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# **SANJUKTA MITRA (2025) - UNDERSTANDING THE POSITION OF LAW OF ANTICIPATORY BAILS IN INDIA- EMPHASIS ON STATUTORY APPLICATION OF SECTION 480 AND 482 OF BNSS.**

AUTHORED BY - MS. SANJUKTA MITRA

Symbiosis Law school, Pune

3rd year students of BBA LLB (Hons.)

## **Abstract**

*The Supreme Court's landmark judgement in Sushila Aggarwal v. State: NCT Delhi, has highlighted the special feature of anticipatory bail which is not available as a rule like bail in most cases. The BNSS Act 2023 has set out in law a statutory right of anticipation to grant bail, however, has been given in large quantities as part of the day-to-day process of administration, thus diluting the intent of Parliament to preserve and protect the constitutional rights of individuals. The study critically evaluates the impact of excessive judicial power on the legislation's framework wherein anticipatory bail is disconnected from the protection that Section 480 of the BNSS provides and thus creates disparity between Courts, weakens the integrity of the investigatory process and creates a favourable position for the accused over that of the victim in non-bailable cognisable offences. This is demonstrated by a doctrinal analysis of judicial precedents, beginning with Gurbaksh Singh Sibbia through to Sushila Aggarwal. It has been found that anticipatory bail has morphed away from the pre-trial jurisdiction of the Court into a near-blanket entitlement with its increased use from 2000 onwards resulting in a 34% increase in the number of grants being made and diminished deterrent value. In light of these findings an argument is made for a recourse to legislative calibration, to reinstate the temporal limitation to the date of filing a charge-sheet, provide for co-existing grounds for rejection of anticipatory bail pursuant to Section 480 related to mala fide conduct or activity, and provide statutory criteria for rejection to restore uniformity between anticipatory bail and Article 21 liberty due process and to balance the goals of retribution and reform within the sphere of Indian criminal justice.*

**Keywords:** Anticipatory Bail, BNSS Sections 480, 482, Judicial Discretion, Criminal Justice Reform, Pre-trial Protection, Bail Jurisprudence, Non-bailable Offences, Legislative Inten.

## I. INTRODUCTION

The law of Anticipatory bails is that faucet of the criminal justice system that is still in search of its correct interpretation in the criminal law. Ideally, the inception of anticipatory bails stems from the protection under article 21 of the Indian constitution.<sup>1</sup> which has extended also to apply to safeguard the rights of the arrested person.<sup>2</sup> However, the interpretation of anticipatory bails is extremely differential since it is based on wide discretion rendered to the courts for interpretation as it deems fit. Historically, the concept of anticipatory bails was included in the Criminal procedure code of 1939, as amended according to the recommendations of the 41<sup>st</sup> Law commission report.<sup>3</sup> Post the inclusion, the criminal procedure code of 1973 came to apply to entirety of India, thereafter, the courts' primary issue pertaining to application of anticipatory bails was that, whether anticipatory bail is a pre-trial protection or a protection that lasts throughout the trial.<sup>4</sup> Secondly, the courts tussled to decide whether the restrictions given under section 437<sup>5</sup> of the criminal procedure code, 1973 applies to the newly added protection of 'bail in apprehension of arrest'<sup>6</sup> given under section 438 of the C.R.P.C. In reality, there is no verbatim presence of 'anticipatory bails' in the criminal law codified in the country, the formal word used for it under the newly enacted Bharatiya Nyaya Suraksha Sanhita (BNSS) is "section 482- Bail in apprehension of Arrest"<sup>7</sup> and that for bails is "Section 480- When bail may be taken in case of non-bailable offense".<sup>8</sup> To set the tone of the research article it is necessary to note that both the sections are applicable specifically to Non-bailable offenses and Non bailable offenses which are also cognizable. Particularly, the problem with anticipatory bails is that the underlying principles of law of bails was getting violated because a person was being granted bail even before he is arrested, giving it the nature of pre-trial protection. However, the courts from 1973 to 2020 had interpreted the granting of section 482 so distinctively from each other that a vacuum was created causing grave injustice as a result of disparity between the decisions of the courts.<sup>9</sup> It was finally in *Sushila Aggarwal v. State (NCT) of Delhi*<sup>10</sup>, that the supreme court facilitated the criminal justice system with a conclusive set of guidelines which clarified the position of Anticipatory bails' application in

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<sup>1</sup> INDIA CONST. art 21.

<sup>2</sup> *Id.*

<sup>3</sup> Code of Crim. Proc. § 437 (1973)

<sup>4</sup> *Gudikrantu Narasimhulu v. Pub. Prosecutor*, 1978 SCR 371 (SC)

<sup>5</sup> Code of Crim. Proc. § 438 (1973).

<sup>6</sup> Bharatiya Nyaya Suraksha Sanhita, No. 45 of 2023, § 480.

<sup>7</sup> *Id.* § 482.

<sup>8</sup> *Munish Bhasin v. State (NCT of Delhi)*, (2009) 2 SCC (Cri) 56.

<sup>9</sup> *Gurbaksh Singh Sibbia v. State of Punjab*, AIR 1980 SC 1632.

<sup>10</sup> *Id.*

India.<sup>11</sup> Although a set of guidelines have been provided, this paper endeavors to point out and explore the reasons and quantum of disparity between the courts in granting of Anticipatory bails, The factors affecting the limitation of granting anticipatory bails and anticipatory bails as an exception rather than a right.

## II. RESEARCH PROBLEM

In the dynamic fraternity of Criminal justice system, the research<sup>12</sup> indicates that as compared to 1973-2000 period, the sessions and high courts are granting 34 per cent higher anticipatory bails.<sup>13</sup> The ease of acquiring an anticipatory bail is much higher today, creating a problematic reality of ceased deterrence. Hence,

*“The author identifies that the courts have departed from its traditional approach of treating anticipatory bails as an exercisable in exceptional cases and are more prone to granting anticipatory bails even in cases of atrocities. Unfortunately, the tussle in the criminal justice system in striking a balance between the theory of retribution and reformatory theory has perhaps caused this vacuum. This paper endeavors to explore the angle of concurrency of section 480 of BNS with section 482, which will further clarify as to what is the extent to which anticipatory bail is consistent with the principles of granting bail under section 480. Further, this will also explore the increased statistic of courts’ tendencies to grant anticipatory bail as a matter of right”.*<sup>14</sup>

## III. RESEARCH OBJECTIVES

1. To understand and explore the scope and extent to which the sessions and high courts may exercise their discretion in granting anticipatory bails.
2. To amplify and explore the scope of enjoying protection under an anticipatory bail granted, in the nature of blanket protection or limited protection.
3. To examine and analyze the consistency of section 482 with section 480 in terms of grounds for refusal of bails being applicable to granting of anticipatory bails.
4. To conclusively understand and discover the present disparity between several courts and the effects thereof owing to the landmark judgement of **Sushila Aggarwal v. State**

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<sup>11</sup> Id

<sup>12</sup> Krishnadas Rajagopal, *Bail May Be a Rule in Many Cases but Anticipatory Bail Is Not, Says SC Judgment*, THE HINDU (Mar. 30, 2024), <https://www.thehindu.com/news/national/bail-may-be-a-rule-in-many-cases-but-anticipatory-bail-is-not-says-sc-judgment/article68009427.ece>.

<sup>13</sup> *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 1 SCC 1.

<sup>14</sup> *Sunita Devi v. State of Bihar*, (2005) SCC (Cri) 435.

(NCT) Delhi.

5. To conclude and explore the current positioning of law relating to anticipatory bails under the criminal laws.

#### IV. RESEARCH QUESTIONS

1. Whether anticipatory bail as anticipated under section 482 may be granted strictly for a limited period in the nature of a pre-trial protection or as a blanket protection extending till the end of the trial?
2. Whether anticipatory bail is such an exceptional provision that it does not submit itself to section 480 under which the grounds for refusal of a bail for non-bailable offense is manifested?
3. Whether there is unnecessary scope for wide and extensive interpretation given to sessions and high courts in granting anticipatory bail?
4. Whether there is a substantial negative effect on the criminal justice system owing to the wide and uncontrolled discretion of the courts causing disparity and subsequently effecting the investigation?

#### V. RESEARCH METHODOLOGY

The author has undertaken conclusively research on the said topics by the way of doctrinal and descriptive methods. The reference material used hereof will be mainly secondary in nature including legislations, bills, reports, cases and commentaries. The paper will analyze the already established principles in light of the contemporary situation of the criminal justice system.

#### VI. ANALYSIS OF THE PROBLEM

*The author finds it appropriate to correlate the problem at hand with the research objectives to jointly answer the research questions, therefore the three elements will coexist and run throughout the segment hereof.*

##### A. INCEPTION OF THE PROBLEM

Technically, the protection of anticipatory bail is not a protection to the arrested person, rather it is protection given to a person against whom a complaint has been lodged<sup>15</sup> or FIR has been

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<sup>15</sup> *Balchand Jain v. State of Madhya Pradesh*, (1976) 4 SCC 572.

registered<sup>16</sup> and such person, in apprehension that the authorities may arrest such person, may apply to the concerned court for anticipatory bail. **Hence, anticipatory bail is prenatal in nature.** The paragraph 39.9 of the 41<sup>st</sup> Law commission report states that, anticipatory bails have been codified to prevent the political groups from getting a fellow competition arrested, causing them to ease out on their political agenda.<sup>17</sup> Secondly, the ease of access into the investigating bodies is usually vested with the rich and influential, however such access must not but innocents behind the bar which will physically restrain them from even earning a living.<sup>18</sup> The legislature cautioned the courts that this provision is to be used and granted only in exceptional cases where it appears that there is an aorta of influence, injustice and disparity.<sup>19</sup> Truly, as of today, these grounds of granting anticipatory bails have become vague and the courts are granting anticipatory bails at great ease because of two reasons, firstly, the courts have the required discretion to grant the said relief<sup>20</sup> and secondly, the courts are approaching arrests as an exception and bails as a rule which furthers them to also the problem of crowded jails and the risks that pose while a normal person only apprehended of an offense is barred with different strata of criminals.<sup>21</sup> The problem with both these grounds is that, the courts are not able to reach a consensus over the grounds which will cause such an application to be rejected. Hence, the courts are setting varied precedents and benchmarks which are being used in a straightjacketed manner by the rival parties to get such applicant's application rejected. Hence, hereafter the paper will address such disparity.

## B. ANALYSIS OF LEGAL PROVISIONS

1. **The law of anticipatory bail stems from 'Section 480 of the BNSS'**<sup>22</sup> as, **an individual who has done non-bailable offence is eligible for bail except where the offence carries death or life imprisonment, or there are previous serious convictions against the accused. Bail can be granted to woman, children, sick/infirm people, or for special reasons.** Bail should not be refused based on police custody or identification purposes. Bail should be justified by courts in writing and set conditions, particularly in grave offences. Bail may be revoked. Unless trial is finished within 60

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<sup>16</sup> Law Comm'n of India, 41<sup>st</sup> Report on Code of Crim. Proc., 1898, ¶ 39.9 (1969).

<sup>17</sup> Sudesh Kumar Sharma, *Dimensions of Judicial Discretion in Bail Matters*, 22 J. INDIAN L. INST. 351, 367 (1980).

<sup>18</sup> *Id.* at 367-69.

<sup>19</sup> *Id.* at 363.

<sup>20</sup> Law Comm'n of India, 48<sup>th</sup> Report on Code of Crim. Proc. Bill, 1970 (1972).

<sup>21</sup> INDIA, LOK SABHA DEBATES, 8th Sess., vol. XXXI, cols. 48-49 (Sept. 3, 1973).

<sup>22</sup> *K.L. Verma v. State*, (1998) 9 SCC 348.

days (Magistrate cases), bail is compulsory. Post-trial but pre-judgment, bail is issued if the accused seems probable to be acquitted.

2. **Section 482<sup>23</sup> of the BNSS**- If someone apprehends arrest for a non-bailable offence, they can approach the High Court or Court of Session to seek anticipatory bail. The court can grant it subject to conditions example complying with police, not intimidating witnesses and not fleeing India. If arrested, the individual has to be released on bail as per the direction. If a Magistrate issues a warrant, it has to be bailable. This provision does not extend to offences under section 65 and 70(2) of the BNSS.
3. **Article 21 of the Indian constitution<sup>24</sup>**.- Article 21 establishes a person's liberty with assurance of the law preventing prior restriction of someone's rights by rightful authority and thus condemns arbitrary invasion of liberty or by arrest. Anticipatory bail contained in Section 438 of the Code of Criminal Procedure arises from this right, ensuring an individual cannot be denied liberty without due process. The Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab*<sup>25</sup>, found that anticipatory bail protects personal liberty while restricting the abuse of arrest provisions, so as such, Article 21 is favorable to the institution of anticipatory bail giving protection from wrongful restraint, affirming the constitutional guarantee of freedom including reasonable process of law.

### C. LEGAL PRECEDENTS AND DECISIONS

The evolution relating to law of anticipatory bails began with '*Salauddin Abdulsamad Shaikh v. State of Maharashtra*<sup>26</sup>' in the year 1996 and ended with a conclusive guideline in the Sushila Aggarwal case of 2020. The Latter case settled the law relating to anticipatory bails regarding the period of limitation, however the grounds that the courts afford to grant or reject applications thereof is still unsettled.

In *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, the courts provided that since anticipatory bails are granted at the time of ongoing investigation, the charges against the person hereof are not defined, that is why, the protection granted by the way of anticipatory bails must last until definite charges against the person thereof is found. Once such charge is

<sup>23</sup> *Nirmal Jeet Kaur v. State of M.P.*, (2004) 7 SCC 558.

<sup>24</sup> INDIA CONST. art. 21.

<sup>25</sup> R.V. Kelkar, *Criminal Procedure* (6th ed. 2014).

<sup>26</sup> *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, (1996) 1 SCC 667.

definite, the person thereof must apply for bail under section 480 of BNSS all over again.<sup>27</sup>

To contrary to which, the case of *Gurbaksh Singh Sibbia v. State of Punjab*, the apex court provided that the concept of anticipatory bails although declared exceptional will follow two rules:-

- a. The person applying for anticipatory bails must be subject to the same condition as that of granting of bails, and if the courts feel that granting of anticipatory bails in light of section 480 will significantly hamper the investigation, in that case the anticipatory bail may be rejected.<sup>28</sup>
- b. The legislature has not included the period to which the anticipatory bail will continue to provide protection from arrest but it is not disputed that the motive is to prevent any unnecessary restraint to such person and it must deem to mean that the protection under section 480 will last till the end of the trial.<sup>29</sup>

Post the decision in the Gurbaksh Singh case, the courts followed these two cardinal rules for a long time. Yet, in 2010, *the apex court in HDFC Bank limited case*<sup>30</sup> **provided a completely different rationale, providing that the anticipatory bail will only continue to grant protection until the accused can formally obtain bail under section 482.**<sup>31</sup> The problem with this rationale is two-fold, it completely disregards the independent existence of anticipatory bail to regular bails, secondly, it limits the protection under anticipatory bails making it almost redundant. At this juncture, the sessions and high courts had three distinct and mutually exclusive guidelines of granting anticipatory bails, causing wide disparity in granting of anticipatory bails.

The idea of anticipatory bails post 2010, following the judgement in *Bhadresh Bipin Bhai Sheth v. State of Gujarat*<sup>32</sup> in 2016 and *Satpal Singh v. State of Punjab*<sup>33</sup> in 2018 completely distorted the grant of anticipatory bails. ***The applicants were barely being granted anticipatory bails and in case of grants as well, the applicants were always at the risk of being arrested because the power to deem the arrest necessary for the purpose of 'concluding investigation' was with the investigating bodies, and such applicants were to apply for regular bails under section 480 all over again once the investigation is over***

<sup>27</sup> *Emperor v. H.L. Hutchinson*, 1931 SCC OnLine All 14.

<sup>28</sup> *Amir Chand v. Crown*, ILR (1949) 1 Punj 515.

<sup>29</sup> *S.S. Mhatre v. State of Maharashtra*, (2011) 1 SCC 694.

<sup>30</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273

<sup>31</sup> *id*

<sup>32</sup> *Bhadresh Bipinbhai Sheth v. State of Gujarat*, (2016) 1 SCC 152.

<sup>33</sup> *Satpal Singh v. State of Punjab*, (2018) 5 SCC 941

*and chargesheet is filed.*

#### **D. PRESENT POSITIONING OF THE LAW OF ANTICIPATORY BAILS.**

In 2020, the court adjudicated upon ‘Sushila Aggarwal v. State of (NCT) Delhi<sup>34</sup>’ which is landmark in determining the extent of protection and the concurrency of section 482 with 480. This case specifically overruled the judgements in the previous segment.

Sr. no	Judgement	Portion overruled
1.	<i>Salauddin Abdulsamad Shaikh v. State of Maharashtra</i>	Anticipatory bails are not subject to limitation. It will conclusively extend till the end of the trial
2.	<i>Satpal Singh v. State of Punjab</i>	The investigating authorities cannot put an end to the protection given by anticipatory bails. However, such a protection is deemed to be revoked if the accused tries to evade the appearance to facilitate the investigation
3.	<i>HDFC Bank limited case</i>	Anticipatory bails are independent of the nature of regular bails under section 480, hence, there is no need to obtain a regular bail because until the anticipatory bail is rejected due to breach of bail conditions, there is no question of applying for regular bail.
4.	<i>Bipin Bhai Sheth v. State of Gujarat</i>	Anticipatory bails are not subject to the restrictions under section 480 because anticipatory bails are granted as a pre-trial protection to protect the individuals from unnecessary humiliation and torment of going through arrest.

The judgment in this case provided the answers for all the research above mentioned to an extent. The decision in this case manifests that anticipatory bails are subject to completely the discretion the court, further the following points are clarified:-

- a. Anticipatory bails are special kinds of protection granted to safeguard an individual from the personal vendetta and vengeance of people with more power and prospect,

<sup>34</sup> Sunita Devi v State of Bihar (2005) 1 SCC 608.

therefore the discretion to grant anticipatory bails is completely vested in the court irrespective to the restrictive grounds under section 480.

- b. Anticipatory bails, although pre-trial in nature, will last to give protection till the end of the trial irrespective of the restrictions under section 480. There is no need to narrow down the scope of discretion of the courts to that effect.
- c. The legislature was well aware of the open-ended nature of law of anticipatory bails and intentionally the grounds for 'not' granting anticipatory bails was not incorporated, hence there is no need to attach the intricacies of section 480 with 482.

The research attempts to explore the reasons of extremely high rates of anticipatory bails being granted.<sup>35</sup> However, the decision in Sushila Aggarwal case was the cornerstone that lifted all the restrictions in case of non-cognizable offenses. The liberal interpretation of law has facilitated the author to answer the questions in the following manner.

- a. *anticipatory bail as anticipated under section 482 may be granted liberally for a period in the nature of a pre-trial protection till the end of the trial unless formally and efficaciously revoked by the concerned court on grounds of tampering the investigation.*<sup>36</sup>
- b. *Anticipatory bail is such an exceptional provision that it does not submit itself to section 480 under which the grounds for refusal of a bail for non-bailable offense is manifested.*
- c. *The law relating to the powers and the extent of protection given through anticipatory bails is well settled now. there is no substantial negative effect on the criminal justice system owing to the wide and uncontrolled discretion of the courts causing disparity and subsequently effecting the investigation.*

## VII. RECCOMENDATIONS AND PROBLEMS

The root problem with the liberal interpretation of the law is that such a law is causing the power of magistrate under section 209(1) to be redundant because an accused is being allowed to roam freely during the investigation.<sup>37</sup> The legislative objection in enacting section 482 was always that it would give unfettered power to the capitalists, profiteers and thief-businessman to be set free during the investigation, something that even the British colonial rule did not deem fit to do.<sup>38</sup> The loopholes with anticipatory bails today is that:-

<sup>35</sup> *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453.

<sup>36</sup> BLACK'S LAW DICTIONARY (3d ed. 1933).

<sup>37</sup> Code of Crim. Proc. § 209 (1973)

<sup>38</sup> *Supra* note 16.

- a. *Although it is easy to get, it cannot be claimed as a matter of right unlike regular bail. Either anticipatory bails be made a right of the accused or the grounds for rejecting anticipatory bails be codified.*
- b. *The interpretation of the apex court in Sushila Aggarwal case should have correlated the concurrency of section 480 with 482 because they both are the facets of each other and are based upon the same principle of balancing the rights of the accused and easing the investigation by ensuring production before the court whenever necessary.*
- c. *The period of enjoying protection under section 482 must be limited till the chargesheet is filed. Once charges affirming non-cognizable offense has been made out against the accused, the investigation authority must be given the power to arrest once the charges are made out since that will actually protect the interests of the victim, witnesses and evidences.*
- d. *The decision in State v. K.L. Verma<sup>39</sup> appears to the author to be the best in appreciating the period of limitation. If the courts were to limit the protection under section 482 till the chargesheet is filed, it would consciously make sense to apply for bail then under section 480. Both the sections can then meaningfully and concurrently exist.*
- e. *The legislature must now explore making the protection under section 482 accessible to all the strata of the society.*

## VIII. CONCLUSION

The protection under section 482 is contemporary and proactive in nature. Although the interpretation that supported anticipatory bails have been distinct, the judgement in Reserve Bank India v. Peerless General Finance and Investment co. Ltd<sup>40</sup> is still widely applicable that “*Interpretation must depend on the text and the context...One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important...With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to<sup>41</sup> say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.*”<sup>42</sup> This rule of

<sup>39</sup> State v. K.L. Verma, (1998) 9 SCC 348.

<sup>40</sup> RBI v. Peerless Gen. Fin. & Inv. Co., (1987) 2 SCC 89.

<sup>41</sup> id

<sup>42</sup> Akshay Maheshwari & Anjali Bhatt, *Anticipatory Bail in India: A Critical Analysis*, LAWCTOPUS (Jan. 30, 2015), <https://www.lawctopus.com/academike/anticipatory-bail-india-critical-analysis/>.

interpretation is what the courts should have cardinally used while interpreting the scope of anticipatory bails. However, in today's date, the courts are granting anticipatory bails with great ease because it really is a discretion. However, the theory that 'power corrupts but absolute power corrupts absolutely'<sup>43</sup> is to be widely followed. Anticipatory bails are a matter to be adjudication upon keeping in mind the balance between the rights of the accused and the ease of carrying out the investigation. There has never been any dispute regarding the legislative intention of enacting this provision, however, the intention today is misconceived. The author believes that merely because jails are overcrowded and the country's criminal justice system is making a shift to reformative mechanism, it does not sheerly justify that accused be left roaming freely during the investigation. In many cases<sup>44</sup> it has so happened that the applicant has tampered with the evidence during his bail which caused the court to be misguided. The courts must now take a more retributive approach and guard the sacrosanct intention of the legislature of keeping anticipatory bails as an exceptions. It is also not disputed that an individual can claim regular bails as a matter of right, then anticipatory bails only prevent such person from arrest. On that note it will be more appropriate to only subject the grants of anticipatory bails to cases in which the FIR or complaint shows a remote connect of the applicant to the offense or where a prior political or financial vendetta against such person is anticipated.

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<sup>43</sup> *Neela Shah v. State of Gujarat*, 1998 Cri LJ 228 (Guj).

<sup>44</sup> Sudesh Kumar Sharma, *supra* note 17.