

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No. 3354 of 2026

Abhay Kumar Mishra, aged about 53 years, Son of Sri
Suryanath Mishra, Resident of House No. 14, Road
No. 1, Birsa Chowk, Birsa Nagar, P.O. -Hatia, P.S.-
Jagarnathpur, District-Ranchi, Jharkhand.

..... ... Petitioner

Versus

1. The State of Jharkhand.

2. Mahesh Tewari (Informant), Son of Late Sudhanshu
Shekhar Tiwari, Resident of D/43 G, Sail City, Pundag,
P.O. and P.S. Pundag, District Ranchi, Jharkhand.

..... ... Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Ajit Kumar, Sr. Advocate.
: Mr. Krishna Prajapati, Advocate
: Mr. Akash Ajit Kumar, Advocate.
For the State : Mr. Saket Kumar, A.P.P.
For the Informant : Mr. Mahesh Tewari (In person)

03/ 24.06.2026 Heard Mr. Ajit Kumar, learned senior counsel appearing for
the petitioner, Mr. Saket Kumar, learned A.P.P. appearing for the State
and Mr. Mahesh Tewari, learned counsel, who is appearing in person
for the informant.

2. The petitioner is apprehending his arrest in connection with
Jagarnathpur P.S. Case No. 314 of 2017 corresponding to G.R. No.
4984 of 2017, registered for the offence under Sections 406, 420, 467,
468, 379 and 120(B)/34 of the Indian Penal Code, pending in the court
of learned Judicial Magistrate, 1st Class-IV, Ranchi.

3. Mr. Ajit Kumar, learned senior counsel appearing for the
petitioner at the outset submits that this matter is arising out of the FIR
of the year 2017 and earlier the petitioner has filed Cr.M.P. No. 1990 of
2021 for quashing of the entire criminal proceedings. He next submits
that in that Cr.M.P., the petitioner was provided the interim protection,

as such, the petitioner has no occasion to file the anticipatory bail application. He then submits that however, the said interim protection has been vacated, but the case is still pending. He further submits that now the chargesheet has been submitted by the police and the petitioner has co-operated in the investigation and in view of that anticipatory bail may kindly be provided to the petitioner.

4. Learned senior counsel submits that the informant is nowhere involved with the concerned society or not associated with the concerned school, however, he has chosen to file the FIR against the petitioner. He next submits that the petitioner was elected as the Secretary of the School in the year 2015 and for that the dispute arose and pursuant to that all false allegations have been made against the petitioner. He then submits that the allegations are made for a tender of the school building, however, the school building has already been completed and that was sanctioned by the competent authority. He further submits that there was a typographical error in preparation of the note-sheet, as in place of six class rooms, it has wrongly been typed as five class rooms, however, the same was corrected later on by the petitioner. He also submits that now the chargesheet has already been submitted on 31.12.2023. He also submits that for the identical allegation, another case being Chutia P.S. Case No. 130 of 2022 has also been lodged against the petitioner and others, in which, the petitioner has already been provided the privilege of anticipatory bail in A.B.A. No. 1629 of 2025 by the co-ordinate bench of this court and other two of the co-accused persons have also been provided the privilege of anticipatory bail in the said case in A.B.A. Nos. 3962 and 3967 of 2025 by this court.

5. Learned Senior counsel appearing for the petitioner further

submits that the chargesheet has already been submitted and the learned court has been pleased to take cognizance under Sections 406, 420, 467, 468, 379, 120 (B) and 34 of the Indian Penal Code against the petitioner and others. He next submits that the allegations are made that the wife of this petitioner is not having the eligibility criteria of becoming a teacher, although she has been appointed and the petitioner became the Secretary of the School in the year 2015. He then submits that there is no relation of being appointed of the wife of this petitioner in the year 2009. He also submits that the wife of this petitioner has qualified B.Ed. Examination in the year 2009-10 from the Bengaluru University and the certificates have been annexed as Annexure-17 of the petition. He submits that the Chartered Accountant always do the accounts work of the fund of the school. He next submits that now by the order of the High Court, the Retired Judge of this Court has been appointed as an Administrator with effect from 07.03.2022 and the learned Administrator has not made any complaint whatsoever against this petitioner thereafter. He also submits that with regard to the allegation of election of the executive members of the school, the dispute came to the High Court claiming that the petitioner's faction was not validly elected and the same was challenged before this court in the writ petition, wherein the petitioner has succeeded holding that the I.G. Registration has got no jurisdiction to enter into such dispute, however, a fresh election was ordered and thereafter that election was held, wherein the petitioner has again been elected. He further submits that against the order of the writ court, the informant has moved before the Division Bench and now the arguments have been concluded and the judgment is reserved. On these grounds, he submits that anticipatory bail may kindly be provided to the petitioner.

6. Learned A.P.P. appearing for the State submits that now the chargesheet has already been submitted and in view of that the petitioner is required to appear before the learned court to face the trial.

7. Mr. Mahesh Tewari, learned counsel appearing in person for the informant has vehemently opposes the prayer for anticipatory bail of the petitioner and submits that in the said Jagarnathpur P.S. Case No. 314 of 2017, the chargesheet has already been submitted and cognizance of the offences including under Sections 467 and 468 of the Indian Penal Code has already been taken by the learned court and summons have already been issued. He submits that yet on one pretext or another, by repeated moving this court, the petitioner has not appeared before the learned court. He next submits that if the summons have already been issued, the petitioner is required to appear before the learned court and this anticipatory bail application is not maintainable. On these grounds, he submits that anticipatory bail may kindly be rejected.

8. Mr. Tewari, learned counsel appearing in person for the informant further submits that the allegations are there that the Chartered Accountant of the petitioner is himself as an accused with the active connivance and support of the present petitioner, they have amassed huge wealth out of the school funds by committing fraud. He next submits that this is evident from the action of the Income Tax authorities, who have imposed a penalty to the tune of Rs. 5.72 crores upon the school and the Income Tax Department has taken the steps and two of the Bank accounts of the school have already been freezed. He then submits that so far as the construction of building is concerned, a tender has been floated through Khabar Mantra, wherein the tender amount is disclosed as Rs. 54,000/- and the security amount

is to be deposited to the tune of Rs. 25,000/-. He further submits that however, the concerned contractor has already been paid Rs. 1,00,74,250/-, out of which Rs. 15,36,750/- has been shown as GST Tax. According to him, the payment has been made prior to 01.08.2017, when the GST has come into existence on 01.08.2017. He also submits that Rs. 15,36,750/- has not been deposited by the contractor in light of the GST. He submits that interpolation has been made with regard to the number of class rooms i.e. in place of five, it has been interpolated by giving the figure six. He also submits that during the period of demonetization, the amount of Rs. 2.32 cores were deposited in the school accounts in cash, which is the black money of the persons close to the Secretary routed through and withdrawn the said amount on the same day.

9. Mr. Tewari lastly submits that wife of this petitioner is working in the said school and she is withdrawing the salary as trained teacher, however, she was not qualified for the same. He also submits that the certificates annexed with the petition with regard to the wife of this petitioner is also doubtful. On these grounds, he submits that anticipatory bail may kindly be rejected.

10. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials including the annexures as well as the counter affidavit filed by the informant. It is an admitted position that the case is arising out of a police investigation and now the chargesheet has been submitted on 31.12.2023 and the learned court has been pleased to take cognizance against the petitioner and further summons have also been issued against the petitioner.

11. The argument has been made by the informant that if the

summons have been issued, the anticipatory bail application is not maintainable in the present case.

12. Mr. Tewari, with regard to the above argument has relied in the case of *Om Prakash Chhawnika @ Om Prakash Chabnika @ Om Prakash Chawnika Versus The State of Jharkhand & Anr.* [Special Leave to Appeal CrI. No. 16221 of 2025] and submits that in the said case the Hon'ble Supreme Court has stated that if the summons have been issued, the accused is required to appear before the learned court. By way of referring the said judgment, he submits that the anticipatory bail application of the petitioner is not maintainable.

13. It transpires that the said case is arising out of a private complaint case, in which, the co-ordinate bench of this court has rejected the anticipatory bail application and directed the accused to surrender before the learned court and seek the regular bail and in this background, the Hon'ble Supreme Court has held that there is inquiry under Section 202 of the Cr.P.C., as such, the said direction of the High Court was unwarranted and it has been clarified that in a private complaint case, there is no need of arrest and the accused is required to appear before the learned court, however, the facts of the present case is otherwise, as the petitioner was earlier protected by the co-ordinate bench of this court, which was later on vacated and further the present case is arising out of a police case and after investigation the chargesheet has been submitted and the petitioner has already co-operated in the investigation and pursuant to that the chargesheet has been submitted, however apprehension is there to the petitioner, on appearance, he can be taken into custody.

14. There is no restriction of entertaining the petition if any apprehension is there. In the way, the things in the present case has

gone as subsequently, another FIR has been lodged in the year 2020, in which, the petitioner and others have already been provided the privilege of anticipatory bail, it cannot be ruled out that the petitioner is not having apprehension on his appearance, as the case is arising out of the police investigation, as such, the judgment, on which, Mr. Tewari has relied was dealing with a private complaint case, in which, the ratio has been laid down by the Hon'ble Supreme Court and the facts of the present case are otherwise. Accordingly, the court finds that if there is apprehension, the anticipatory bail can be maintained.

15. So far as the argument of Mr. Tewari with regard to construction of building is concerned, the same has already been constructed and the allegations are made that only five rooms of the school have been noted in the note-sheet, however, later on it has been corrected by way of saying the same as Six in number. It has been alleged that the amount of Rs. 54,000/- has only been said to be for the construction of the said rooms in the tender notice, however, it has been pointed out that the said tender amount was Rs. 54 lakhs and it was pointed that there was alternative advertisement in the website, correcting the figure of the amount of the tender.

16. Further, the penalty in question by the Income Tax Department is not clear that due to act of this petitioner, the said penalty has been imposed by the said department. Furthermore so far the certificates and appointment of the wife of this petitioner in the year 2009 is said school is concerned, that is already the subject matter of trial. It transpires that the petitioner was appointed as Secretary of the said school in the year 2015, prima facie, it appears that in the Secretaryship of this petitioner, the appointment of his wife was not made.

17. What has been argued by Mr. Tewari, learned counsel appearing for the informant in person of merit with regard to the allegation for rejecting the anticipatory bail application of this petitioner, in light of the chargesheet, the dispute is already there and that can only be the subject matter of trial, as the petitioner is only seeking anticipatory bail, as he has already co-operated in the investigation.

18. The filing of a challan or charge-sheet is not, by itself, a bar to the grant of anticipatory bail. An application under Section 438 CrPC corresponding to Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 cannot be rejected solely on that ground. The court must consider the application on its merits and in light of the facts and circumstances of the case. Reference may be made to the case of *Ravindra Saxena's v. state of Rajasthan* reported in (2010) 1 SCC 684 . where in the Hon'ble Supreme Court in paras-9, 10 and 11, has held as under:

9. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 CrPC.

10. In our opinion, the High Court committed a serious error of law in not applying its mind to the facts and circumstances of this case. The High Court is required to exercise its discretion upon examination of the facts and circumstances and to grant anticipatory bail "if it thinks fit". The aforesaid expression has

been explained by this Court in Gurbaksh Singh case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] as follows : (SCC p. 583, para 18)

“18. ... The expression ‘if it thinks fit’, which occurs in Section 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in Section 437(1). We see no valid reason for rewriting Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.”

11. The salutary provision contained in Section 438 CrPC was introduced to enable the court to prevent the deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as “the challan having been presented, anticipatory bail cannot be granted”. We may notice here some more observations made by this Court in Gurbaksh Singh [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] : (SCC p. 586, para 26)

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of

which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a constitutional challenge by reading words in it which are not to be found therein.”

19. In the attending facts and circumstances of the case, I am inclined to grant anticipatory bail to the petitioner, above named.

20. Accordingly, the petitioner, named above, is directed to surrender before the learned court within three weeks from today and in the event of his surrender / arrest, the petitioner shall be released on bail, on furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each, to the satisfaction of learned Judicial Magistrate, 1st Class-IV, Ranchi, in connection with Jagarnathpur P.S. Case No. 314 of 2017 corresponding to G.R. No. 4987 of 2017, subject to the condition that the petitioner will co-operate in the trial and further subject to conditions as laid down under Section 482 (2) of Bharatiya Nagarik Suraksha Sanhita, 2023.

(Sanjay Kumar Dwivedi, J.)

Dated:-24.06.2026
Amitesh/- [A.F.R.]