2026:AHC:212094

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 10183 of 2026

Mohd Kashif

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Araf Khan, Tauseef Khan
Counsel for Opposite Party(s)	:	G.A.

Court No. - 71

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A for the State and perused the record.

2. The present application has been filed on behalf of the applicant in Case Crime No. 228 of 2025, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, Police Station Civil Line, District Aligarh with a prayer to grant him anticipatory bail.

3. 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 submitted on behalf of the applicant that one case has been shown in the gang chart against the applicant and in that case, the applicant is on bail. During the course of investigation, the arrest of the applicant was stayed by a Division Bench of this Court vide order dated 22.5.2025 in Criminal Misc. Writ Petition No. 10479 of 2025. Now, the charge-sheet has been submitted in this matter and cognizance has been taken by the court concerned. Since the the applicant was not arrested during the course of investigation, therefore, there is no requirement of custodial interrogation of the applicant. The criminal antecedent of one case has been explained in paragraph 40 of the affidavit.

4. He further stated that in F.I.R., in issue, the allegations with regard to

disturbing the public order as also regarding gaining undue temporal, pecuniary, material or other advantage of like nature against the applicant are vague. Further, stated that in absence of allegation concerning an act or omission on the part of an accused, covered by the definition of term "gang" and "gangster" as provided under Section 2 of the Act, no FIR is maintainable. In the instant case, the FIR is based upon the pending criminal case(s) and not upon any new allegation(s) or discovery of fact(s) having serious reflection on the society, for which purpose the Act was enacted.

5. He also stated that the provisions of the Act could not be used as a weapon to wreak vengeance or harass or intimidate citizens or to settle scores on political or other fronts.

6. He stated that in this case, it appears that the District Administration in order to show good work or to win laurels or seek appreciation from the higher authorities of Government or ruling party has invoked the provisions of the Act, which is unjustified.

7. He also stated that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicant is not guilty of the offence under the Gangsters Act and that he would not commit the offence while on anticipatory bail. He also submitted that the applicant while on anticipatory bail would not commit any crime/offence nor would try to tamper the evidence or influence the witnesses in any manner whatsoever it may be.

8. 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.

9. Learned A.G.A. has opposed the prayer for grant of anticipatory bail, but has fairly conceded that in the cases mentioned in the gang chart, the applicant is on bail. He also could not dispute that co-accused person has

already been enlarged on anticipatory bail by this Court. However, he further submitted that the applicant is member of a gang and habitual of committing crime. In case the applicant is released on bail, he will again indulge in similar anti-social activities and will misuse the bail by extending threat and intimidation to the prosecution witnesses.

10. I have heard the rival submissions of both sides and perused the record.

11. Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 reads as follows:-

> *"(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless--*
>
> *(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
>
> *(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."*

12. In light of Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, I have considered the material evidence available on record, the nature of offence which has been mentioned in the gang-chart and the criminal background of the accused-applicant.

13. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764,** the Hon'ble Apex Court has held that :

> *"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court*

is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87 Cr.P.C that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. In sofar as the present case is concerned and the general principles under Section 170Cr.P.C, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

14. Considering the settled principle of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on merits, and the case of the applicant is squarely covered by the aforesaid judgments, a case for anticipatory bail is made out.

15. Accordingly, the anticipatory bail application is **allowed** with following directions:-

(i) In the event of arrest/appearance of the applicant-**Mohd Kashif** involved in aforesaid case shall be released on anticipatory bail till the conclusion of trial, before the competent Court on his furnishing a personal bond of Rs.50,000/- with two sureties each of the like amount to the satisfaction of the court concerned;

(ii) The applicant shall co-operate during trial and shall report to the court concerned as and when required for the purpose of fair trial.

(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; and

(iv) The applicant shall not leave India without the previous permission of the Court.

16. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant, before the concerned court.

(Vivek Kumar Singh,J.)

October 9, 2026
Lalit Shukla

Digitally signed by :-
LALIT KUMAR SHUKLA
High Court of Judicature at Allahabad