

Anticipatory bail

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Manifest pedagogy: Anticipatory bail is a boon and a bane looking at the news events in UP and other parts of the country and at the same time ensure dignity of human rights under the law. Thus, a reset of its applicability and implementation is a need of the hour.

In news: Supreme Court (SC) has recently ruled that Anticipatory bail need not be limited to a fixed period.

Placing it in syllabus: Fundamental rights

Static dimensions:

- What is it?
- Criticisms against anticipatory bail

Current dimensions: Recent Supreme court judgement and importance

Content:

What is it?

- **Section 438 of the Criminal Procedure Code (CrPC)** provides for the provision of anticipatory bail.
- However, the **term “anticipatory bail” is nowhere defined in the CrPC.**
- This provision allows a person to seek bail in anticipation of an arrest on accusation of having committed a **non-bailable offence.**
- The **purpose of the grant of anticipatory bail** is to protect the life and liberty of the appellant and to protect him from unnecessary trauma and defamation of frivolous and false charges and arrest.

- Anticipatory bail became part of the new CrPC in 1973, after the **41st Law Commission Report of 1969** recommended the inclusion of the provision.
- As opposed to ordinary bail, which is granted to a person who is under arrest, **in anticipatory bail, a person is directed to be released on bail even before arrest made.**



- The section mandates that all pre-arrest bail would have **at least three conditions** attached to it : the accused should cooperate in investigation, not tamper with evidence or influence the witness, and not leave the country without prior permission of the court.
- According to **Section 438(1)**, the **High Court and the Court of Session have concurrent powers** to consider anticipatory bail applications.
- Though there is no specific mention in Section 438, it is **normally presumed that the Court of Session would be first approached**, unless an adequate case is made out for straightaway approaching the High Court directly.
- When the application of anticipatory bail is rejected by the Court of Session, then a fresh application can be made in the High Court.
- The Court within whose jurisdiction the arrest has been apprehended has the jurisdiction to admit the application of anticipatory bail.
- The grant of anticipatory bail can be **allowed even in the absence of the applicant.**
- It is only if the public prosecutor applies to the court for the appearance of the applicant it becomes mandatory for him to appear.

Its importance:

- This kind of bail provides an opportunity to a person, who having the reasonable belief of apprehension,

approaches the court of law to protect his fundamental right of life and liberty.

- It serves to be a blessing where the rival parties in the political system of the country try to falsely charge the opposition for mere cause of vote.
- In the Gurbaksh Singh Sibbia vs State of Punjab case (1980), a five-judge Supreme Court bench ruled that S.438(1) is to be interpreted in the light of **Article 21 of the Constitution (protection of life and personal liberty)**.

Recent Supreme court judgement and its importance:

- The SC recently ruled that **anticipatory bail granted to a person "should not invariably" be limited to a fixed period and could continue till the end of the trial.**
- However, the adjudicating court **can limit** its period **in case of "special or peculiar features"**.
- It said that anticipatory bail need not normally end when an accused is summoned by the court or charges are framed against him.
- Imposing a time limit on anticipatory bail is not proper as **denial of bail amounts to deprivation of Article 21.**
- An **application for anticipatory bail should be based on concrete facts**, not vague allegations.
- **A plea for anticipatory bail can be filed even before the registration of a first information report.**
- The **lower courts need not wait for** hearing the version of the prosecution before granting anticipatory bail, depending on the seriousness of the threat.
- While granting anticipatory bail, courts have to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering of evidence, including intimidating witnesses and fleeing justice.
- But **restrictions to be imposed can be done only on a case-to-case basis.**

- The grant of protection should not be “blanket” but confined to specific offence or incident for which relief from arrest is sought.
- It is **open for the police to move court for arrest of the accused** if there is any **violation of bail conditions**.

Criticisms against anticipatory bail:

According to the SC in previous judgements, the provision of anticipatory bail is the **most abused section of CrPC**. The discretionary power vested with the high courts and sessions courts is **being repeatedly invoked by persons accused of heinous offences**.

A large number of **pre-arrest bail petitions by rapists, triple murder accused and most corrupt** are flooding the HCs and **precious time of the high court is being spent** in dealing with applications for grant of bail.

Since the **state legislature has requisite powers to amend the provisions of the code**, states like Maharashtra, Orissa, West Bengal have a little different anticipatory bail provisions, where as Uttar Pradesh has even omitted provision of Section 438, and so **there is nothing like Anticipatory bail in state of Uttar Pradesh**.