



2026:AHC:177154

HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.
- 7237 of 2026**

Dr. Vaibhav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Gopal Misra, Shiv Mangal Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Affidavit of compliance filed today is taken on record.
2. Heard Sri Gopal Misra, learned counsel for the applicant, Sri Rabindra Kumar Singh, learned A.G.A. for the State and perused the record.
3. The present application has been filed on behalf of the applicant in Case Crime No. 121 of 2026, under Sections 18, 19, 20 of the Transplantation of Human Organs Act, 1994, and Section 111(2), 143(2), 239(b), 318(4), 319(2), 3(5) of B.N.S., Police Station - Rawatpur, District Kanpur Nagar, with a prayer to grant him anticipatory bail.
4. The prosecution case, in brief, is to the effect that an F.I.R. was lodged against the applicant and several other persons on 31.03.2026, under Section 143, 3(5) of B.N.S. and Section 18, 19, 20 of Transplantation of Human Organs and Tissues Act, 1994 (hereinafter referred to as "the Act of 1994"), at P.S. Rawatpur, District Kanpur Nagar, which was registered as Case Crime No. 121 of 2026. It is alleged in the F.I.R. that the applicant as well as other accused persons nominated in the F.I.R. are involved in illegal kidney transplant which was being carried in Ahuja Hospital with the help of doctors, coming from outside. The F.I.R. was lodged by the first informant/Sub-Inspector Mukesh Kumar and owners of the hospital were arrested on the spot.
5. Learned counsel for the applicant submits that the applicant is absolutely

innocent and has been falsely implicated in the present case. He has nothing to do with the alleged offence in spite of that the police are trying to arrest the applicant. It is further contended that the applicant is a registered dentist, running a dental clinic in District Meerut; the applicant has been practicing since 2009, having Registration No. 6050UPDCI; he has no knowledge or expertise of transplantation of kidney. As per the Act of 1994, a prior permission ought to have been taken from the competent authority to prosecute the applicant-accused. No cognizance can be taken on a police report in terms of Section 22 of the Act of 1994. In the absence of the complaint by the competent authority, registration of the F.I.R. itself is without jurisdiction and therefore, all consequential actions are also violated and liable to be dropped. The applicant has no concern with the hospital where an illegal act of transplantation of human organ was being carried. The applicant has been made accused in the present case on the basis of confessional statement of other co-accused namely Dr. Surjeet Ahuja and Dr. Preeti Ahuja. There is no admissible evidence against the applicant. A malicious prosecution has been launched against the applicant. The applicant is neither a member of any organized crime nor involved in trafficking of persons. The arrest of co-accused Md. Afzal has been stayed by the Division Bench of this Court vide order dated 18.06.2026, passed in Crl. Misc. Writ Petition No. 12032 of 2026. Learned counsel for the applicant further submits that the applicant undertakes to cooperate during investigation and trial and shall appear as and when required by the Investigating Agency or the Court concerned. It has also been stated that, in case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail, shall cooperate with the investigation, and shall abide by all the conditions that may be imposed by the Court.

6. On the other hand, learned A.G.A. has opposed the application for anticipatory bail. It is further contended that the investigating officer has collected sufficient material against the applicant. The kidney donor Ayush Chaudhary, has specifically stated that the applicant was involved in the offence. As per statement of kidney donor Ayush Chaudhary, the applicant actively participated in the offence and that on 18.03.2026, he was taken to Ghaziabad by the applicant and co-accused Dr. Amit, Dr. Afzal and others; he specifically stated that at the time of his operation,

the applicant and other doctors were present in the hospital and after his operation he was shifted to another hospital. The investigating officer collected call detail record of the applicant which goes to show that the applicant was present in District Kanpur on the date of operation of the kidney donor Ayush Chaudhary. The investigating officer collected visitor register of the hotel and a copy of which has been filed alongwith affidavit of compliance, which indicates that the applicant stayed in the hotel alongwith other co-accused on and around the date of operation. The other witnesses and co-accused also stated that the applicant was involved in the illegal transplantation of human organs. He further submitted that Dr. Surjeet Ahuja and Dr. Preeti Ahuja, who were arrested on the spot by the police, remained in jail for a period of about four months and only thereafter their bail application was allowed. He further submits that custodial interrogation of the applicant is required in this matter to unearth the truth. In case, anticipatory bail is granted to the applicant, it would hamper the investigation.

7. I have heard submissions of both the parties and perused the record.

8. The applicant is nominated in the F.I.R. The kidney donor Ayush Chaudhary has specifically stated that he was taken to other hospital by the applicant for conducting medical test. The other co-accused also stated that the applicant was one of the member of operating team. The stage of cognizance is yet to come, therefore, Section 22 of the Act of 1994 is not applicable at this stage. The investigating officer has communicated the competent authority to lodge complaint under the Transplantation of Human Organs and Tissues Act, 1994, against the guilty persons. The investigating officer has collected sufficient materials against the applicant regarding his presence in District Kanpur on the date of operation. The applicant was one of the members of the operating team of the doctors. *Prima facie*, the applicant was actively involved in the alleged offence. He is not cooperating in the investigation and is concealing himself from the clutches of law for the past four and half month. The pre-arrest bail to the applicant may lead to miscarriage of justice. This is not a fit case to invoke extraordinary powers of this Court.

9. In the case of **Srikant Upadhyay and Others vs. State of Bihar and**

Another, (2024) 12 SCC 382, the Hon'ble Supreme Court has held that the power to grant anticipatory bail is an extraordinary power. While called upon to exercise the said power, the Court has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice. When warrant of arrest or proclamation is issued, the applicant is not entitled to invoking extraordinary power. The relevant paragraph no. 30 of **Srikant Upadhyay (supra)** is quoted as under:

"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

10. In the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court has held that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The power under Section 438 of Cr.P.C./482 of B.N.S.S. has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The relevant paragraph no. 69 of **P. Chidambaram (supra)** is reproduced as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. "

11. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as **Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another, 2022 SCC OnLine SC 2528**, relevant paragraph nos.14 and 15 whereof read as under:

"14.....

74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation, Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information.....

6.....

*75. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das v.***

State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933], it was held as under: (SCC p. 313, para 19)

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

76. In Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694: (2011) 1 SCC

(Cri) 514], the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to **Siddharam Satlingappa Mhetre** [**Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694: (2011) 1 SCC (Cri) 514**] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar** [**Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379: (2012) 2 SCC (Cri) 468**], the Supreme Court held as under: (SCC p. 386, para 19)

*"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. P.T. Manokaran** [**D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345**], **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain** [**State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176**] and **Union of India v. Padam Narain Aggarwal** [**Union of India v. Padam Narain***

Aggarwal, (2008) 13 SCC 305: (2009) 1 SCC (Cri) 11.)"

Economic offences

78. *Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105: 1998 SCC (Cri) 510], it was held that in economic offences, the accused is not entitled to anticipatory bail."*

15. *In Sushila Agrawal and others v. State (NCT of Delhi) and Another reported in (2020) 5 SCC 1, Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held:-*

"92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

12. As per the averments put forth in the FIR and investigation, serious allegations have been levelled against the applicant. The investigation is at a preliminary stage, and the custodial interrogation of the applicant is necessary to unearth the truth. Learned counsel for the applicant has failed to demonstrate that the case registered against him is false. At this stage, there is no material on record to hold that a prima facie case is not made out against the applicant. The material that has come on record and the preliminary investigation, appear to establish a reasonable basis for the

accusations.

13. In view of this Court, the parameters of granting regular bail and anticipatory bail are different and it is not necessary that the grounds which are sufficient to enlarge an accused on regular bail must also be sufficient to enlarge him on anticipatory bail. Further, the Constitution Bench of the Apex Court in the case of **Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC 565** also observed that the power to grant anticipatory bail is an extraordinary power and therefore in view of this Court being extraordinary power it cannot be used in routine manner.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on anticipatory bail.

15. Accordingly, the instant anticipatory bail application stands **dismissed**.

(Vivek Kumar Singh,J.)

August 21, 2026

A.P. Pandey