomorrow to Superintendent of Police, Banda."

10. In compliance of the order dated 28.07.2022, a personal affidavit dated 05.08.2022 sworn by Sri Abhinandan, the Superintendent of Police, Banda has been filed containing 11 paragraphs in all. The said paragraphs are quoted herein-below:-

"1. That the deponent is presently posted as Superintendent of Police, District Banda and in compliance of the Hon'ble Court's order dated 28.07.2022, he is filing the instant personal affidavit in the above-noted matter. The deponent has perused the record as available to him and as such, he is well acquainted with the facts deposed herein below. The deponent is enclosing his photograph and the photocopy of his identity card according to the provisions of Rules of Court, 1952.

2. That this Hon'ble Court had been pleased to direct, vide order dated 28.07.2022, the Superintendent of Police, Banda shall file his personal affidavit disclosing as to why the same has not been disclosed in the counter affidavit filed earlier in the matter. Further the Hon'ble Court has been pleased to direct that he is free to initiate any action against the deponent of the counter affidavit for the contents of para 12 if he finds it to be untrue. If any action is taken, the same shall also be disclosed in his personal affidavit. If the said personal affidavit is not filed, Superintendent of Police, Banda shall be personally present before the Hon'ble Court on the next date.

3. That in compliance of the aforesaid order (supra), the deponent is filing the instant personal affidavit and prays this Hon'ble Court may kindly be pleased to permit the instant affidavit to be taken on record.

4. That at the very outset, the deponent tenders her unconditional, unqualified, unfettered and sincere apology for the inconvenience caused to this Hon'ble Court, though the same was inadvertent.

5. That the deponent noted the justified concern expressed by the Hon'ble High Court as to why, when the applicant himself had indicated that he had some criminal history (although explained) yet, it was stated in the paragraph no. of the counter

affidavit sworn by Sub-Inspector Brahmdev Goswami at Police Station Kotwali Nagar, District Banda that the applicant had no criminal history according to the reports of DCRB and CCTNS. Admittedly, if the knowledge of the deponent was confined to criminal history of the applicant or lack of it, in District Banda, the correct averment should have read that to the best of his knowledge, he had no criminal history in District Banda.

6. That stating the DCRB and CCTNS records did not contain any criminal history gives the impression of a clean chit to the applicant and appears to state that he has no criminal history. Since the applicant does have a criminal history, the aforesaid averment, even if it is a bonafide example of unhappy drafting but, it cannot be condoned.

7. That however, the applicant has criminal history of long criminal cases in different districts viz. 01 criminal case in District Banda (criminal case in question), 10 criminal cases in District Chitrakoot, 10 criminal cases in District Raibareli, 04 criminal cases in District Pratapgarh, 01 criminal case in District Mirzapur and 01 criminal case in District Prayagraj. A copy of the chart reflecting the entire criminal history of the applicant is being enclosed herewith and marked as annexure no. 1 to this affidavit.

8. That it is humbly submitted that the deponent took a serious note of the lapse aforesaid committed by the Sub-Inspector and passed an order dated 30.07.2022 to conduct a preliminary inquiry by the Additional Superintendent of Police, District Banda, into the apparently arbitrary, negligent and irresponsible manner, in which the counter affidavit dated 10.06.2022 had been filed by the Sub-Inspector Brahmdev Goswami at Police Station Kotwali Nagar, District Banda. A copy of the order dated 30.07.2022 passed by the deponent is being enclosed herewith and marked as annexure no. 2 to this affidavit.

9. That the deponent assures this Hon'ble Court that the most stringent action as per the relevant and extant law and rules, will be taken against the delinquent police officer.

10. That the deponent humbly reiterates his unconditional, unfettered and unqualified apologies to this Hon'ble Court for the inconvenience caused, and he is sincerely sorry for the same, though the same was inadvertent.

11. That in view of the aforesaid facts and circumstances, stated above, it is humbly prayed that this Hon'ble Court may pass such other or further order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case, so that the justice may be done."



11. Annexure-1 to the said personal affidavit is a chart showing the criminal history of the applicant. The same has been referred to in paragraph 7 of the said personal affidavit. The criminal history as stated in the said chart is of 27 criminal cases. The case mentioned at Serial No. 27 being Case Crime No. 831 of 2020, under Sections 419, 420, 406 I.P.C., Police Station Kotwali Nagar, District Banda is the case which is the subject matter in the 482 petition and the anticipatory bail application also. The list of 27 cases distributed in five columns in the said chart is extracted herein-below:-

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 i -01 □ i □f £ 02- «-42 i  
 i ¥ □ ¢ □ “  
 x x x x x □

1.

147/148/149/302 .□i .

f £

2. 399/402 .□i .

f £

3. 216« .□i .

f £

4. 364/395/120 .□i .

f £

5. 216« .□i .

¢ x i f £

6. 03 £ < « f £

7. 504/506 .□i .

¢ x i f £

8. 142/504 .□i .

f £



¢ i i

24. 419/420/406/504/506 .□i .i 66 < ' « i

25. 153/500/505 .□i .i 66 < ' « ¢ x > □

26. 269/188 □ i 51 □ x > □

27. 419/420/406 .□i .

¢ x □

12. An affidavit dated 16.08.2022 in the 482 petition has been filed on behalf of the applicant in response to the personal affidavit of the Superintendent of Police, Banda in which an explanation has been given about the criminal history of the applicant as detailed in Annexure-1 to the said personal affidavit from paragraph nos. 8 to 22 of it stating therein that the cases from Serial Nos. 1 to 5 have ended in acquittal as per the Goshwara register, but the lawyer of the applicant is making an effort to obtain the certified copies of the judgements of the said cases, the case at Serial No. 6 is a punitive proceeding, the cases at Serial Nos. 7, 8 and 9 are non cognizable offences, the case at Serial No. 10 has ended in acquittal, the cases at Serial Nos. 11 to 17 related to obtaining firearm licences by the applicant from the places where he was living at that time, the said weapons were seized which were then released in his favour on the orders of the concerned District Magistrate, the case mentioned at Serial No. 18 also ended in acquittal, the case at Serial No. 19 though a charge-sheet has been sent to the concerned court in which cognizance has been taken but the applicant has not received any summons or notices till date, the cases at Serial Nos. 20 & 21 are the cases in which the applicant is not named in the first information report, no charge-sheet has been submitted against him and he has neither been summoned nor has received any notice till date, the case at Serial No. 22 has been withdrawn under Section 321 Cr.P.C., the case at Serial No. 23 has ended in Final Report in favour of the applicant, for the cases at Serial Nos. 24 & 25 the applicant has no knowledge of any charge-sheet being submitted against him and neither has he received any summon or any notice till date and the case at Serial No. 26 is a case simple in nature.

13. An affidavit of compliance dated 06.09.2022 has been filed by Sri Abhinandan, the Superintendent of Police, Banda in the anticipatory bail application containing 12 paragraphs in all. The same are extracted herein-below:-

"1. That the deponent is presently Superintendent of Police, Banda, and he is filing the instant affidavit in the above noted matter. The deponent has perused the record as available to him and as such, he is well acquainted with the facts deposed herein below. The deponent is enclosing his photograph and the photocopy of his identity card according to the provisions of Rules of Court, 1952.

2. That this Hon'ble Court had been pleased to direct, vide order dated 02.09.2022, the State to file a proper affidavit about criminal history of the applicant.

3. That in compliance of the aforesaid order (supra), the deponent is filing the instant affidavit, and humbly prays that this Hon'ble Court may graciously be pleased to permit the instant affidavit to be taken on record.

4. That the deponent at the very outset tenders his unconditional, unqualified, unfettered and sincere apologies for the inconvenience caused to this Hon'ble Court, though the same was inadvertent.

5. That it is humbly prayed that this Hon'ble Court may graciously be pleased to permit the instant affidavit to be read in conjunction with the affidavit sworn by Superintendent of Police, Banda and filed on 05.08.2022 in criminal misc. application (under section 482 Cr.P.C.) no. 10778 of 2022.

6. That taking serious note of the negligence and irresponsible manner in which the counter affidavit dated 10.06.2022 had been filed by the Sub-Inspector Brahm Dev Goswami of Police Station Kotwali Nagar District Banda in the aforesaid (supra) application under section 482 Cr.P.C., the deponent had ordered the Addl. Superintendent of Police, Banda to conduct a preliminary inquiry against him by order dated 30.07.2022. A copy of the order dated 30.07.2022 passed by the deponent is being enclosed herewith and marked as annexure no. 1 to this affidavit.

7. That it was prima-facie found that the said Sub-Inspector named Brahm Dev Goswami had been guilty of gross negligence and carelessness, therefore, a show cause notice dated 24.08.2022 was issued to him requiring him to submit a reply within 15 days why action against him be not taken under the relevant and extant rules. A copy of the show cause notice dated 24.08.2022 issued by the deponent is being enclosed herewith and marked as annexure no. 2 to this affidavit.

8. That considering the serious nature of the allegations against the concerned Sub-Inspector, the deponent invoked the powers vested in him under rule 17(1)(Ka) of the Non-Gazetted Police Officers (Punishment & Appeal) Rules, 1991 and by order dated 24.08.2022 suspended the concerned Sub-Inspector Brahm Dev Goswami, and it was also communicated to him that a departmental inquiry against him was contemplated. A copy of the order of suspension dated 24.08.2022 passed by deponent is being enclosed herewith and marked as annexure no. 3 to this affidavit.

9. That with regard to the incomplete criminal history (showing only 18 cases), which was attached as annexure no. CA-1 to the counter affidavit sworn by Sub-Inspector Mohammad Akram of Police Station Kotwali, District Banda dated 21.05.2021, the deponent took serious note of this egregious lapse on the part of the delinquent officer and by order dated 01.09.2022, the deponent ordered the Addl. Superintendent of Police, Banda to conduct a preliminary inquiry as permitted under the relevant and extant rules. A copy of the order dated 01.09.2022 passed by the deponent is being enclosed herewith and marked as annexure no. 4 to this affidavit.

10. That the fact is that there are a total of 27 criminal cases comprising the history of the applicant. A list of the complete criminal history is being enclosed herewith and marked as annexure no. 5 to this affidavit.

11. That the deponent humbly reiterates his unconditional and unqualified apologies to this Hon'ble Court for the inconvenience caused, though the same was inadvertent.

12. That in view of the facts and circumstances of the case, stated above, it is expedient in the interest of justice that this Hon'ble Court may graciously be pleased to reject the bail application of the applicant."

14. Annexure-5 to the said affidavit which is refereed to in paragraph 10 is the criminal history of 27 cases against the applicant which are the same as stated in the personal affidavit filed in the 482 petition and have been quoted above and as such are not being quoted as being repetitive.

15. The prosecution case as per the first information report lodged on 11.10.2020 by Ramakant Tripathi as Case Crime No. 0831 of 2020, under Sections 419, 420, 406 I.P.C., Police Station Kotwali Nagar, District Banda against the applicant and Bhanu Pratap Chaturvedi son of Virendra Chaturvedi alleges therein that he is a contractor in P.W.D. and lives in Gali No. 9, Swaraj Colony, District Banda. Bhanu Pratap Chaturvedi is his relative. He is a Lekhpal in Banda. In March 2017, Bhanu Pratap Chaturvedi came to his house and told him that there is big work of sand in which if he invests once then he would have no tension any time. The first informant told him that there is a marriage in the house till 10th December and as such he cannot invest money. On 14th December he told that on 17.12.2017 "Sahab" will be coming who will then make him a partner of 10 percent. On 17.12.2017 the first informant with Bhanu Pratap Chaturvedi went to the Irrigation Inspection Bungalow, Banda and then an information was sent to Sahab who after 10 months called them on which Chaturvedi introduced each other and then he came to know that Sahab is former M.P. Bal Kumar Patel after which Chaturvedi told him to give money. Then Bal Kumar Patel former M.P. told him that he will be in Rai Bareilly and Rs. 5 lakhs be deposited in his Account No. 06122800100031928 in Punjab National Bank. The first informant then on 20.12.2017 through RTGS transferred Rs. 5 lakhs in the said account. Whenever he used to call Bal Kumar Patel and ask him for getting the agreement done he used to say for getting it done in a day or two. One day Chaturvedi called the first informant and said that on 28.05.2018 the Member of Parliament Bal Kumar Patel is coming and will be meeting in the Inspection Bungalow as there is lot of sand and there will be a requirement of about 50-60 lakhs for which he is trying to make arrangement through his friends. Then contractor Rudra Prakash, contractor Satendra Shukla and his relative Yogesh Pandey agreed to invest money and on 28th May they reached Inspection Bungalow where Bal Kumar Patel told them that a lease has been granted in favour of his son Sudheer and a required rawanna is to be filled. On believing the same, Rudra Prakash gave Rs. 10 lakhs, Satendra Shukla gave Rs. 20 lakhs and Yogesh Pandey gave Rs. 9 lakhs to which Yogesh was told that he would be a partner of only 9 percent on which he said that he would send the money or get it transferred through RTGS after which he transferred Rs. 16 lakhs through RTGS in the account of Bal Kumar Patel. Bal Kumar Patel used to delay the talks and then on 27.12.2018 the first informant through RTI requested for information as to whether any file has been approved for lease of sand in the

name of Sudheer, Rama Shanker Patel and Dev Sharan Patel for Manpur Khurd Naraini to which he did not get any reply and then he himself went to the concerned department and inquired from there and came to know that there is no file for the said names. He then tried to contact Bal Kumar Patel former M.P. on phone on which he used to say sometimes he is in Delhi, sometimes in Rae Bareilly and sometimes in Pratapgarh and later on in the year 2019 he left Samajwadi Party and joined Congress Party and contested the elections from Banda Chitrakoot Lok Sabha constituency but lost it. The first informant and his persons have a belief that Bhanu Pratap Chaturvedi and Bal Kumar Patel former M.P. have together committed cheating and fraud with him and his associates Rudra Prakash, Satendra Shukla and Yogesh Pandey. The first informant and his associates then went 2-3 times to the house of Bal Kumar Patel in Chitrakoot and asked about the partnership to which he tried to mislead them and then they demanded their money back which is also being avoided by him. He has not returned Rs. 65 lakhs due on the first informant and his associates and is neither responding to their phone calls. Bal Kumar Patel @ Raj Kumar former M.P. was called repeated times and then on 07.07.2020 he promised to return the money in September 2020 but now is not responding to the phone calls. Some unknown people came to the house of the first informant and gave a threat that he should forget the money given to Bal Kumar Patel otherwise it will not be good for him. He and his family is under threat of life. He prays that a first information report be lodged. Along with the first information report enclosures being RTGS receipts, the application and receipt of registry of RTI have been enclosed. The first information report has thus been lodged.

16. Learned counsel for the applicant argued that the first information report has been lodged under misconception. The deal between the first informant and his friends and relatives with the applicant and co-accused was a business transaction. There was no offer and assurance given by the applicant either to the first informant or his associates. The offence is petty in nature. The statements of the first informant and the witnesses recorded during investigation are stereo typed statements. The present dispute is a private dispute. It is argued while placing Annexure-4 to the paper-book of the 482 petition that an application under Section 156 (3) Cr.P.C. was filed by Bal Kumar Patel @ Raj Kumar (the applicant) against Ramakant Tripathi (the first informant), Yogesh Pandey, Rudra Prakash and Satendra Shukla alleging therein that the accused persons had given money for purchase of land but some dispute arose between the parties and as such the applicant gave an application dated 17.11.2020 to the Superintendent of Police, Chitrakoot to the said effect and since there was no action on it an application under Section 156 (3) Cr.P.C. has been moved by him. Paragraph 4 of the affidavit and Annexure-4 being the said application dated 17.11.2020 (page numbers 62 and 63 of the paper-book) and the application under Section 156 (3) Cr.P.C. (page numbers 64 to 67 of the paper-book) have been placed before the Court. It is argued that the same is the reason for false implication of the applicant. It is argued that the present dispute if any is a private dispute arising out of business transaction and as such the proceedings deserve to be quashed. There is no criminality in the allegations. It is argued that subsequent to lodging of the first information report the investigation concluded and a charge-sheet dated 21.09.2021 has been submitted against the applicant and co-accused Bhanu Pratap Chaturvedi under Sections 419, 420, 406 I.P.C. on which vide order dated 02.11.2021 they have been summoned to face trial which is totally illegal. While placing the anticipatory bail application, learned counsel argued that if this Court is not of the view of allowing the 482 petition then the applicant may be granted anticipatory

bail till conclusion of trial, the arguments and grounds are the same as argued.

17. Learned counsel for the first informant while opposing the prayers of the 482 petition and the anticipatory bail application argued that the intention of the applicant to cheat was right from the very inception as is apparent from the allegations itself. Money was taken on false assurance. The applicant has not only cheated the first informant but many other people. While placing paragraph 2 of his counter affidavit dated 27.08.2022 in the anticipatory bail application it is argued that the Investigating Officer tried to serve notice under Section 41 (A) Cr.P.C. to the applicant but the applicant did not meet him and as such he pasted the said notice at his house. Subsequently the Investigating Officer received a call from the mobile phone of one Dinesh Kumar Patel stating that the applicant is busy in elections and cannot come and since notice under Section 41 (A) Cr.P.C. has been sent to him, he may talk to him on phone only on which the Investigating Officer talked to the applicant on phone and recorded his statement on phone itself. Learned counsel has placed CD No. 25 dated 18.09.2021 which is annexed as Annexure-CA-1 to the counter affidavit to demonstrate the same and while further elaborating his argument has stated that the same would go to show that the applicant never cooperated in the investigation and even the Investigating Officer felt handicapped in recording his statement under Section 161 Cr.P.C. which was done by him on telephone.

Learned counsel has further argued that a recording of the demand of money and the conversation between the parties as was recorded was given to the Investigating Officer by the first informant in a pen-drive which was sealed by him and made part of the case diary. Paragraph 7 of the additional submissions in the counter affidavit dated 27.08.2022 in the anticipatory bail application and Annexure-7 to the same being CD No. 5 dated 24.11.2020 in which a note has been made by the Investigating Officer regarding the said pen-drive and making it part of the case diary has been placed before the Court to demonstrate the same. It is further argued that the alleged application dated 17.11.2020 addressed to the Superintendent of Police, District Chitrakoot and the application under Section 156 (3) Cr.P.C. as stated to have been moved by the applicant against the first informant and his associates is a totally false version containing a concocted story. It is argued while placing the counter affidavit that the applicant is a man of criminal antecedents. Paragraph 18 of the said counter affidavit has further been placed to argue that the applicant was a member of dreaded Dadua gang and is involved in criminal activities since the year 1979 which is still continuing. It is further argued that there are 27 cases against the applicant. Learned counsel argued that the 482 petition and the anticipatory bail application deserve to be dismissed.

18. Learned counsel for the State also opposed the 482 petition and the anticipatory bail application and argued that the applicant is named in the first information report and there are allegations against him. There has been misrepresentation on behalf of the applicant and he was actively involved in the conversation due to which money was transferred in his account. There was mens rea on his part. It is argued that the applicant has not cooperated in the investigation as is apparent from the case diary. A notice under Section 41 (A) Cr.P.C. was tried to be served on him but could not be served and as such the same was pasted at his house after which the Investigating Officer received a call from some person of the applicant stating about the inability of the applicant to appear before the Investigating Officer and then the Investigating Officer recorded his statement under Section 161 Cr.P.C. through telephone only. It is argued that although there was a

non-disclosure of the criminal antecedents of the applicant in the counter affidavit previously but the affidavit of compliance of the Superintendent of Police, Banda in both the petitions goes to show that there are 27 cases including the present case in which the applicant has been involved. It is argued that the Superintendent of Police, Banda has taken action against the earlier deponent of the counter affidavit dated 10.06.2022 who did not at all disclose the criminal antecedents of the applicant but stated in paragraph 12 that the applicant has no criminal history to his credit. It is further argued that the investigation in the matter has concluded in which credible evidence has been found against the applicant. There has been transfer of money which is a recorded event and recorded transaction. The money has gone in the bank account of the applicant. A charge-sheet has been submitted after thorough investigation upon which the court concerned has taken cognizance in the present case. It is argued that as such the 482 petition and the anticipatory bail application deserve to be dismissed.

19. After having heard learned counsels for the parties and perusing the records, it is apparent that the applicant is named in the first information report. The transaction of money has been through bank transfers as have been stated in the first information report. The allegations prima facie show active participation of the applicant along with co-accused while dealing with the first informant and his associates. The matter has been investigated and charge-sheet has been submitted on which the court concerned has taken cognizance and summoned the applicant and co-accused. The application given to the Superintendent of Police, District Chitrakoot by the applicant is dated 17.11.2020 and the application allegedly moved under Section 156 (3) Cr.P.C. is an undated application and even unnumbered. Even on probe to the learned counsel for the applicant its date could not be disclosed. More so the first information report of the present case has been lodged on 11.10.2020 whereas the application allegedly moved before the Superintendent of Police, District Chitrakoot is dated 17.11.2020 which is after about 01 month and 07 days of lodging of the present first information report. The application under Section 156 (3) Cr.P.C. if moved has to be obviously after 17.11.2020 which is the date of the application mentioned as alleged to be given to the Superintendent of Police, District Chitrakoot. The same is thus after lodging of the present first information report and is a defence of the accused in the present case.

20. The law with regard to quashing of proceedings / charge-sheet is well settled.

In the cases of :

- i) R.P. Kapur Vs. State of Punjab : AIR 1960 SC 866;
- ii) State of Haryana and Ors. Vs. Bhajan Lal and Others : 1992 Supp (1) SCC 335;
- iii) State of Bihar Vs. P. P. Sharma : 1992 Supp (1) SCC 222;
- iv) Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors. : (1999) 8 SCC 686;
- v) M. Krishnan Vs. Vijay Singh & Anr. : (2001) 8 SCC 645;



vi) Zandu Pharmaceuticals Works Ltd. Vs. Mohd. Sharaful Haque & another : (2005) 1 SCC 122;

vii) M. N. Ojha Vs. Alok Kumar Srivastava : (2009) 9 SCC 682;

viii) Joseph Salvaraj A. Vs. State of Gujarat and Ors. : (2011) 7 SCC 59;

ix) Arun Bhandari Vs. State of Uttar Pradesh and Ors.: (2013) 2 SCC 801;

x) Md. Allauddin Khan Vs. State of Bihar : (2019) 6 SCC 107;

xi) Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr. : (2019) 11 SCC 706;

xii) Rajeev Kourav Vs. Balasaheb & others : (2020) 3 SCC 317;

xiii) Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh : (2020) 12 SCC 467, it has been held by the Apex Court that exercise of inherent power of the High Court under Section 482 of the Code of Criminal Procedure is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the complaint/FIR/charge-sheet in deciding whether the rarest of the rare case is made out to scuttle the prosecution in its inception.

21. Further in the case of Priti Saraf & anr. Vs. State of NCT of Delhi & anr. : 2021 SCC Online SC 206 the Apex Court while considering the powers under Section 482 Cr.P.C. has held as follows:

"23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.

24. The question which is raised for consideration is that in what circumstances and categories of cases, a criminal proceeding may be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitution, or in the exercise of the inherent powers of the High Court under Section 482 CrPC. This has often been hotly debated before this Court and various High Courts. Though in a series of decisions, this question has been answered on several occasions by this Court, yet the same still comes up for consideration and is seriously debated.

25. In this backdrop, the scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in the judgment of this Court in State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335). The relevant para is mentioned hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. This Court has clarified the broad contours and parameters in laying down the guidelines which have to be kept in mind by the High Courts while exercising inherent powers under Section 482 CrPC. The aforesaid principles laid down by this Court are illustrative and not exhaustive. Nevertheless, it throws light on the circumstances and the situation which is to be kept in mind when the High Court exercises its inherent powers under Section 482 CrPC.

27. It has been further elucidated recently by this Court in *Arnab Manoranjan Goswami Vs. State of Maharashtra and Others*, 2020 SCC Online SC 964 where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analyzed at great length.

28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."

22. In the case of *Ramveer Upadhyay Vs. State of U.P.* : 2002 SCC Online SC 484 the Apex Court has held in paragraphs 27, 38 and 39 that quashing of a criminal case by exercising jurisdiction under Section 482 Cr.P.C. should be done in exceptional cases only. It was further held that criminal proceedings cannot be nipped in the bud, whether the allegations are true or untrue would have to be decided in the trial, the court cannot examine the correctness of the allegations in the complaint. Paragraphs 27, 38 and 39 are quoted herein:

"27. Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.

38. Ends of justice would be better served if valuable time of the Court is spent on hearing appeals rather than entertaining petitions under Section 482 at an interlocutory stage which might ultimately result in miscarriage of justice as held in *Hamida v. Rashid @ Rasheed and Others*, (2008) 1 SCC 474.

39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be

ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."

23. Further in the case of Daxaben Vs. State of Gujarat : 2022 SCC Online SC 936 in para 49 the Apex Court has held as under:

"49. In exercise of power under section 482 of the Cr.P.C., 1973 the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence."

24. Thus, it is trite law that at the stage of quashing only the material of the prosecution has to be seen and the court cannot delve into the correctness of the allegations or the defence of the accused and then proceed to examine the matter on its merit by weighing the evidence so produced. The disputed questions of facts of the case cannot be adjudged and adjudicated at this stage while exercising powers under Section 482 Cr.P.C. and only the prima facie prosecution case has to be looked into as it is. Evidence needs to be led to substantiate the defence of the accused. The accused can raise their grievances while claiming discharge at the appropriate stage before the trial court.

25. The law with regards to anticipatory bail is also well settled.

In the case of Bhadresh Bipinbhai Sheth v. State of Gujarat : (2016) 1 SCC 152 the law relating to anticipatory bail has been reiterated. It is stated as under:

"21. Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench judgment of this Court in Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]. The Constitution Bench in this case emphasised that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore,

effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the "touch" or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner : (Gurbaksh Singh case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] , SCC p. 586, para 26)

"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] , that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

22. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with the evidence or influencing witnesses, etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner: (Gurbaksh Singh case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465], SCC p. 588, para 31).

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to 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. On the other hand, if it appears likely, considering the antecedents of the

applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* [AIR 1962 SC 253 : (1962) 1 Cri LJ 215 : (1962) 3 SCR 622], which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

26. The Apex Court in the case of *Narinderjit Singh Sahni v. Union of India* : (2002) 2 SCC 210 has observed that accused facing a charge under sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bonafide one.

27. While considering the scope of anticipatory bail under section 438 of Criminal Procedure Code the Apex Court in the case of *Adri Dharan Das v. State of West Bengal* : (2005) 4 SCC 303, relying on the earlier Constitutional Bench judgment in case of *Balachand Jain v. State of Madhya Pradesh* : (1976) 4 SCC 572, in para 7 has observed thus:-

"7. The facility which Section 438 of the Code gives is generally referred to as "anticipatory bail". This expression which was used by the Law Commission in its 41st Report is neither used in the section nor in its marginal note. But the expression "anticipatory bail" is a convenient mode of indication that it is possible to apply for bail in anticipation of arrest. Any order of bail can be effective only from the time of arrest of the accused. Wharton's Law Lexicon explains "bail" as "to set at liberty a person arrested or imprisoned, on security being taken for his appearance". Thus bail is basically release from restraint, more particularly the custody of police. The distinction between an ordinary order of bail and an order under Section 438 of the Code is that whereas the former is granted after arrest, and therefore means release from custody of the police, the latter is granted in anticipation of arrest and is

therefore effective at the very moment of arrest. (See *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] .) Section 46(1) of the Code, which deals with how arrests are to be made, provides that in making an arrest the police officer or other person making the same "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". The order under Section 438 of the Code is intended to confer conditional immunity from the touch as envisaged by Section 46(1) of the Code or any confinement. The Apex Court in *Balchand Jain v. State of M.P.* [(1976) 4 SCC 572 : 1976 SCC (Cri) 689 : AIR 1977 SC 366] has described the expression "anticipatory bail" as misnomer. It is well known that bail is ordinary manifestation of arrest, that the court thinks first to make an order is that in the event of arrest a person shall be released on bail. Manifestly there is no question of release on bail unless the accused is arrested, and therefore, it is only on an arrest being effected the order becomes operative. The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested, if he has already obtained an order from the Court of Session or the High Court, he shall be released immediately on bail without being sent to jail."

(emphasis supplied)

28. Looking to the discussions as above, facts of the case, the prima facie allegations against the applicant, the law on the subject and the criminal antecedents of the applicant, this Court does not deem it proper to quash the proceedings in the 482 petition as prayed for.

In so far as the anticipatory bail application is concerned, although a case for interference could have been made out but looking to the facts and circumstances of the case cumulatively that the applicant was a public representative earlier, the fact that he was involved earlier in many criminal cases, the non-cooperation by him in the investigation by not making himself available at the call of the Investigating Officer, the recorded fact of transfer of money in his bank account, the allegation of the applicant misrepresenting the first informant right from the inception of the talks, the allegation of threat being extended to the first informant by the henchmen of the applicant, the evidence as collected after which the investigation being concluded by filing a charge-sheet against the applicant and co-accused and as such the case being prima facie proved, the court taking cognizance on it and summoning the accused persons, the fact that there was absolutely no reason for the first informant to falsely implicate the applicant, the hesitation of general public of making allegations against a politician or a public representative but still lodging a first information report and the law as stated above, this Court rejects the anticipatory bail application also.

29. Accordingly, the 482 petition and the anticipatory bail application are rejected. The interim order dated 07.09.2022 passed in the 482 petition stands discharged.

30. Before parting with the case it would be apt to give certain directions with regard to filing of counter affidavit specially with regard to the criminal antecedents of an accused. The present case is a glaring example of how things have moved specially with regards to the criminal antecedents of the accused in counter affidavit dated 10.06.2022 being filed by Brahmdev Goswami, Sub-Inspector, Police Station Kotwali Nagar, District Banda on behalf of the State of U.P. initially by mentioning in it that he has no criminal history to his credit after which on the statement of learned counsel for the first informant that the applicant has a criminal history of 11 cases, this Court took cognizance of it and passed an order on 28.07.2022 to the said effect after which the personal affidavit of the Superintendent of Police, Banda was filed and then it was disclosed that the applicant has a criminal history of 27 cases including the present case. Although the criminal antecedents of a person may not be the sole decisive factor in a case but surely need to be looked upon while deciding a matter. The affidavit of compliance of the Superintendent of Police, Banda in the anticipatory bail application though shows that the some action has been initiated against the deponent of the earlier counter affidavit but the manner in which this fact has emerged and that too on the pointing out of learned counsel for the first informant is a matter of concern. There may be a case where the first informant may not be represented in a Court of law and thus the Court believing the affidavit filed by the State / Police authorities to be true proceeds to hear and decide the matter but the actual fact about the criminal history of the accused would not come before the Court.

With the present digital age where everything is now possible and available with the press of a button or a click of a mouse, it cannot be said that the criminal history of a person cannot be gathered by the police agency instantaneously through a dedicated portal for it for reporting it to the Courts. If the same is not updated or is non functional, it is a matter of concern.

31. The Principal Secretary (Home), Government of Uttar Pradesh, Lucknow and the Director General of Police, Government of Uttar Pradesh, Lucknow are directed to look into this issue and do the needful and also take up the issue at their level for having the details of criminal history of a person at one stroke. Even responsibility should be fixed for the person responding in Court(s) through instructions / reply / affidavit or otherwise for disclosing the entire criminal history of the accused failing which there should be some deterrent for it to avoid intentional efforts to shield the accused persons and not disclose their criminal history before the concerned courts.

32. The Registrar General of this Court and the learned Additional Government Advocate for the State of U.P. are directed to send a copy of this order within a week from today to the Principal Secretary (Home), Government of Uttar Pradesh, Lucknow, the Director General of Police, Government of Uttar Pradesh, Lucknow and the Superintendent of Police, Banda for necessary compliance and the needful.

Allahabad



December 9, 2022

Abhishek Singh Rathore

(Samit Gopal,J.)

Whether the order is speaking : Yes

Whether the order is reportable : Yes