Page: 1867-1894 *URL: www.lijdlr.com*

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: https://doi.org/10.70183/lijdlr.2026.v04.82

ANTICIPATORY BAIL UNDER BNSS: SCOPE, LIMITATIONS, AND CONFLICTING JUDICIAL INTERPRETATIONS

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I. ABSTRACT

Anticipatory bail operates as a critical safeguard against arbitrary arrest and unnecessary pretrial detention, drawing normative strength from Article 21 and the presumption of innocence. The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has re-codified criminal procedure and recast anticipatory bail through section 482, broadly retaining the structure of section 438 of the Code of Criminal Procedure, 1973 while introducing notable textual and policy shifts. This paper undertakes a doctrinal and analytical study of anticipatory bail under BNSS, focusing on its scope, statutory conditions, and emerging judicial interpretations. It examines the constitutional foundations of prearrest liberty, the relationship between anticipatory bail and investigative needs, and the operational significance of conditions designed to prevent tampering, intimidation, and noncooperation. Particular attention is given to the categorical exclusion under section 482(4) for specified aggravated sexual offences under the Bharatiya Nyaya Sanhita, 2023, and the interpretive controversies arising from its language. The paper also maps conflicting approaches among courts on maintainability, duration, and interaction with special statutes, highlighting the risks of inconsistency and forum shopping. It concludes by proposing interpretive and institutional measures to ensure that BNSS anticipatory bail jurisprudence remains constitutionally coherent, victim sensitive, and uniformly applied.

II. KEYWORDS

Anticipatory Bail, Bharatiya Nagarik Suraksha Sanhita, 2023, Pre Arrest Liberty, Judicial Interpretation, Bail Jurisprudence.

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 (ISSN: 2583-7753)

III. INTRODUCTION

A. Background of bail jurisprudence in India

Anticipatory bail in India developed as a response to misuse of arrest powers and the need to protect personal liberty under Article 21 of the Constitution. Courts and law reform bodies saw that arrest often worked as a tool of pressure and not only as a means to secure appearance of the accused in trial. So, Parliament in 1973 inserted section 438 into the Code of Criminal Procedure to allow a person to seek bail in anticipation of arrest and avoid unnecessary custody.[3] This statutory innovation marked a clear shift from a custody first approach to a liberty first approach, subject of course to fair conditions that protect investigation.

Indian constitutional jurisprudence then shaped anticipatory bail into a core safeguard for dignity and freedom. In *Gurbaksh Singh Sibbia v. State of Punjab*, the Constitution Bench rejected narrow readings which treated anticipatory bail as an extraordinary remedy and instead linked it closely with the guarantee of life and personal liberty.[4] The Court stressed that judges must exercise wise discretion and that rigid formulas or fixed categories will undermine the very purpose of the provision. This reasoning still guides later benches when they interpret prearrest bail and now also influences how courts will approach the parallel provision under the Bharatiya Nagarik Suraksha Sanhita, 2023.

The background of the present research also lies in the continuing crisis of undertrial incarceration in India. Official prison statistics reveal that undertrials form nearly three fourths of the total prison population, which means that a large number of people remain in custody without conviction for long periods.[5] Many of these people belong to marginalised communities and face economic, social and information barriers to asserting their rights. When arrest happens at an early stage and bail is delayed, the process itself becomes punitive. In this landscape, anticipatory bail under BNSS acts as

[3] Law Commission of India, Forty First Report on the Code of Criminal Procedure, 1898 (1969).
[4] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[5] National Crime Records Bureau, Prison Statistics India 2021 (Govt. of India 2022).

an early procedural shield which, if applied in a right's protective manner, can prevent avoidable pretrial detention.

The enactment of BNSS, along with the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhiniyam, has recast the architecture of criminal justice and reopened debates on bail jurisprudence. BNSS reorganises several procedural norms, including provisions on arrest, custody and production, and introduces a fresh provision that corresponds to and partly modifies section 438 CrPC.[6] At the same time, the Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* clarified that anticipatory bail may ordinarily continue till conclusion of trial, which raises questions on how far this doctrinal position fits within the new statutory design and how courts will reconcile text, precedent and victim rights in the BNSS era.[7] These tensions form the immediate research background for a focused doctrinal and analytical study on anticipatory bail under BNSS.

B. Evolution of anticipatory bail under the Code of Criminal Procedure, 1973

The story of anticipatory bail under the Code of Criminal Procedure, 1973 starts with the Forty First Report of the Law Commission of India, which frankly recorded how arrest often worked as a means of harassment and social stigma rather than a genuine investigative need. The Commission proposed a special provision that would allow a person, who apprehends arrest on accusation of a non bailable offence, to approach the Court in advance and secure an order that takes effect at the moment of arrest.[8] Parliament accepted this recommendation and enacted section 438 CrPC, thus placing the concept of pre arrest bail in the statutory text for the first time in Indian criminal procedure.

Early judicial responses to section 438 show some hesitation and restrictive reading. In *Balchand v. State of Madhya Pradesh*, the Supreme Court described anticipatory bail as an "extraordinary" power which courts must exercise in exceptional cases, and stressed that

[6] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, Gazette of India, pt. II sec. 1 (25 Dec. 2023).
[7] Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 (India).
[8] Law Commission of India, Forty First Report on the Code of Criminal Procedure, 1898 (Govt. of India 1969).

the normal rule is to arrest first and then consider bail.[9] Several High Courts followed this approach and tended to grant anticipatory bail sparingly, often to accused persons with stronger social standing. This phase reflects a strong custodial bias, where courts treated liberty as something to be justified by the accused rather than as a constitutional default.

The Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* marks a turning point in the evolution of anticipatory bail. The Court rejected fixed categories such as "extraordinary remedy" and held that section 438 confers a wide judicial discretion which must be exercised on well settled principles but not cut down by judicially invented limitations.[10] It underlined that personal liberty under Article 21 requires courts to lean against unnecessary detention and that a person who anticipates arrest need not show any special status to seek relief. After *Sibbia*, the governing position became one of broad, principled discretion rather than narrow, rule-bound power.

Subsequent decisions under the CrPC regime then moved in different directions and created fresh questions. In *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, the Court encouraged time bound anticipatory bail orders, usually linked with surrender before the trial court, which again tilted the balance towards custody and made the relief more fragile in practice.[11] Later, in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, the Supreme Court read *Sibbia* expansively and held that courts should not impose arbitrary time limits and should prefer conditions that protect investigation while still honouring the presumption of innocence and the right to life and personal liberty.[12]

[9] Balchand v. State of M.P., (1977) 4 SCC 308 (India).
[10] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[11] Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 (India).
[12] Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 (India).

C. Research Objectives

1. To examine the historical and doctrinal evolution of anticipatory bail in Indian criminal procedure, with particular reference to the transition from the CrPC regime to the BNSS framework.
2. To analyse the statutory scope, conditions, and exclusions governing anticipatory bail under section 482 of the BNSS, with special emphasis on offences excluded from its applicability.
3. To critically evaluate judicial interpretations of anticipatory bail under BNSS in light of constitutional guarantees of personal liberty, equality before law, and the presumption of innocence.
4. To identify and assess conflicting trends in judicial decision making on anticipatory bail under BNSS and to suggest measures for achieving doctrinal clarity and uniform application of law.

D. Research Questions

1. How has the concept and legal framework of anticipatory bail evolved from section 438 of the Code of Criminal Procedure, 1973 to section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023?
2. What is the scope of anticipatory bail under the BNSS, and how do the newly introduced statutory limitations, particularly under section 482(4), affect the protection of personal liberty?
3. To what extent do judicial interpretations of anticipatory bail under BNSS reflect consistency with established constitutional principles under Articles 14 and 21 of the Constitution of India?
4. What are the major areas of conflicting judicial interpretation relating to anticipatory bail under BNSS, and how do these conflicts impact uniformity and certainty in bail jurisprudence?

E. Research methodology

The present study adopts a doctrinal and analytical research methodology.

It is primarily based on the analysis of statutory provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Nyaya Sanhita, 2023, and relevant constitutional provisions, along with a detailed examination of judicial precedents of the Supreme Court of India and various High Courts.

Secondary sources such as law commission reports, parliamentary materials, academic commentaries, journal articles, and comparative legal literature have been relied upon to contextualise the doctrinal analysis. The study also uses a critical approach to evaluate conflicting judicial interpretations and assess their implications for personal liberty, consistency in bail jurisprudence, and the overall objectives of criminal justice administration under the new legal regime.

IV. CONCEPTUAL AND LEGAL FRAMEWORK OF ANTICIPATORY BAIL

A. Concept of personal liberty and presumption of innocence

Personal liberty in Indian constitutional jurisprudence stands at the centre of bail law and therefore shapes anticipatory bail as well. Article 21 no longer protects only freedom from physical restraint in a narrow sense, it covers a wide range of dignitary and procedural interests that give life real meaning.[13] Any arrest or detention now has to satisfy a test of fairness, non arbitrariness and reasonableness, not only in the text of the law but also in how police and courts apply it. This expanded understanding turns bail from a matter of pure discretion into a structured safeguard, because every decision that sends a person to jail before trial directly cuts into personal liberty.

The presumption of innocence adds a second conceptual pillar to this structure. Criminal procedure does not treat an accused person as guilty until the State proves the charge

[13] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).

through evidence tested in a fair trial. This normative stance flows from basic rule of law values, and later finds expression in international instruments that describe everyone charged with a criminal offence as "presumed innocent until proved guilty according to law".[14] When a court decides whether to place a person in custody or allow them to remain free during investigation, it in effect decides how far this presumption will operate in practice. Long periods of pretrial imprisonment can hollow out the presumption and make acquittal a weak consolation.

Anticipatory bail emerges at the intersection of these two ideas of liberty and innocence. It allows a person who fears arrest to approach the court at an early stage, sometimes even before registration of a first information report, and asks that the criminal process respects their status as a presumed innocent individual. The Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* treated anticipatory bail as a technique to reconcile the need for police investigation with the obligation to protect personal liberty under Article 21.[15] The Court refused to accept rigid limitations which would reduce the remedy to a rare indulgence, and instead linked it with a broader culture of constitutional restraint on arrest. This reasoning later flows into how courts read statutory text whenever Parliament modifies procedure.

B. Definition and nature of anticipatory bail

Anticipatory bail in Indian law describes a judicial order which directs that, if a person is arrested on accusation of a non bailable offence, he or she shall be released on bail without going through police custody in the usual way. The court does not grant bail in advance as a present release, it sets up a future oriented protection that becomes effective the moment arrest takes place.[16] The expression "anticipatory bail" therefore functions more as a convenient label for this pre arrest arrangement than as a strict statutory definition,

[14] International Covenant on Civil and Political Rights art. 14(2), Dec. 16, 1966, 999 U.N.T.S. 171.
[15] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[16] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).

because neither the Code of Criminal Procedure, 1973 nor the BNSS contains an exhaustive definitional clause.

The nature of anticipatory bail appears more clearly when it is contrasted with ordinary post arrest bail. In regular bail proceedings, custody is already a fact, and the court decides whether continued detention is necessary for investigation, trial or public interest. In anticipatory bail, the court intervenes between accusation and arrest and asks whether custody is needed at all or whether appearance on conditions will sufficiently secure the process.[17] This different posture explains why anticipatory bail is often described as a "prearrest legal process" rather than a usual enlargement on bail. It does not wipe out the power of arrest in every situation but channels that power through a prior judicial assessment.

Judicial decisions under section 438 CrPC consistently stress that anticipatory bail does not grant any blanket immunity from investigation or from all future arrests. Courts treat it as a conditional protection, tailored to the particular case and offence, which presupposes cooperation of the accused with the investigating agency.[18] The order usually specifies that, in the event of arrest in the described case, the person shall be released on furnishing bond and on compliance with conditions such as joining investigation, not tampering with evidence, and not influencing witnesses. If the accused abuses this position, the prosecution may seek cancellation of the order, and the court may withdraw the shield.

The jurisprudence also clarifies that anticipatory bail is not an absolute right, yet it is not a rare privilege either. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*, the Supreme Court held that the remedy forms an integral part of the system that protects personal liberty and the presumption of innocence, and that courts should not cut down its reach by importing rigid categories like "exceptional cases only".[19] At the same time, the Court

[17] Law Commission of India, Forty First Report on the Code of Criminal Procedure, 1898 (Govt. of India 1969).
[18] Balchand v. State of M.P., (1977) 4 SCC 308 (India).
[19] Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 (India).

acknowledged that serious offences, credible risk of absconding, or concrete material of likely interference with investigation may justify refusal. The nature of anticipatory bail is therefore best understood as wide but disciplined discretion, structured by constitutional values.

C. Distinction between regular bail, anticipatory bail and interim protection

Regular bail in Indian criminal procedure operates as a post arrest remedy where the accused first enters custody and then seeks release on conditions. The statutory scheme speaks in terms of a person "accused or suspected of the commission of any non bailable offence" who is already arrested or detained and is then produced before a court which decides whether detention must continue.[20] The core question in regular bail is whether further custody is necessary for investigation, trial, or public safety, so the court works with an existing deprivation of personal liberty and considers if that deprivation still remains justified.

Anticipatory bail, by contrast, addresses the period before arrest and tries to prevent unnecessary entry into custody. The provision allows any person who has reason to believe that he or she may be arrested on accusation of a non bailable offence to seek a direction that, in the event of such arrest, they shall be released on bail.[21] The protection is prospective, it activates only when an arrest in that case actually occurs, yet the judicial evaluation happens earlier in time. This future facing character shows that anticipatory bail is not just another form of ordinary bail but a distinct device that reorganises the sequence of arrest and judicial scrutiny.

The nature of judicial discretion also differs in these two contexts. In regular bail, courts often examine the progress of investigation, strength of the prosecution case on the record, and length of time already spent in custody. In anticipatory bail, the court has to work with anticipatory facts such as likelihood of false implication, nature of the accusation, cooperation of the accused, and risk of flight, and must do so without a full

[20] Code of Criminal Procedure, 1973, §§ 437–439 (India).
[21] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482 (India).

case diary. The Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab* recognised this difference and still held that the same constitutional commitment to personal liberty and fairness must guide both forms of bail, though the factual lens is not identical.[22]

Interim protection adds a third category and often creates confusion in practice. Courts grant interim protection when an application for anticipatory bail or quashing is pending and there is a real fear that arrest may take place before final hearing, so they pass a short term direction that the applicant shall not be arrested or, if arrested, shall be released on ad hoc terms.[23] This order does not finally decide the bail claim; it simply preserves the liberty of the applicant and maintains status quo until the court can hear both sides in detail. Interim protection therefore functions as a procedural bridge and not as a substitute for either regular bail or a full anticipatory bail order.

D. Constitutional underpinnings under Articles 14, 19 and 21

Article 21 provides the deep constitutional bedrock on which anticipatory bail stands, since any arrest or detention directly cuts into the right to life and personal liberty. After *Maneka Gandhi v. Union of India*, the Court read the phrase "procedure established by law" as a guarantee that criminal process must be fair, reasonable and non arbitrary, not a mere formal ritual.[24] A bail decision therefore cannot rest only on the text of the Code or BNSS, it must satisfy this substantive due process test. When a court considers anticipatory bail, it in fact decides whether prearrest deprivation of liberty is really necessary in a fair system.

Article 14 adds the principle that this deprivation of liberty cannot depend on whim, social status, or local habit of a particular court. The equality clause has been interpreted as a prohibition on arbitrariness, so like cases must attract like treatment and distinctions must rest on rational criteria.[25] In *Gurbaksh Singh Sibbia v. State of Punjab*, the Constitution

[22] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[23] Law Commission of India, Forty First Report on the Code of Criminal Procedure, 1898 (Govt. of India 1969).
[24] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
[25] E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India).

Bench warned against rigid rules such as automatic refusal in serious offences or a universal requirement of surrender, because such thumb rules damage individualized justice and encourage unequal outcomes.[26] This insistence on structured discretion under Article 14 shapes how judges frame conditions and reasons when they grant or deny anticipatory bail.

Article 19, particularly the freedoms of movement and profession, completes this constitutional triangle. Custody does not only confine the body; it interrupts work, education, political activity, and family life, so restrictions on movement and occupation follow as direct consequences of arrest.[27] Courts have repeatedly treated bail as a means to reduce these collateral burdens while still ensuring presence of the accused at trial. If anticipatory bail is refused mechanically, people who later secure acquittal may still suffer months of lost liberty and livelihood, which sits uneasily with the guarantees under Article 19 read with Article 21. The constitutional lens therefore demands that bail conditions restrict rights only to the minimum extent required by legitimate State interests.

V. ANTICIPATORY BAIL UNDER THE PRE-BNSS REGIME

Section 438 of the Code of Criminal Procedure, 1973 created the statutory foundation for anticipatory bail in India and marked a deliberate break from the older colonial model that trusted almost entirely in police discretion over arrest.[28] The provision permitted any person who had reason to believe that he might be arrested on accusation of a non bailable offence to seek a direction that he shall be released on bail in the event of such arrest, so the protection was clearly forward looking and conditional.[29] The Law Commission had already highlighted the risk of false cases and vindictive arrests, and

[26] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[27] India Const. arts. 19(1)(d), 19(1)(g).
[28] Code of Criminal Procedure, 1973, § 438 (India).
[29] Law Commission of India, Forty First Report on the Code of Criminal Procedure, 1898 (Govt. of India 1969).

Parliament accepted that only a formal pre arrest jurisdiction could properly answer this misuse.

The early judicial phase under the pre BNSS regime showed some uneasiness with this innovation and courts often described anticipatory bail as an extraordinary remedy.[30] In *Balchand v. State of M.P.*, the Supreme Court suggested that bail is the rule and jail the exception but still characterised anticipatory bail as a power to be used in exceptional situations, which many lower courts read in a restrictive way.[31] High Courts tended to grant relief mainly to accused with stable residence, social standing and apparent respectability, which created a quiet class filter around the new jurisdiction, even when the statute itself did not draw such lines.

A major doctrinal correction came with the Constitution Bench judgment in *Gurbaksh Singh Sibbia v. State of Punjab*, which remains the central authority for the pre BNSS anticipatory bail regime. The Court refused to treat section 438 CrPC as an extraordinary provision and held that it confers a wide but structured discretion that must be exercised consistently with Articles 14 and 21.[32] It rejected fixed rules like automatic denial in serious offences or mandatory surrender and insisted that the court must look at the nature of accusation, possibility of absconding, antecedents and the need for custodial interrogation in each case.

Despite *Sibbia*, later decisions gradually reintroduced constraints and produced confusion across the country. In *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, the Supreme Court encouraged time bound anticipatory bail orders and stated that protection should operate only till the accused appears before the trial court and seeks regular bail, which again tilted practice in favour of custody.[33] This approach led many trial courts to insist that the accused first surrender and undergo at least a symbolic arrest

[30] Balchand v. State of M.P., (1977) 4 SCC 308 (India).
[31] Balchand v. State of M.P., (1977) 4 SCC 308 (India).
[32] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[33] Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 (India).

before any long term protection could be considered, something that sat uncomfortably with the original spirit of section 438.

Another strand of decisions placed strong emphasis on the need not to obstruct investigation and on preventing anticipatory bail from becoming a shield for noncooperation. In *Adri Dharan Das v. State of W.B.*, the Court stressed that anticipatory bail cannot be allowed to stultify police powers of arrest when genuine necessity exists and that courts should not use the jurisdiction to micromanage investigation.[34] The line between ensuring liberty and interfering with investigation therefore became very thin, and the result was considerable divergence between States and even between benches within the same High Court.

The Supreme Court attempted a course correction in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, by returning to the wide language of *Sibbia* and restating factors that should guide anticipatory bail under the pre BNSS regime. The judgment stressed that no inflexible guidelines exist and that gravity of offence, role attributed to the accused, possibility of recovery, and likelihood of tampering must all be weighed in a holistic manner.[35] It also indicated that courts should avoid mechanical time limits and instead rely on cancellation when supervening circumstances show misuse of liberty.

VI. ANTICIPATORY BAIL UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

A. Legislative intent behind re-codification of criminal procedure

The re-codification of criminal procedure through the Bharatiya Nagarik Suraksha Sanhita, 2023 reflects a conscious attempt to move away from a colonial framework of control towards a citizen centric system of justice that is visibly rooted in the Constitution. The Statement of Objects and Reasons records that the Code of Criminal Procedure, 1973 had become inadequate to meet contemporary democratic aspirations and that a

[34] Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 (India).
[35] Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 (India).

comprehensive new law was needed to secure accessible and speedy justice for all.[36] The focus shifts from merely prescribing procedure for State authority, to designing processes that protect rights of victims, witnesses and accused persons in an integrated way.

Parliamentary materials and committee reports emphasize that seven decades of experience under the CrPC exposed deep structural weaknesses such as procedural complexity, repeated adjunctions, and very slow movement of cases across all tiers of courts. The Department related Parliamentary Standing Committee on Home Affairs noted that modern India requires criminal procedure which is responsive to the needs of citizens, sensitive to technological changes, and capable of handling new forms of crime.[37] The decision to enact BNSS therefore arises not from cosmetic law reform but from a perceived need for paradigm change in how the system manages investigation, trial and enforcement.

Policy documents and training manuals on BNSS repeatedly highlight the chronic problems of delay, low conviction rates and poor use of forensic science that plagued the earlier regime. They point to complex paper based processes, weak documentation at the investigation stage, and limited integration between police, prosecution and courts, all of which together undermined timely and reliable outcomes.[38] BNSS intends to counter these defects by mandating timelines for investigation and trial, encouraging extensive use of electronic records, and giving forensic techniques a central place in serious offences. The legislative intent is to make procedure an enabler of truth finding rather than a barrier.

B. Statutory text governing anticipatory bail under BNSS

Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 carries the statutory scheme for anticipatory bail and is placed within Chapter XXXV on "Provisions as to Bail and

[36] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, Statement of Objects and Reasons (India).
[37] Dep't Related Parliamentary Standing Comm. on Home Affs., 247th Report on the Bharatiya Nagarik Suraksha Sanhita, 2023 (Rajya Sabha Secretariat 2023).
[38] Nat'l Council of Educ. Research & Training, The Bharatiya Nagarik Suraksha Sanhita, 2023 Teaching Module (NCERT 2024).

Bonds". It is titled "Direction for grant of bail to person apprehending arrest", which itself shows that the legislature continues to treat pre arrest bail as a specific, targeted protection rather than as a general defence to prosecution.[39] The location in the general bail chapter also confirms that anticipatory bail is not a special jurisdiction outside the ordinary procedural framework but part of a coherent code on release from custody.

Sub section (1) of section 482 substantially tracks the familiar language of section 438 CrPC, while updating it to the BNSS structure. It allows "any person" who has reason to believe that he may be arrested on accusation of a non bailable offence to apply to the High Court or Court of Session for a direction under this section.[40] The court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. This text preserves the wide standing to apply, does not confine the remedy to named accused, and continues to tie jurisdiction to the gravity category of "non bailable offence", which is now defined with reference to the Bharatiya Nyaya Sanhita and other special laws.

Sub section (2) then sets out the standard toolkit of conditions that can accompany an anticipatory bail direction. The court may, in the light of the facts of the case, impose conditions such as making oneself available for interrogation, not making any inducement, threat or promise to persons acquainted with the facts, and not leaving India without prior permission of the court.[41] A fourth limb cross references sub section (3) of section 480 BNSS, so that conditions ordinarily attached to non bailable release, for example attending in accordance with the bond and not committing a similar offence, can also be tagged onto anticipatory bail orders.[42] The statutory text therefore hardwires the idea that pre arrest bail is not unconditional liberty but supervised freedom.

Sub section (3) of section 482 governs the operational stage when arrest actually takes place after a direction is granted. If the person is arrested without warrant on such accusation and is prepared to give bail, he "shall be released on bail", which is mandatory

[39] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, ch. XXXV, § 482 (India).
[40] Id. § 482(1).
[41] Id. § 482(2)(i)–(iii).
[42] Id. § 482(2)(iv); id. § 480(3).

language. If a Magistrate taking cognizance decides that a warrant should be issued in the first instance against that person, the statute directs that only a bailable warrant shall issue in conformity with the High Court or Sessions Court order.[43] This provision closes procedural gaps that might otherwise allow police or magistrates to bypass anticipatory bail by using more coercive process.

A striking change in the BNSS text appears in sub section (4), which creates a specific statutory bar. It declares that nothing in section 482 shall apply to any case involving arrest on accusation of an offence under section 65 or sub section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.[44] These cross referenced provisions deal with aggravated rape of minor girls and gang rape on a woman under eighteen years of age, carrying punishments of long rigorous imprisonment, life imprisonment for the remainder of natural life, or even death in some situations.[45] The anticipatory bail bar thus mirrors the harsher sentencing structure for certain sexual offences and signals a legislative choice to treat these crimes as categorically outside the protection of pre arrest bail.

C. Comparison of BNSS provisions with section 438 of the CrPC

Section 482 BNSS retains the basic threshold of section 438 CrPC that any person who has reason to believe that he may be arrested on accusation of a non bailable offence can move the High Court or Court of Session and seek a direction that he shall be released on bail in the event of such arrest.[46] Section 438 used almost the same opening formula, and both provisions keep the jurisdiction confined to superior courts and to non bailable offences.[47] At this structural level, BNSS therefore signals continuity and does not reduce the accessibility of anticipatory bail as a concept.

[43] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(3) (India).
[44] Id. § 482(4).
[45] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 65, 70(2) (India).
[46] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(1) (India).
[47] Code of Criminal Procedure, 1973, § 438(1) (India).

A significant textual difference appears in the way the two provisions frame guiding factors for the exercise of discretion.[48] After the 2005 amendment, section 438(1) CrPC expressly required the court to consider the nature and gravity of accusation, antecedents of the applicant, risk of flight, and the possibility that the accusation was made to injure or humiliate, before either rejecting the plea or issuing an interim order.[49] Section 482(1) BNSS contains no such enumerated list, and simply authorises the court to pass a direction if it thinks fit. This shift indicates a move away from a codified factor test towards a more open texture where constitutional doctrine and precedents like *Gurbaksh Singh Sibbia* and *Sushila Aggarwal* will supply the controlling principles rather than the bare text itself.[50]

The language on conditions in section 438(2) and section 482(2) is almost identical in its first three limbs. Both provisions allow the court to insist that the person make himself available for interrogation, refrain from threats or inducement to witnesses, and not leave India without prior permission.[51] The divergence is in the fourth clause. Under CrPC the court could add "such other condition as may be imposed under sub section (3) of section 437", thereby tying anticipatory bail to the general conditions for non bailable release, like not committing a similar offence and not interfering with the course of justice.[52] BNSS preserves the same logic but now cross refers to section 480(3), which rephrases and relocates those standard bail conditions within the new code.[53] This drafting technique shows an attempt to integrate anticipatory bail more tightly into the reorganised bail architecture of BNSS.

The operational effect clause in section 482(3) BNSS closely tracks section 438(3) CrPC. In both regimes, if the person is arrested without warrant on the relevant accusation and is

[48] Id.
[49] Id.
[50] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India); Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 (India).
[51] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(2)(i)–(iii) (India).
[52] Code of Criminal Procedure, 1973, § 438(2)(iv) (India).
[53] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 480(3) (India).

prepared to give bail while in police custody, the officer in charge must release him on bail, and if a Magistrate decides to issue a warrant, it must be a bailable warrant.[54] This mandatory language prevents investigating agencies or magistrates from undermining a higher court's anticipatory bail order through more coercive process. The near verbatim repetition in BNSS indicates that the legislature accepted the core functional design of section 438 on this point.

The sharper policy divergence lies in the special offence bar. Section 438(4) CrPC, inserted by the Criminal Law (Amendment) Act, 2018, prohibited anticipatory bail where the arrest related to certain aggravated forms of rape and gang rape under section 376(3), section 376AB, section 376DA or section 376DB of the Indian Penal Code.[55] Section 482(4) BNSS reproduces this idea in the new code language by excluding anticipatory bail for offences under section 65 and sub section (2) of section 70 of the Bharatiya Nyaya Sanhita, which now contain the parallel aggravated sexual offences.[56] Substantively, therefore, the core bar is continued and translated, not removed. However, the BNSS text does not carry the state specific extensions that some amendments to section 438 had introduced, for example blanket exclusions in offences punishable with death in certain States.

VII. SCOPE OF ANTICIPATORY BAIL UNDER BNSS

The scope of anticipatory bail under the Bharatiya Nagarik Suraksha Sanhita, 2023 is anchored in the language of section 482, which preserves the broad right of "any person" who has reason to believe that he may be arrested for a non bailable offence to move the High Court or Court of Session for protection.[57] The provision does not narrow standing to named accused, nor does it confine the remedy to particular classes of offences beyond the express statutory exclusions. In this sense, the text keeps the doorway to pre arrest

[54] Id. § 482(3); Code of Criminal Procedure, 1973, § 438(3) (India).
[55] Code of Criminal Procedure, 1973, § 438(4), inserted by Criminal Law (Amendment) Act, 2018, No. 22 of 2018 (India).
[56] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 65, 70(2) (India).
[57] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(1) (India).

bail wide, while shifting the real question to how courts assess "reason to believe" and the gravity of the accusation.

Scholarly analysis of the new bail chapter under BNSS reads section 482 as largely *pari materia* with section 438 CrPC, so that the conceptual reach of anticipatory bail remains extensive, though now embedded in a restructured code that stresses timelines and victim rights.[58] The remedy continues to cover the entire spectrum of non bailable offences under Bharatiya Nyaya Sanhita and special statutes, unless a specific enactment or BNSS itself carves out an exclusion. This continuity means that constitutional doctrines from *Gurbaksh Singh Sibbia* and *Sushila Aggarwal* still inform the outer boundaries of the jurisdiction, even as fresh interpretive disputes arise around the new text.

Judicial decisions under the new regime have already underlined that the core precondition for invoking section 482 is that the applicant must not yet be arrested for that particular offence.[59] High Courts, while interpreting BNSS, have followed the settled position that anticipatory bail is intended to prevent an impending arrest, not to undo a detention that has already taken place, though they have allowed applications where an accused is in custody in another case.[60] This reading preserves the distinct role of anticipatory bail as a forward looking safeguard and prevents it from turning into a parallel route for regular bail under section 483 BNSS.

The most conspicuous statutory limitation on scope appears in sub section (4) of section 482, which excludes its application to cases where a person is accused of offences under sections 65 or 70(2) of Bharatiya Nyaya Sanhita.[61] These provisions deal with aggravated forms of rape on minors and gang rape on women under eighteen, carrying very severe sentences, including life for the remainder of natural life and death.[62] The Gauhati High Court has read the word "and" in section 482(4) as "or", holding that the bar applies

[58] Sukanya Das, Objectives and Scope of Bail Under BNSS, 2023: An In-Depth Analysis, 10(7) Int'l J. Res. & Innovation in Applied Sci. 167 (2025).
[59] Drishti Judiciary, Anticipatory Bail Under BNSS (10 Sept. 2024).
[60] Drishti Judiciary, Anticipatory Bail Under BNSS (10 Sept. 2024).
[61] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(4) (India).
[62] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 65, 70(2) (India).

when the accusation involves either of the two offences, not only when both are present together, thereby narrowing the scope of anticipatory bail in a significant cluster of sexual offences.[63]

At the same time, other High Courts have clarified that there is no general bar in BNSS against grant of anticipatory bail for offences punishable with death or life imprisonment, outside the specific exclusions that the statute names. In applications under section 482, courts in Uttar Pradesh and elsewhere have granted pre arrest protection even in allegations of serious violent crime, while stressing that such power must be exercised with great circumspection and on a careful appraisal of risk to investigation and society.[64] This line of reasoning suggests that gravity of punishment influences, but does not in itself control, the outer scope of the jurisdiction.

VIII. CONFLICTING JUDICIAL INTERPRETATIONS ON ANTICIPATORY BAIL

Courts have never spoken in a single voice on anticipatory bail, and the tension has only become sharper in the transition from the Code of Criminal Procedure, 1973 to section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023.[65] Even after the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* treated pre arrest bail as an integral part of Article 21 oriented liberty, several benches continued to describe it as an "extraordinary" remedy and to restrict its use, creating a deep doctrinal split that still influences BNSS practice.

One long running line of conflict concerns the duration of anticipatory bail. Some Supreme Court decisions such as *Salauddin Abdulsamad Shaikh* encouraged time bound protection, which many High Courts read as requiring the accused to surrender and seek regular bail once charge sheet is filed.[66] The Constitution Bench in *Sushila Aggarwal v.*

[63] X v. State of Assam, 2025 SCC OnLine Gau 2341 (Gauhati HC).
[64] Judicial Academy Jharkhand, Comparative Study of CrPC, 1973 and BNSS, 2023 – Bail Reading Material (26 July 2025).
[65] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[66] Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 (India).

State (NCT of Delhi) later held that, as a normal rule, anticipatory bail need not be time limited and can continue till trial, yet field practice under both CrPC and now BNSS still shows orders that quietly fix outer dates, revealing incomplete acceptance of the ruling.

Another source of inconsistency lies in questions of maintainability and forum. *Sibbia* allowed applications even before registration of FIR, based on credible apprehension of arrest, but some High Courts insisted on a formally registered crime number and refused "pre-FIR" petitions.[67] Under BNSS, the Allahabad High Court has clarified that there is no absolute bar on approaching the High Court directly under section 482, and that the so called "Sessions first" rule is a matter of self imposed discipline, not a jurisdictional limitation, while other courts still insist that an applicant must first move the Court of Session and treat direct High Court petitions with suspicion.[68]

The interface between anticipatory bail and special statutes shows even sharper conflict. Under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, section 18 bars anticipatory bail, and earlier Supreme Court decisions oscillated between strict and nuanced readings of this bar.[69] In the BNSS era, the Allahabad High Court in *Dinesh Kumar Srivastava v. State of U.P.* held that an application styled under section 482 BNSS is not hit by section 18, and therefore anticipatory bail can still be granted where the factual allegations do not make out a clear offence under the SC/ST Act.[70] By contrast, the Kerala High Court in *Athul P. v. State of Kerala* has read section 18 as impliedly excluding section 482 BNSS as well, so that no pre arrest bail is available once a prima facie SC/ST offence is disclosed on the record.

Section 482(4) BNSS, which bars anticipatory bail where a person is accused under section 65 and section 70(2) of the Bharatiya Nyaya Sanhita, has generated its own interpretive divergence. The Gauhati High Court has read the word "and" in section 482(4) as "or",

[67] Indian Journal of Integrated Research in Law, Case Comment, Gurbaksh Singh Sibbia v. State of Punjab 8 (2023).
[68] Interlocutory Order in Neutral Citation No. 2025:AHC-LKO:… (All. H.C. 28 May 2025).
[69] Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 (India).
[70] Dinesh Kumar Srivastava v. State of U.P., 2025 SCC OnLine All 8063 (India).

reasoning that otherwise the bar would become almost redundant, and has held that no anticipatory bail lies if the person is accused of an offence either under section 65 or under section 70(2) BNS.[71] Other benches and commentators, however, have cautioned that such a rewrite strains plain text and may go beyond the legislature's chosen wording, though a clear Supreme Court pronouncement on this precise BNSS clause is still awaited.

Conflicting approaches also appear on the question whether BNSS section 482 applies retrospectively and whether it sweeps away prior State amendments which had cut down the scope of section 438 CrPC. The Allahabad High Court in *Abdul Hameed v. State of U.P.* treated section 482 as a fresh, more liberal framework and granted anticipatory bail in a murder case where earlier U.P. amendments would have barred such relief, holding that accused persons can benefit from the new procedure even if the offence predated BNSS.[72] The same High Court has extended this reasoning to NDPS matters, while the Uttarakhand High Court has referred similar questions to a larger bench, signalling unease about the retrospective and overriding effect of the new statute.

IX. COMPARATIVE AND CRITICAL PERSPECTIVE

Anticipatory bail under BNSS sits at the meeting point of continuity and change, so any assessment must read section 482 against both preexisting CrPC doctrine and broader global trends on pretrial liberty.[73] The legislature retains the basic architecture of section 438 CrPC yet inserts a categorical bar for certain aggravated sexual offences and links conditions more tightly with the general bail framework. This design signals an attempt to preserve the Indian innovation of prearrest bail while still answering contemporary anxieties about victim protection and heinous crime.[74]

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[71] 2025 LiveLaw (Gau) 27, S.482(4) BNSS | "And" Must Be Read as "Or"; No Anticipatory Bail If Person Is Accused of S.65 or S.70 BNS (Gauhati H.C. 2025).
[72] Abdul Hameed v. State of U.P., discussed in Anticipatory Bail Under BNSS: What Changed in 2025, Free Law (5 Sept. 2025).
[73] PRS Legislative Research, The Bharatiya Nagarik Suraksha Sanhita, 2023 – Bill Summary (18 Aug. 2023).
[74] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482 (India).

Common law comparators show that the Indian choice to constitutionalise anticipatory bail is distinctive but not isolated from wider principles governing pretrial detention. In England and Wales, the Bail Act 1976 recognises a rebuttable presumption in favour of release and treats remand in custody as a last resort when clear statutory grounds exist, such as risk of absconding or interference with justice.[75] Academic work on pre trial detention in that jurisdiction notes that, although judges retain broad discretion, the legal starting point remains liberty, and Article 5 of the European Convention on Human Rights reinforces this presumption. The UK therefore secures pretrial freedom through strong post arrest safeguards, rather than through a separate anticipatory bail device.[76]

Comparative studies on India, the United Kingdom and the United States highlight that all three systems wrestle with similar tensions between risk management and the presumption of innocence, but adopt different institutional tools.[77] In the US, pre trial release often turns on monetary bonds and risk assessment, and constitutional scrutiny focuses on excessive bail under the Eighth Amendment, not on a structured pre arrest remedy. Scholars point out that, while money bail regimes may appear neutral, they can deepen class-based inequality and indirectly coerce guilty pleas. These critiques sharpen the lens through which Indian courts should view anticipatory bail under BNSS, because they show how easily pretrial processes can drift away from liberty even in rights rich jurisdictions.[78]

Against this backdrop, the Indian anticipatory bail model appears both advanced and fragile. It is advanced because it offers direct judicial control over arrest at an earlier point than many other systems. It is fragile because its impact depends heavily on local judicial culture and on how trial courts understand higher court guidance. At the same time,

[75] U.K. Ministry of Justice, Written Evidence, The Bail Act 1976 and the Presumption in Favour of Bail (2021).
[76] Tom Smith, The Practice of Pre-trial Detention in England and Wales, 62 Crim. L. Bull. 1 (2022).
[77] De Facto Law Journal, Custody or Conditional Release? A Cross-Jurisdictional Study on Bail and Human Rights in India, the United States and the United Kingdom 4 De Facto L.J. 35 (2021).
[78] A Comparative Study of Bail Jurisdiction in India, UK and USA, 8 J. Reg'l & Tribal Dev. & Democracy 112 (2023).

Indian prison data continue to show that undertrials form more than two thirds of the total prison population, with NCRB based analyses reporting around seventy seven percent undertrials in 2021 and significant numbers confined for more than two years.[79] More recent figures for 2022 and 2023 still place undertrials at roughly three quarters of all inmates, with worrying percentages in custody for over three years.[80] These statistics suggest that bail jurisprudence, including anticipatory bail, has not yet translated constitutional rhetoric on liberty into everyday reality.

Doctrinally, the Constitution Bench in *Sushila Aggarwal v. State (NCT of Delhi)* attempted to align anticipatory bail with global best practices by affirming that, in ordinary cases, protection should not carry arbitrary time limits and may continue till the end of trial, subject to cancellation where misuse appears.[81] This approach brings Indian law closer to the European idea of proportional and reasoned restrictions on liberty, instead of episodic short term shields. Under BNSS, however, text and precedent now sit together in a more complex way. Section 482 preserves the wide power, yet sub section (4) categorically excludes pre arrest bail in cases involving offences under sections 65 and 70(2) of the Bharatiya Nyaya Sanhita, which deal with aggravated rape of minors and similar conduct.[82] The choice to create absolute bars for specific BNS offences invites comparison with foreign statutes that carve out terrorism or organised crime from liberal bail presumptions and raises hard questions on proportionality in Indian conditions.

X. FINDINGS, SUGGESTIONS AND CONCLUSION

The analysis of anticipatory bail under the pre BNSS regime and section 482 BNSS shows that Indian law continues to treat pre arrest bail as a constitutional safeguard rather than a narrow privilege.[83] Courts, starting from *Gurbaksh Singh Sibbia v. State of Punjab*,

[79] Commonwealth Human Rights Initiative, Ten Things You Should Know About Indian Prisons – Prison Statistics India 2021 (2022).
[80] National Crime Records Bureau, Prison Statistics India 2022 (Govt. of India 2023).
[81] Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 (India).
[82] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(4) (India); Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 65, 70(2) (India).
[83] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).

consistently tie anticipatory bail to Articles 14 and 21, and frame it as a device to restrain arbitrary arrest while still respecting legitimate needs of investigation.[84] BNSS does not disturb this basic architecture; it recasts and relocates it within a new statutory framework.

The statutory text of section 482 BNSS substantially preserves the structure of section 438 CrPC but introduces sharper edges through its cross reference to conditions under section 480(3) and the absolute bar for offences under sections 65 and 70(2) of the Bharatiya Nyaya Sanhita, 2023.[85] This reveals a clear legislative intention to keep anticipatory bail broadly available in ordinary non bailable offences while ring fencing certain aggravated sexual crimes involving minors. The finding here is that the legislature views prearrest liberty and victim protection not as mutually exclusive but as values that require careful calibration in text and practice.

A central empirical finding concerns the distance between doctrines on anticipatory bail and the actual landscape of pretrial incarceration. Prison statistics for 2022 show that undertrials constitute more than three fourths of India's prison population, with 4,34,302 undertrial prisoners out of 5,73,220 inmates and a significant fraction in custody for over three years.[86] More recent reporting based on NCRB 2023 data still places undertrials at around seventy four percent of all prisoners, despite some marginal improvement.[87] These figures suggest that bail jurisprudence, including anticipatory bail, has not yet fully delivered its promise of making "bail the rule and jail the exception" in everyday practice.

The doctrinal journey from *Balchand* through *Sibbia*, *Siddharam Satlingappa Mhetre* and finally *Sushila Aggarwal* reveals another core finding: constitutional courts have steadily moved away from viewing anticipatory bail as an exceptional indulgence and have instead affirmed it as a normal remedy that may, in suitable cases, endure till conclusion

[84] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 (India).
[85] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482 (India).
[86] National Crime Records Bureau, Prison Statistics India 2022 (Govt. of India 2023).
[87] "74% of Prisoners Are Undertrials, and That's an 'Improvement'," Times of India (15 Oct. 2025).

of trial.[88] Yet, High Court decisions after *Sushila Aggarwal* still display significant variation on duration, maintainability at pre FIR stage, and interaction with special statutes, producing a patchwork of standards that invites forum shopping and undermines equal treatment under Article 14.

A comparative reading of BNSS with other common law systems indicates that India remains unusual in giving explicit statutory recognition to pre arrest bail, but the underlying concerns mirror those seen elsewhere: risk of absconding, witness intimidation, and public confidence in criminal justice.[89] At the same time, international human rights law, particularly Article 9 of the International Covenant on Civil and Political Rights, stresses that pre trial detention must be exceptional and that liberty is the starting point of analysis.[90] The Indian model of anticipatory bail fits comfortably within this normative frame, provided courts use it actively and in a principled manner.

A first suggestion is that the Supreme Court should, at an early stage of BNSS implementation, issue a set of focused guidelines on section 482, explicitly harmonising the new text with the principles laid down in *Sibbia* and *Sushila Aggarwal*.[91] Such guidance can clarify questions on territorial jurisdiction, pre FIR applications, interaction with special statutes, and the proper use of conditions and cancellation rather than ad hoc time limits. A structured restatement would reduce conflicting interpretations and support more uniform practice across High Courts and subordinate courts.

A second suggestion concerns the categorical bar in section 482(4) BNSS for certain aggravated sexual offences under the Bharatiya Nyaya Sanhita.[92] While the gravity of these crimes and the need to protect child victims is beyond dispute, a rigid exclusion of judicial discretion may raise proportionality concerns under Articles 14 and 21, especially

[88] Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 (India).
[89] De Facto Law Journal, Custody or Conditional Release? A Cross-Jurisdictional Study on Bail and Human Rights in India, the United States and the United Kingdom, 4 De Facto L.J. 35 (2021).
[90] International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.
[91] PRS Legislative Research, The Bharatiya Nagarik Suraksha Sanhita, 2023 – Bill Summary (18 Aug. 2023).
[92] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482(4) (India); Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 65, 70(2) (India).

in cases of demonstrably false implication or evidentiary doubt at the threshold. Parliament may therefore consider a narrowly crafted proviso that allows courts, in rare and exceptional cases recorded with detailed reasons, to grant prearrest protection even in barred categories where failure to do so would clearly result in injustice.

A third suggestion lies at the level of judicial and administrative practice. Trial courts and Sessions Courts should be encouraged, perhaps through High Court rules and training modules, to pass reasoned orders on anticipatory bail that engage with statutory factors, victim concerns, and data on the accused's roots in the community, rather than relying on formulaic phrases.[93] Simultaneously, better data collection on anticipatory bail applications, grants, rejections and cancellations under BNSS, disaggregated by offence type and socio economic indicators, can help policymakers and courts identify structural bias or unintended exclusion.

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