

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

2026:PHHC:118136



CRM-M-23753-2016 (O&M)

Maneesh Vashistha

...Petitioner

Versus

Ishwar Singh Yadav and another

...Respondents

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	17.08.2026
2	The date when the judgment is pronounced	25.08.2026
3	The date when the judgment is uploaded on the website	25.08.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Petitioner in person.

Mr. H. P. S. Ghumman, Advocate
for the respondents.

MANISHA BATRA, J.

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of the impugned order dated 11.02.2016 (Annexure P-1) passed by the Court of learned Sessions Judge, Narnaul, whereby the anticipatory bail application filed by respondents No.1 to 3 was allowed, as well as the consequential order dated 15.02.2016 (Annexure P-2) passed by the Court of learned Judicial Magistrate First Class, Narnaul, whereby these respondents were released on regular bail.
2. Brief facts of the case relevant for the purpose of disposal of

this petition are that the petitioner, who is an Advocate practising at District Courts, Narnaul, had instituted a criminal complaint against respondents No.1 to 3, namely, Ishwar Singh Yadav, Divisional Engineer Telecom, BSNL, Narnaul, Jai Prakash Sharma, Junior Telecom Officer, BSNL, Narnaul, and Mahender, under Sections 406, 409 and 120-B IPC. The allegations in the complaint pertained to alleged unauthorised use of electricity from the generator installed at the BSNL Telephone Exchange, Nizampur, for a Jagran being organised outside the house of respondent No.3 on the night of 17.04.2010. As per the complaint, on 17.04.2010 at about 7:50 p.m., the petitioner received information from Rajender Prashad Sharma that electricity was being supplied from the generator of the Nizampur Telephone Exchange for the aforesaid Jagran. The petitioner thereafter contacted Parveen Kaushik, who was stated to be a correspondent of Jain Television and other television channels. The petitioner, along with Parveen Kaushik, reached near the Telephone Exchange at about 9:20 p.m. and found electricity being supplied from the BSNL generator to the Jagran. Both of them recorded the occurrence on their respective cameras and a CD containing the recording was annexed with the complaint. It was further alleged that Rajender Sharma had informed respondent No.1, Ishwar Singh Yadav, that Mahender was taking electricity from the Telephone Exchange generator and that respondent No.1 replied that the electricity was being supplied to the Jagran with his permission. The petitioner alleged that the Nizampur Telephone Exchange was under the control of respondents No.1 and 2 and that the use of the BSNL generator and diesel for the Jagran was within their knowledge and at their instance. It was alleged that the respondents, in collusion with each other and by misusing their official

position, had caused financial loss to BSNL and had dishonestly misappropriated the property entrusted to them, thereby committing offences under Sections 406, 409 and 120-B IPC.

3. As per the further allegations, when respondents No.1 and 2 came to know that the petitioner had recorded the incident, they submitted a false application before Police Chowki, Nizampur on 18.04.2010 as a counterblast. The petitioner claimed that he had himself approached the police on 18.04.2010 and had shown the video recording, but no action was taken. He thereafter submitted an application under Section 156(3) Cr.P.C. to the Superintendent of Police, Mahendergarh at Narnaul and also sent representations to other senior officers and the Chief Minister, Haryana but no action was taken. The petitioner consequently approached the jurisdictional Court by way of a private criminal complaint.

4. The learned Judicial Magistrate, after considering the complaint and the material placed before him, summoned respondents to face trial for offences under Sections 406, 409 and 120-B IPC. The summoning order required them to appear before the Court on 15.02.2016. The petitioner asserts that the respondents, having been summoned in a private complaint by the issuance of summons, had no apprehension of arrest by the police and, therefore, the remedy of anticipatory bail under Section 438 Cr.P.C. was not available to them. Despite the above, the respondents filed an application under Section 438 Cr.P.C. before the learned Sessions Judge, Narnaul, contending that as Section 409 IPC was a non-bailable offence, they apprehended that they might be taken into judicial custody upon appearing before the trial Court. The learned Sessions Judge, vide order dated 11.02.2016, allowed the anticipatory bail application and directed the

respondents to appear before the learned trial Court within 15 days and seek regular bail. Pursuant to the said order, the respondents appeared before the learned Judicial Magistrate on 15.02.2016 and furnished bail bonds of Rs.25,000/- each with one surety in the like amount. The learned Magistrate accepted the bonds and released the respondents on bail.

5. The petitioner has challenged both the aforesaid orders before this Court, primarily alleging that the learned Sessions Judge had exercised jurisdiction under Section 438 Cr.P.C. in a situation where there was no apprehension of arrest by the police and had thereby interfered with the jurisdiction of the trial Magistrate under Section 437 Cr.P.C.

6. It is argued by the petitioner, who is appearing in person, that the impugned order dated 11.02.2016 passed by the learned Sessions Judge is patently illegal and amounts to an abuse of the process of law. It is argued that the respondents had been summoned by the learned trial Court under Section 204 Cr.P.C. in a private complaint after consideration of the preliminary evidence and material collected during proceedings under Section 202 Cr.P.C. Since the process issued against them was only by way of summons, there was no question of their being arrested by the police. Thus, the basic and essential requirement for invoking Section 438 Cr.P.C., namely, a reasonable apprehension of arrest, was completely absent. It is further submitted that the petitioner had specifically raised this objection before the learned Sessions Judge and had brought to his notice the distinction between police arrest and detention in judicial custody. Apprehension of being remanded to judicial custody upon appearance before the Magistrate cannot be treated as an apprehension of arrest by the police so as to attract Section 438 Cr.P.C.

7. It is also argued that the learned Sessions Judge also erred in directing the respondents to surrender before the learned trial Court and seek regular bail as the respondents had been summoned in a private complaint and there was no police investigation or apprehension of arrest against them. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned orders are liable to be set aside. To fortify his arguments, the petitioner has relied upon the authorities cited as ***Om Parkash Chhawnika v. State of Jharkhand, 2026(2) RCR (Criminal) 791*** and ***Ram Pukar Yadav and another v. State of Bihar and another, SLP (Crl.) No. 11260/2026, decided on 16.06.2026.***

8. On the other hand, learned counsel for the respondents has argued that the impugned order granting anticipatory bail is perfectly justified and calls for no interference. It is argued that the mere fact that the respondents were summoned in a private complaint does not take away the jurisdiction of the Court of Sessions under Section 438 Cr.P.C. to grant anticipatory bail, particularly when they apprehended being taken into custody on their appearance before the learned trial Court. To fortify his arguments, learned counsel for the respondents has relied upon ***Bharat Chaudhary and another v. State of Bihar, (2003) 8 SCC 77, Maneesh Vashistha v. State of Haryana and another, CRM-M-9565-2014, decided on 18.03.2014, Puran Singh v. Ajit Singh and others, 1984(2) RCR (Criminal) 532*** and ***Manjit Singh and others v. Karam Singh, 1990(1) RCR (Criminal) 482.***

9. This Court has heard the rival submissions.

10. The question which arises for consideration is whether, in the facts of the present case, where the respondents were summoned in a private

complaint by way of summons and no warrant of arrest had been issued against them, they could have invoked the jurisdiction of the Court of Session under Section 438 Cr.P.C. merely on the ground that one of the offences alleged against them, namely, Section 409 IPC, was non-bailable and that they apprehended being taken into custody upon their appearance before the learned Magistrate. This position has been specifically considered by the Hon'ble Supreme Court in ***Om Prakash Chhawnika's case (supra)***. The case arose out of a private complaint. The Hon'ble Supreme Court noticed that once cognizance is taken and process is issued in a private complaint, the Court issues summons and that Section 87 Cr.P.C. permits issuance of a warrant in lieu of or in addition to summons only in the contingencies specified therein. The Court categorically observed that once summons have been issued, the accused is required to appear before the concerned Court and join the proceedings and that the police has no power to arrest the accused in a complaint case unless a non-bailable warrant has been issued by that Court along with the summons. The aforesaid principle has thereafter been reiterated by the Hon'ble Supreme Court in ***Ram Pukar Yadav and another v. State of Bihar and another, SLP (Crl) No.11260 of 2026, decided on 16.06.2026***. The matter also arose from a complaint case. Referring to its earlier decision in ***Om Prakash Chhawnika's case (supra)***, the Hon'ble Supreme Court reiterated that in a private complaint, when cognizance is taken and process is issued, the Court issues summons and the accused is required only to appear before the concerned Court and join the proceedings. It was specifically held that the police has no power to arrest the accused in a complaint case unless a non-bailable warrant is issued by the Court along with the summons. The Hon'ble Court consequently held

that there was no question of the petitioners being taken into custody by the police and set aside the impugned order.

11. On examining the peculiar facts of this case in the light of the aforementioned pronouncements, it is apparent that the respondents were not summoned through bailable/non-bailable warrants and there was no question of their being taken into custody by the police. The respondents should have straightway appeared before the learned trial Court and joined the proceedings instead of moving an application for grant of anticipatory bail. However, the fact that cannot be lose sight of is that the complaint of this case pertains to the year 2010 with regard to an incident which allegedly took place 17.04.2010. After passing of the impugned order, the respondents had caused appearance before the learned trial Court and had furnished bonds and were admitted to bail on 15.02.2016. The case was fixed for producing pre-charge evidence on that very day only. The instant petition is pending since that very year i.e. 2016. They have, thus, already submitted themselves to the jurisdiction of the learned trial Court and joined the proceedings. At this stage, requiring them to once again surrender before the learned trial Court, after a lapse of more than a decade, would serve no useful purpose. In view of the aforesaid peculiar circumstances, although this Court finds that the exercise of jurisdiction under Section 438 Cr.P.C. by the learned Sessions Judge in the facts of the present case was not warranted and the impugned order dated 11.02.2016 cannot be sustained in law, the subsequent order dated 15.02.2016 passed by the learned Magistrate releasing the respondents on regular bail need not be disturbed. The respondents have remained on bail pursuant thereto for all these years and there is nothing on record to suggest that they have misused the concession

of bail or failed to participate in the proceedings before the learned trial Court. Consequently, while setting aside the impugned order dated 11.02.2016, this Court deems it appropriate, in the peculiar facts and circumstances of the case, not to require respondents No.1 to 3 to surrender or to appear afresh before the learned trial Court. The bail bonds furnished by them pursuant to order dated 15.02.2016 shall continue to their benefit, subject to their remaining bound by the conditions imposed by the learned trial Court and subject to any further order passed by the said Court in accordance with law. However, they shall appear regularly before the trial Court unless their presence is exempted by any order passed by learned trial Court in accordance with law.

12. The present petition is accordingly disposed of in the above terms. The observations made hereinabove are confined to the legality of the impugned order and shall not be construed as an expression of opinion on the merits of the complaint.

25.08.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No