

Abstract

Anticipatory bail is a type of bail that is obtained by a person who anticipates arrest and its effect is just to release a person on bail, even before the person is arrested. However, it does not prevent the law enforcement agencies from interrogating and investigating the person who was granted anticipatory bail in respect of the offence alleged to have committed. In other words, when any person has reason to believe that he/she may be arrested on an accusation of having committed a non-bailable offence, he/she may apply to the High Court or any other Court empowered by law and the said Court if it thinks fit, direct that in the event of such arrest, the person shall be released on bail. It is apparent that the object and reason for introducing anticipatory bail is to establish a means by which a suspect is not compelled to face humiliation and degradation at the instance of influential people who try to implicate their rivals on false accusation. This study aims at examining the concept of anticipatory bail with a view to determine its legal effect on Human rights and impacts on Criminal Justice System. The study employs a doctrinal methodology where library materials such as books, articles from journals, and online articles among others will be carefully reviewed and analyzed with a view to meeting the desired objective of the study.

Keywords: Legal Effect; Anticipatory Bail; Human Rights, Criminal Justice System

1. Introduction

Anticipatory bail simply means an application seeking permission from the court to be released if arrested by the police, but only for the particular reason against which permission of anticipatory bail is asked by the suspect.¹ The necessity for granting anticipatory bail has arisen because sometimes influential persons try to implicate their rivals in false cases for harassment at the hands of the police or for the purpose of disgracing them or for any other reason, by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase.² Apart from false cases, where there are reasonable grounds for holding that a person suspected of an offence is not likely to abscond, or otherwise misuse his liberty, while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.³ Anticipatory bail is not to be exercised as a punishment before trial is being imposed. The only material consideration in such a situation is whether the accused would be really available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence.⁴ The power of anticipatory bail has to be exercised cautiously and only in exceptional cases. That is, where the Court strongly feels that an applicant is being framed in the charge, and not otherwise. An indirect use of the power to grant bail would be an abuse of the judicial process and would shake the confidence of the general public in the judiciary. No hard and fast rule should be laid down in discretionary matters like the grant or refusal, nor can there be inflexible principle governing the exercise or discretion except that discretion should be exercised judiciously having regard to peculiar facts and circumstances of each case.⁵

The Court is not expected to conduct a pre-trial of the case and consider the probability of guilt or innocence, but can certainly look into the material available on record for exercise of its power. The fact that offence is a serious one is not by itself a good ground for refusal, if otherwise entitled to. A person should be granted anticipatory bail only when the Court is convinced that the applicant is such a person who would not abscond or otherwise misuse his liberty by threatening the other party or influencing the case. Hence, Anticipatory bail should not be granted as a matter of rule; it has to be granted only in special cases.⁶

2. Anticipatory Bail

Over the years, police have witnessed a spate of petitions for anticipatory bail. The petitioners were in many cases influential persons who had wielded enormous powers during emergency and who were, in the post-emergency era, apprehensive of arrests on the charges of corruption, misuse or abuse of official positions, etc. The persons involved in

*By **Ibrahim DANJUMA, PhD**, Department of Public Law, Faculty of Law, Bauchi State University Gadau, Nigeria. Email: ibrahim.danjuma@basug.edu.ng, Tel: +2348068062226, and

***Habila Isah BARAU**, Department of Private and Business Law, Faculty of Law, Bauchi State University Gadau, Nigeria, Email: habilaisabarau@gmail.com. The authors wish to acknowledge and appreciate TETFund for sponsoring this research. We firmly believe that this research will be beneficial to the managers of criminal justice system and future researchers as well as academic community in general.

¹Sharma, SK, 'Dimensions of Judicial Discretion in Bail Matters', *Journal of Law Institute* [2018]

²Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction', (2021) 75

³Zannah, K, 'Prison Congestion, the Courts, the Police and Abuse of Human Rights: Nigerian Legal System in Crisis', *Abia State University Law Journal*, [2000] (7)

⁴Okagbue, I.E, *Bail Reform in Nigeria* (Ibadan: Caltop Publication Nigeria Ltd. 1994).

⁵Schattschneider, E. E., cited in Shishi, S.M. *et al* 'Globalization, Democracy and Good Governance in Nigeria' – The Best Practices in The Council was established by the Legal Aid Act of 2011.

⁶Ogbu, O.N., *Modern Nigeria Legal System* (CIDGAP Press 2007)

the anticipatory bail proceedings being rich and mighty, they made every effort to use the law and its machinery to their maximum advantage. In this process the courts were required to interpret the law discreetly and with great precision and circumspection.⁷ The law relating to anticipatory bail has received, thereby, impetus in the process of its growth and sophistication. Where any person has a reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court for a direction under this section that in the event of such arrest he shall be released on bail and the court shall provide him anticipatory bail after taking into consideration the following factors, namely:⁸

1. The nature and gravity of the accusation.
2. The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.
3. The possibility of the applicant to flee from justice.
4. Where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

Where the High court grants interim bail to the applicant then the court forthwith a show cause notice attested with a copy of such order, served to the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court. The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.⁹

Persons Eligible for Anticipatory Bail

When any person has a reason to believe that there is a chance to get him arrested on false or trump up charges, or due to enmity with someone, or he fears that a false case is likely to be built up against him, he has the right to move the court of the High Court to apply for bail in anticipation of his arrest, and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.¹⁰

Conditions for obtaining the anticipatory bail:

The High Court or the court of the session may include such conditions in the light of the facts of the particular case, including:¹¹

- a. A condition that the person shall make himself available for interrogation by the police officer as and when required;
- b. A condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- c. A condition that the person shall not leave India without the previous permission of the court.
- d. An accused is free on bail as long as the same is not cancelled. The High Court or Court of Session may direct that any person who has been released on bail to be arrested and commit him to custody on an application moved by the complainant or the prosecution. An accused is free on bail as long as the same is not cancelled. The High may direct that any person who has been released on bail to be arrested and commit him to custody on an application moved by the complainant or the prosecution.¹²

3. Functioning and Applicability of Anticipatory Bail

The purpose of this section inter alia appears to be to secure that a person anticipating arrest is not obliged to go to jail until he is able to move the court for being released on bail. The object which is sought to be achieved is that the moment a person is arrested, if he has already obtained an order granting anticipatory bail from the High Court, he would be released immediately without having to undergo the rigor of jail even for a few days which would necessarily be taken up if he has to apply for bail after arrest. So, there is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.¹³ In respect of non-bailable offences, all the conditions imposed by law are implicitly provided. In order to successfully invoke the jurisdiction under this section apart from satisfying the conditions, the applicant must, in addition make out a special case for securing an order of anticipatory bail which is of an exceptional type. He must prove that the charge levelled against him is *mala fide*

⁷ Zannah, K., 'Prison Congestion, The Courts, The Police and Abuse of Human Rights: Nigerian Legal System in Crisis', *Abia State University Law Journal*, [2000] (7).

⁸ Ngwakwe, E et al (eds), *Human Rights, Democracy and Development Revisited*. (KDV E- Publishers, Aba 2019).

⁹ Ojukwu, E. 'Breathing More Life into Human Rights in Nigeria with Three New Statutes' [2012].

¹⁰ Ademola, T.A, 'The Police and Holding Charge Syndrome; Issues' *Nigeria Bar Journal* [2003] I (3).

¹¹ Babatunde, L.A, *Handbook of Criminal Law and Procedure* (Lagos: Law Breed Ltd. 2003).

¹² Boderin, M, 'Law and Development in Africa: Towards a New Approach', *NIALS Journal of Law and Development* [2019]

¹³ Eko, E, *The Law of Bail* (Ibadan: Lifegate Press and Publishing Co. 2003).

and stems from ulterior motive. It is for the applicant to prima facie substantiate his allegation that the charge of serious non-bailable offences against him has been levelled *mala fide*.¹⁴

The provision for granting anticipatory bail is not applicable to certain offences especially capital offences. Thus, anticipatory bail can be granted in respect of non-bailable offences whether they are cognizable or non-cognizable offences.¹⁵ Moreover granting of anticipatory bails in case of non-bailable offences are not confined to those non-bailable offences which are punishable with death or imprisonment for life. A person already on bail (whether ordinary or anticipatory), cannot apply afresh for bail in respect of the same accusation. The Court has power to grant anticipatory bail even in cases where either cognizance has been taken or charge sheet has been filed.¹⁶ Anticipatory bail can be granted even after the Criminal Court has taken cognizance, and summons or warrant has been issued by the Court. Anticipatory bail is not granted when the accused has been arrested, that is it cannot be invoked after the arrest of the accused has been done.¹⁷ The exercise of power in this regard relates to a specific accusation and cannot be extended in a blanket fashion to cover all offences which the petitioner may come to be charged. On an application for grant of anticipatory bail, the investigating agency would be given reasonable time to file objection to the application.¹⁸ Where the copy of the application was served on the appellant only in the afternoon the order for bail passed on the next day would be set aside. In case of regular bail there is no provision made in the code, that a complainant or a third party can intervene and make any submissions independently in opposing the application for grant of bail or anticipatory bail.¹⁹

Factors Considered by the Court while Granting Anticipatory Bail

- a. It has been held that if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on Anticipatory bail in the event of his arrest would generally be made.²⁰
- b. Anticipatory bail should not generally be passed and that the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective.
- c. The Courts in dealing with the application for Anticipatory bail should look into the consideration governing exercise of discretion for granting anticipatory bail because it is materially different from those of an ordinary application for bail. When the accused is admittedly involved in the offence and when police want the accused for investigation, application may be rejected.
- d. Like when the multi-storeyed building put up by a building architect is collapsed and the applicant is prima facie guilty of such a serious offence, anticipatory bail cannot be granted.²¹
- e. The power of Anticipatory bail being of extraordinary nature should be exercised only in exceptional cases. Anticipatory bail is not to be granted as a matter of rule, it is granted only when a special case is made out and the court is convinced that the person is of such a status that he would not misuse his liberty. If a case for anticipatory bail is made out, it should not be refused merely because the accused is required in police custody for interrogation.²²
- f. Anticipatory bail cannot be granted to a person apprehending arrest for contravention of the Constitution. Moreover, mere pendency of cases is not a ground for denying bail.
- g. The grant of bail to an accused who has voluntarily surrendered before the Court cannot be said to be an order for release.
- h. Anticipatory bails are mostly refused to the people who are not cooperating with the investigation or it requires custodial interrogation or in any way they are influencing the evidence of the case, then awarding of anticipatory bails becomes tough also results in rejection of the application.
- i. Filing of First Information Report, (FIR) is not a condition precedent for preferring and disposing an application for anticipatory bail. Filing of a charge- sheet or issuance of a warrant for arrest does not put an end to the power to grant anticipatory bail

¹⁴ Guobadia, D. A. and Azinge, E. (ed), *Globalization, National Development and the Law* (NIALS, Lagos 2005).

¹⁵ Annan, K, 'In Larger Freedom: Towards Development, Security and Human Rights for All' (A Report Presented to United Nations, 2015).

¹⁶ Amadi, G.O.S, *Police Powers in Nigeria* (Afro Orbis Publishing Co. Ltd, Nsukka).

¹⁷ Internet: Available at <http://www.NigerianLaw.org> accessed 24th November, 2021; Sorin Amit, 'Anticipatory Bail Law in India' (2009). <<https://ssrn.com/abstract=1476730>> or <http://dx.doi.org/10.2139/ssrn.1476730> Accessed 10th March, 2024.

¹⁸ Nwanyanwu, C.A., 'An Overview of Bail as Safeguard for Personal Liberty Under Nigerian Criminal Justice System', *Port Hacourt Journal of Business Law* (2018)

¹⁹ Blackstone, W., 'Commentaries on the Laws of England in Four Books' *The American Law Register* (1859) 8 (55) <<https://doi.org/10.2307/3302061>>.

²⁰ Adegboruwa, E. O., 'The Law and Practice of Bail in Nigeria' *The Punch* (Lagos, 2004) 63

²¹ Agaba, J.A., *Practical Approach to Criminal Litigation in Nigeria* (3rd edn Law Lords Publications, Abuja 2020) 246.

²² Ibid

Courts with Original Jurisdiction to Entertain Anticipatory Bail Application

Where a person has an apprehension or reason to believe that he or she may be arrested on charges of having committed a non-bailable offense, he or she may request the High Court to direct the investigating agency to release him or her on bail in case of arrest.²³

Discretion of the Court to Grant Anticipatory Bail

Inappropriate cases, with due care and caution, anticipatory bail is generally exercised sparingly. Anticipatory bail may be granted under a few circumstances:²⁴

1. A special case is made out that would suggest that there are ample grounds to assume that the applicant may be detained for unreasonable grounds.
2. The allegations were made with a false intent or to cause the claimant to be injured/humiliated and arrested.
3. The arguments against the claimant are ambiguous or generic.
4. The name of the accused is not mentioned in the First Report on Information
5. The applicant satisfies the Court of Appeal granting the Anticipatory Bail that he is from a respectable family, has deep roots in society, and is not likely to abscond from or avoid the Court's proceedings or to hinder the investigation in any way.
6. A plaintiff is an influential individual against the defendant who is a weak person or if a case is brought against a political rival.

Refusal of Anticipatory Bail

A few of the conditions under which Anticipatory Bail may be rejected are:²⁵

1. The risk of the applicant absconding if cognizance is taken by the trial court or the trial court has issued a warrant of arrest.
2. If it is possible to make the prima facie argument in which the claimant was charged.
3. The applicant has previously been imprisoned for any cognizable offense on conviction.
4. Where it is possible to make a case that the applicant can influence the investigation to his advantage.
5. When a reasonable claim to secure incriminating evidence is made in a case.

Scope of Anticipatory Bail

The offences has been categorized generally into two categories bailable offences and the non bailable offences ,in terms of the bailable offences the bail is treated as the right of the accused person while under the category of non bailable offences the bail is to be considers as the discretion of the Court adjudicating the application of bail keeping in mind the very thing that the accused should not be deprived of his fundamental rights as well as the society will not suffer because of the accused if he has been granted bail.²⁶ Now, anticipatory bail is granted in anticipation of arrest the anticipatory bail ensure freedom till the regular bail application decided by the Court. It means where a person has a reasonable ground that he may be arrested for an non-bailable offence by the police on suspicion, to prevent such arrest the person moves an application in an appropriate court seeking bail in advance prior to his arrest this procedure is called anticipatory bail.²⁷ Where the application of the person has been allowed then he shall show that order of Court regarding anticipatory bail when the police come to arrest him, on producing such order the person shall be released on bail. This option of anticipatory bail is available to every person who is been suspected of committing or involved in some non-bailable crime or offence.²⁸ The High Court and the Magistrate Court may both have concurrent jurisdiction to hear the anticipatory bail depending on the nature and circumstances of the case, but in general practise as a matter of alternative remedy it is preferred to file a bail firstly before a magistrate court and thereafter the High Court.²⁹

4. Practices of Anticipatory Bail in Selected Jurisdictions

As anticipatory bails are granted against arrest and detention, an appropriate court within whose jurisdiction the arrest takes place or is apprehended will also have jurisdiction to grant bail to the person concerned.³⁰ Therefore, the High Court having jurisdiction over the place where the arrest is apprehended by the applicant has jurisdiction to entertain application for anticipatory bail even though the FIR might have been registered at a place within the jurisdiction of another High Court.³¹ Where the Court grants an interim order, it shall forthwith cause a notice being not less than seven day notice depending on the area of jurisdiction, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the

²³ Agaba, J. A., *Practical Approach to Criminal Litigation in Nigeria* (Law Lords Publications Abuja 2011) 1 (246).

²⁴ Peter, S., 'Human Rights and the Administration of Criminal Justice in Nigeria' (2021)

²⁵ Onwabuchi N, 'The Bail Process and Human Rights in Nigeria' (2020)

²⁶ Okagbue, E., *Bail Reform in Nigeria* (Caitop, Ibadan 1996)

²⁷ Anticipatory Bail accessed from (www.thestreetjournal.org/2021/10/gbenga-daniel-grantedbail-for-n-500-million)

²⁸ Krishna, V. R., 'Anticipatory Bail and Its Application' *Acute Law Journal* (2020)

²⁹ Daphtary, T., 'The Grant of Anticipatory Bail' (Hiraini & Co 2021)

³⁰ Ishaku, J., *Bail and Bail Research* (University of Jos Publishers 2018) <www.researchgate.net/publication/334381939_Bail_and_Bail_Processes>

³¹ Sharma, S.K., 'Dimensions of Judicial Discretion in Bail Matters' *Journal of Law Institute* 2018

application shall be finally heard by the Court. It may be however be noted that though the gives concurrent power to the High Court, it is normally to be presumed that the magistrate court would be first approached for the grant of anticipatory bail unless an adequate case for not approaching the said court has been made out.³² It has also been held that it is not always necessary that the Judge should be approached first. Where the petition for anticipatory bail has been rejected by the Court, the petitioner cannot approach the High Court asking for anticipatory bail on the same grounds. However, revision against the order of rejection was held to be maintainable. The High Court has ruled that rejection of an application by the Sessions Court would not be a bar for the High Court to entertain a similar application based on the same facts. But if he moves the High Court first and his application is rejected, he cannot approach the Court with a similar application.³³ Normally the Supreme Court does not interfere in the matters concerning grant or refusal of Anticipatory bail, whether by High Courts or magistrate Court. Every petition for anticipatory bail should be supported by affidavit and sometimes a written address depending on the area of jurisdiction. There is no statutory bar in entertaining second anticipatory bail application. It would be maintainable but it has to be placed before the same Honourable Judge.³⁴

Anticipatory Bail in the State of Uttar Pradesh

Anticipatory bail under section 438 was precluded from the Code of Criminal procedure (Uttar Pradesh amendment Act), 1976. This made anticipatory bail seekers surge either to the High Court or to the Honourable Supreme Court. The Constitution vests powers under Article 246(2) to states to frame laws on the topics counted inside the concurrent list. The concurrent lists secure uniformity within the main principle of law throughout country then on avoid excessive rigidity to two-list distribution. In this way, the states cause laws regarding to their political, social, financial and different necessities of that area. The crisis stage made it the necessity of great importance for the state to enact on certain current laws in order to check socio-political showings.³⁵ Consequently, activities taken by the territory of Uttar Pradesh are frequently validated. Nonetheless, the execution shouldn't be in a self-assertive way where the re-inclusion of the Segment in regards to anticipatory bail wasn't started and joined till next 43 years bringing about the negation of the fundamental rights appreciated by the residents presented by the constitution Along these lines, it totally was significant that the justification for anticipatory bail be developed in Uttar Pradesh in such manner that central thought is given to the standard of crucial rights and produce the instrument at standard with the contrary conditions of India. There was a constant interest for its recovery and a few writ petitions were additionally documented. The State Law Commission had suggested rebuilding of this arrangement in its third report in 2009.³⁶ An advisory group was comprised by the state government under the chairmanship of Additional Chief Secretary to the Uttar Pradesh Government of the Home Department, Special Secretary of the Legislatives, DG Prosecution and Additional Director General of Police (Crime) had also recommended the restoration of the provision. Thus, the provision of the anticipatory bail has been reinstated in Uttar Pradesh, providing the remedy for the accused to get anticipatory bail in non-bailable offences. The Allahabad High court and the apex court had been pressing the state government to re-apply this law.³⁷ Thus the Section is laid down on the road map of the 2005 Amendment of the C.P.C. as provided under section 438(1), (2), (1A) and further providing State amendments as:³⁸

1. The disposal of the application of Anticipatory bail should be within 30 days by the sessions court or the high court
2. If an application has been filed before high court because of the concurrent jurisdiction and the same is disposed of the same application will not be filed in the sessions court.
3. The person will not be enlarged on anticipatory bail in the offences of the following Acts
 - i. The Unlawful activities (Prevention) Act, 1967
 - ii. The Narcotic Drugs and Psychotropic Substances Act, 198
 - iii. The Official Secret Act, 1923
 - iv. The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986
 - v. Offences having punishment till death penalty.

Grant of Anticipatory Bail in India

In India, the Criminal Procedure Code 1973 provides protection to persons anticipating or fearing arrest. The essential difference between regular bail and anticipatory bail is that while a regular bail is applied for by a person/ accused only after his arrest, anticipatory bail ('Anticipatory Bail') is applied for by a person in anticipation of his arrest and to secure orders from court to prevent the actual arrest. Also, no one deserves to face disgrace in case he is implicated in false cases.³⁹ However, there are certain conditions under which an application for grant of Anticipatory Bail may be considered and it is not granted in a routine manner and depends on facts of the case to illustrate, in cases of economic offences, the protection of Anticipatory Bail is not a matter of right. However, if the Applicant is an established

³² Ibid

³³ Krishna, V. R., 'Anticipatory Bail and Its Application' *Acute Law Journal* 2020

³⁴ Ogbu, O. N., 'Modern Nigeria Legal System' (CIDGAP Press 2007)

³⁵ Ibid @ pg. 105

³⁶ Sharma, S.K., 'Dimensions of Judicial Discretion in Bail Matters' *Journal of Law Institute* 2018

³⁷ Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75

³⁸ Krishna, V. R., 'Anticipatory Bail and Its Application' *Acute Law Journal* 2020

³⁹ Ngwakwe, E. *et al* (eds), *Human Rights, Democracy and Development Revisited*. (KDV E- Publishers, Aba 2019).

businessman, has roots in society then his application for Anticipatory Bail may not be denied merely because he has been accused of having committed an economic offence of any nature. In case of any violations under Foreign Exchange and Regulation Act, 1973 ('FERA'), if a person establishes that he is being unnecessarily harassed by the investigating agency, then the Court may grant Anticipatory Bail in his favour.⁴⁰

Empowerment of Courts

The High Courts and Court of Sessions ('Courts') in India are empowered to make an Order granting anticipatory bail that in the event of arrest; a person shall be forthwith released on bail without having to undergo the rigor of jail. Generally, the applicant has to first approach the Court of Sessions for moving an application for Anticipatory Bail unless special circumstances exist for filing the same in the High Court. If an application is rejected by the Court of Sessions, a fresh application cannot be made to the High Court. Where application for Anticipatory Bail has been rejected by the High Court, thereafter a subsequent application for Anticipatory Bail cannot be entertained by the Court of Sessions. At the time of approaching the Courts to secure Anticipatory Bail, one will need to establish that he has reasonable belief that he may be arrested on accusation of having committed a non-bailable offence or the trial court has taken cognizance of criminal complaint and summons or warrant has been issued against him. The Application for Anticipatory Bail would not be maintainable if the Applicant has already been arrested for the same accusation and/or is already on bail/anticipatory bail for the same accusation or he has voluntarily surrendered before the trial court for in respect of the same accusation.

Competent Jurisdiction

An Applicant can approach the Courts within whose jurisdiction he apprehends his arrest. It is irrelevant that the alleged offence has been committed outside the jurisdiction of such Courts. If the Courts do not have territorial jurisdiction, it may yet grant Anticipatory Bail for a short term with adequate safeguards for approaching the Court having jurisdiction to entertain such application after considering the facts and circumstances involved therein.⁴¹

5. Relationship of Anticipatory Bail with Human Rights and Criminal Justice System

Life and personal liberty are perceived as sacrosanct rights of every person under every Country's Constitution. The law generally provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law.⁴² It means that every person has a right to protect his right and liberty even though they are an accused of a crime or even an anticipatory accused. The provision of bail provides them with a chance to protect their liberty by getting out of the police custody and fighting their case with all measures possible. They can't prepare their case for trial from behind bars as the accused person who enjoys freedom is in a much better position to look after the case and to defend them properly.⁴³ The provision of bail, especially anticipatory bail works on the principle of innocent until proven guilty. It is a fundamental principle of the Criminal Jurisprudence, enshrined under Article 11(1) of the Universal Declaration of Human Rights. It also reflects that the grant of anticipatory bail is a fundamental right as the law cannot deprive them of life and liberty until they are proven guilty beyond a reasonable doubt.⁴⁴ There is a provision in Magna Carta which protects the life and liberty of a person similar to what the provision of Anticipatory bail does. It provides that no free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.⁴⁵ When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or court of competent jurisdiction for a direction and that Court may if it thinks fit, direct that in the event of such arrest, he shall be released on bail. There is a rationale to maintain the provision of anticipatory bail as a fundamental right because there may be a chance that the complainant filing the FIR might be doing it out of hatred, influential persons try to implicate their rivals in false cases to disgrace them or to blackmail someone to get something intrinsic.⁴⁶ Since these apprehensions to file false cases against a person might be non-bailable (murder charges, rape or sedition), there is a strong need to articulate this provision into a fundamental right as once they are arrested, they cannot do anything to get out of it but to wait for the trial to end. It is the utmost priority through which a person can protect his liberty and can enjoy the freedom against such unscrupulous false claims as they possess the power to cripple the sanctity of liberty and freedom.⁴⁷

6. Legal Effect of Anticipatory Bail on Human Rights and Criminal Justice System

One can easily deduce this quote with the need to grant the provision of anticipatory bail to an accused of a crime as they are also a victim of crime done by wealthy people who have the right connections which empowers them to file false cases against anyone they wish to. This type of malpractice in law creates corruption and disruption in the stroll of justice.

⁴⁰ Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75

⁴¹ Sreena, M. 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75

⁴² Krishna, V. R., 'Anticipatory Bail and Its Application' *Acute Law Journal* 2020

⁴³ Ogbu, O.N., *Modern Nigeria Legal System* (CIDGAP Press 2007)

⁴⁴ Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75

⁴⁵ Ogbu, O.N., *Modern Nigeria Legal System* (CIDGAP Press 2007)

⁴⁶ Ngwakwe, E. *et al* (eds), *Human Rights, Democracy and Development Revisited*. (KDV E- Publishers, Aba 2019).

⁴⁷ Sharma, S.K., 'Dimensions of Judicial Discretion in Bail Matters' *Journal of Law Institute* 2018

There have been many landmark judgments to protect the sanctity of justice in this arena.⁴⁸ Recently, Courts have taken a bold step in addressing the issue of anticipatory bail to observe that there is no provision of time restriction in the applicability of anticipatory bail. It does not specify that the effect of this provision will cease after the beginning of the trial as it can even continue until the end of trial depending upon the discretion of the concerned court. It was also enlightened that the conditions required following to avail the grant of anticipatory bail depend upon the discretion of the concerned court as situations may vary from case to case. As some crimes are more heinous than the rest, so in those cases, the court may have to impose harsher conditions for the grant of bail. The provision of discretion regarding condition is the essential matter that needs to be dealt with soon to establish au fait sanctity of law and justice in the country.⁴⁹ Before now, there was a heated discussion regarding the status of anticipatory bail in the global Judicial System. Some cases held that it an integral part of our laws, others held that it is not a fundamental right as it can help a presumed convict to elope from getting justice as it can be termed as the most abused of court process.⁵⁰ It has been observed that before any anticipatory will be considered justifiable and reasonable, the following essential ingredients must be satisfied:⁵¹

- a. Judicial Discretion
- b. Power of reason to believe by the courts
- c. Non-contemplation of blanket orders
- d. Non-precedence of registration of FIR
- e. On-time period of bail
- f. Seeking importance of Article 21
- g. No provision of Anticipatory bail after arrest

Anticipatory Bail cannot be granted as a matter of right. It has to be exercised sparingly, especially in economic offences which constitute a class apart. In granting anticipatory bail to the accused particularly in a case of money laundering invoking the specific conditions for anticipatory bail may hamper the ongoing investigation.⁵²

7. Conclusion

Anticipatory bail otherwise known as pre-arrest bail has been considered to mean the act of enforcing the liberty of an innocent person from being implicated by false case especially by powerful people in the society. This suggests that it is only granted by court of competent jurisdiction especially the High Court in special circumstances. That is, where the person applying satisfied the court that will not disobey any condition, jeopardize with police investigation and will be present to answer the allegations against him. Hence, the bail stands revoked once the person is arrested and charged to court. Anticipatory bail is a new concept in our criminal justice system. However, even after all these years of judicial scrutiny and loads of landmark cases, there is still a need to make and amend the laws regarding anticipatory bail as there are still some confusions regarding the term 'discretion'. Until it is not specified or made crystal, courts may tend to create biasness and disruption of the right to life and liberty.

⁴⁸ Ibid

⁴⁹ Ogbu, O.N, *Modern Nigeria Legal System* (CIDGAP Press 2007)

⁵⁰ Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75

⁵¹ Krishna, V. R., 'Anticipatory Bail and Its Application', *Acute Law Journal* 2020

⁵² Sreena, M., 'Bail, Anticipatory Bail, Mandatory Bail & Bail After Conviction' (2021) 75