

No. 205/XXXVI(3)/2020/82(1)/2019

Dated Dehradun, August 11, 2020

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of '**The Code of Criminal Procedure (Uttarakhand Amendment) Act, 2019**' (Adhiniyam Sankhya: 22 of 2020).

As passed by the Uttarakhand Legislative Assembly and assented to by the President on 28 July, 2020.

THE CODE OF CRIMINAL PROCEDURE (UTTARAKHAND AMENDMENT)

ACT, 2019

(Uttarakhand Act no. 22 of 2020)

AN

ACT

further to amend the Code of Criminal Procedure, 1973 (Act no. 2 of 1974) in the context to the State of Uttarakhand-

Be it enacted by the Uttarakhand Legislative Assembly in the Seventieth Year of the Republic of India as follows:-

Short title, extent and commencement	1- (1) This Act may be called the Code of Criminal Procedure (Uttarakhand Amendment) Act, 2019 (2) It shall extend to whole of the State of Uttarakhand. (3) It shall come into force at once.
--------------------------------------	--

Insertion of Section 438 in Act no 2 of 1974 as amended in its application to Uttarakhand	2- In the Code of Criminal Procedure, 1973 as amended in its application to Uttarakhand, after section 437 A the following section shall be inserted, namely :-
---	---

438. Direction for grant of bail to person apprehending arrest

(1). Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely :-

- (i) the nature and gravity of the accusation ;
- (ii) 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;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) 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:

Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include *inter alia* the following conditions, namely:-

- (i) that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) that the applicant 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;
- (iii) that the applicant shall not leave India without the previous permission of the Court; and
- (iv) such other conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

Explanation: The final order made on an application for direction under sub- section (1); shall not be construed as an interlocutory order for the purpose of this Code.

- (3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, 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 application shall be finally heard by the Court.
- (4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order.
- (5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application;
- (6) Provisions of this section shall not be applicable,-
- (a) to the offences arising out of, -
 - (i) the Unlawful Activities (Prevention) Act, 1967;
 - (ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - (iii) the Official Secrets Act, 1923;
 - (iv) the Uttarakhand (Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986;) Adaptation and Modification Order, 2002
 - (v) sub-section(3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code;
 - (vi) chapter 6 of the Indian Penal Code, 1860, viz, offences against the state (except Section 129);
 - (vii) The Protection of Children from Sexual Offences (POCSO) Act, 2012;
 - (b) in the offences, in which death sentence may be awarded.
- (7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session.

By Order,

PREM SINGH KHIMAL,
Secretary.

STATEMENT OF OBJECTS AND REASONS

Section 438 of the code of Criminal Procedure 1973, regarding the provision of anticipatory bail, was omitted by the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 (U.P. Act no. 16 of 1976). The said Amendment Act of 1976 also remained in force at Uttarakhand which was adopted by Adaptation and modification order. There is continuous demand for its revival. Writ petitions have also been filed before the Hon'ble Courts for its revival in Uttarakhand. The State Law Commission has, in its first report, also recommended for reviving the provisions of the said section. It has been decided to amend the Code of Criminal Procedure, 1973 in its application to Uttarakhand to revive the provisions of section 438 thereof with certain modifications.

The Code of Criminal Procedure (Uttarakhand Amendment) Bill, 2019 is introduced accordingly.

2- The proposed Bill fulfills the aforesaid objective.

TRIVENDRA SINGH RAWAT
CHIEF MINISTER