



2026:AHC:128512

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4764 of 2026

Sunil Kumar

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Madhukar Bharti, Prince Kumar Srivastava
Counsel for Respondent(s)	:	G.A., Jagadish Prasad Yadav

Court No. - 67

HON'BLE SAMEER JAIN, J.

1. Compliance affidavit filed by the State is taken on record.
2. Sri Jagadish Prasad Yadav, learned Advocate apprised the Court that on 20.06.2026 he though has filed his power on behalf of opposite party no.2 but his name has not been shown in the cause list.
3. Heard Sri Prince Kumar Srivastava, learned counsel for the appellant, Sri Jagadish Prasad Yadav, learned counsel for opposite party no.2 and Sri Brijesh Kumar Dwivedi, learned AGA for the State.
4. The present appeal has been filed by the applicant with a prayer to set aside the impugned judgment and order dated 17.04.2026 passed by Special Judge (SC/ST) Act, Bhadohi Gyanpur and release the appellant on anticipatory bail in Case Crime No. 47 of 1997, under Sections 323, 436, 429 IPC and Section 3(2)5 SC/ST Act, Police Station Gopiganj, District Bhadohi.
5. Learned counsel for appellant submits, by way of instant appeal appellant challenged the order dated 17.04.2026 passed by the court concerned by which, his anticipatory bail application has been dismissed.
6. He next submits, FIR of the present case was lodged on 27.02.1997 with the allegation that he along with the then Tehsildar set fire to the dwelling hut of the informant but entire allegation leveled against appellant and co-accused were totally false and therefore, after investigation on 30.12.1998 final report was submitted but against the final report when informant i.e. opposite party no.2 filed protest petition then court concerned treated the protest petition as criminal complaint and on 31.10.2003 appellant has been summoned.
7. He further submits, when appellant came to know about the summoning order then he challenged the summoning order before this Court vide Criminal Misc. Writ Petition No. 2238 of 2005 and this Court on 03.03.2005 was pleased to stay the further

proceedings of the case but during pendency of his petition on 28.08.2023 warrants were issued against appellant under the pretext of the order of the Apex Court passed in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. Vs. Central Bureau of Investigation 2018 (16) SCC 299**.

8. He next submits, however, warrants issued to the appellant on 28.08.2023 but warrants never served upon him and when appellant in the year 2026 came to know about this fact then he filed anticipatory bail application but his anticipatory bail application has been dismissed by the court concerned vide order dated 17.04.2026.

9. He further submits, impugned order dated 17.04.2026 is illegal as after more than two decades there is no occasion to send the appellant behind the bar. He further submits, even law laid down by the Apex Court in the case of Asian Resurfacing (supra) has been declared bad by the Constitution Bench of the Apex Court in the year 2024. He further submits, considering the constitution Bench judgement and mandate now there is no occasion to send the appellant behind the bar. He further submits, appellant is not having any criminal history.

10. He further submits, however Section 18 of SC/ST Act states anticipatory bail should not be granted in cases relating to offence under the provisions of SC/ST Act but the Apex Court in the case of **Prathvi Raj Chauhan Vs. Union of India and others (2020) 4 SCC 727** observed that if prima facie offence under the provisions of SC/ST Act is not made out then anticipatory bail application even in cases relating to offences under the provisions of SC/ST Act can be considered.

11. He further submits, from perusal of the FIR of the present case prima facie offences punishable under the provisions of SC/ST Act are not made out against applicant as from the FIR it could not be reflected, the alleged crime was committed because opposite party no.2 belongs to scheduled caste community and therefore anticipatory bail application of the applicant can be considered by this Court in view of the law laid down by the Apex Court in case of **Prathvi Raj Chauhan** (supra).

12. He further submits, therefore, after setting aside the impugned order dated 17.04.2026 appellant may be directed to release on anticipatory bail till trial.

13. Per contra, learned AGA as well as learned counsel for opposite party no.2 however opposed the prayer for anticipatory bail but could not dispute the argument on facts advanced by learned counsel for the appellant.

14. I have heard learned counsel for the parties and perused the record of the case.

15. The instant matter has checkered history. From the record it reflects, FIR of the present case was lodged in the year 1997 and thereafter when after investigation final report was submitted then on the protest petition filed by opposite party no.2 appellant has been summoned in the year 2003 but summoning order was stayed by this Court

when appellant challenged the summoning order before this Court but it reflects, in view of law laid down by the Apex Court in the case of Asian Resurfacing (supra) the trial court in August, 2023 issued warrants against appellant and when appellant filed anticipatory bail application then court concerned rejected his anticipatory bail application by way of impugned order dated 17.04.2026.

16. Considering the fact that FIR of the present case is of the year 1997 and appellant was not arrested for almost more than two and half decades, in view of this Court now there is no occasion to send him behind bar and therefore in considered view of this Court, the impugned order dated 17.04.2026 passed by the court concerned rejecting the anticipatory bail application is illegal.

17. Further, however Section 18 of SC/ST Act bars to grant anticipatory bail in cases relating to provisions of SC/ST Act but the Apex Court in the case of **Prathvi Raj Chauhan (supra)** categorically held that if prima facie no offence under the provisions of SC/ST Act is made out then anticipatory bail application can be considered.

18. Further, again Apex Court in the case of **Kiran Vs. Rajkumar Jivraj Jain and another 2025 INSC 1067** reiterated the above position of law. Therefore, if prima facie no offence under the provisions of SC/ST Act is made out then anticipatory bail application can be considered.

19. In case at hand, from perusal of the FIR prima facie it could not be reflected that as opposite party no.2 belongs to scheduled caste community, therefore, alleged offence was committed and therefore in view of this Court prima facie offences relating to SC/ST Act are not made out and therefore this Court can consider the anticipatory bail application of the appellant. It reflects, court concerned while dismissing the anticipatory bail application of the applicant did not consider this aspect and therefore court concerned again committed illegality.

20. Accordingly, impugned order dated 17.04.2026 passed by the court concerned is illegal and is hereby set aside. The appellant is directed to enlarge on anticipatory bail till trial.

21. Accordingly, without expressing any opinion on the merits of the case, the instant appeal is **allowed**.

22. In the event of arrest of the appellant- **Sunil Kumar** involved in the aforesaid case crime number, shall be released on bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions:-

i. that the appellant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from

disclosing such facts to the court or to any police officer or tamper with the evidence;

ii. that the appellant shall not leave India without previous permission of the court;

iii. that the appellant shall not tamper with the evidence during the trial;

iv. that the appellant shall not pressurize/ intimidate the prosecution witness;

v. that the appellant shall appear before the trial court on each date fixed unless personal presence is exempted;

23. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the appellant.

June 22, 2026
AK Pandey

(Sameer Jain,J.)