



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217

CRM-M-35524-2025
Date of decision: 05.08.2025

SUNDER KUMAR

...PETITIONER

V/s

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: None for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

SUMEET GOEL, J.

1. Present petition has been filed under Section 482 of BNSS, 2023 for grant of anticipatory bail to the petitioner in case bearing FIR No. 219 dated 07.06.2025, registered for the offences punishable under Sections 20(B) and 27-A of NDPS Act, 1985 at Police Station City Fatehabad, District Fatehabad.

2. On 09.07.2025, the following order was passed:-

“Counsel for the petitioner, inter alia, contends that the petitioner is sought to be implicated into the FIR in question solely on the basis of a disclosure statement made by co-accused from whom the contraband in question has been allegedly recovered & the petitioner is willing to join investigation and cooperate therein. In order to buttress his arguments, learned counsel for the petitioner has relied upon the dicta of the judgments of the Hon'ble Supreme Court in ‘Vijay Singh versus The State of Haryana’ bearing Special Leave to Appeal (Crl.) No(s).1266/2023, ‘State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr’ 2022(1) RCR (Criminal) 762, ‘Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592 and ‘Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu vs. State of Gujrat, Narcotics Control Bureau’ 2024 INSC 290.

Notice of motion.



On the strength of advance notice; Mr. Aashish Bishnoi, DAG, Haryana has entered appearance on behalf of the respondent-State of Haryana. State is at liberty to file reply.

Adjourned to 05.08.2025.

The petitioner is directed to appear before the Investigating Officer on 15.07.2025 at 11:00 A.M. in concerned Police Station and join investigation. In the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal/surety bond(s) to the satisfaction of the Arresting Officer/Investigating Officer. As and when further called by Investigating Officer, the petitioner shall join the investigation. He shall abide by the condition(s) enumerated under Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023.”

3. Learned State counsel (on instructions from ASI Virender) has submitted that the petitioner has joined investigation in terms of interim order/protection earlier afforded to the petitioner and is not required for custodial interrogation. He has, however, submitted that since the FIR in question is under NDPS Act of 1985, the petitioner ought not to be extended the concession of anticipatory bail.

4. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as '**Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592**', relevant whereof reads as under: "155. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

More recently, the Hon'ble Supreme Court in a judgment titled as '**Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau' 2024 INSC 290**', has reiterated the ratio



decidendi of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (supra).

4.1 Further, the Hon'ble Supreme Court; while dealing with a plea for bail in a case under NDPS Act, 1985; in a judgment titled as '**State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.**', 2022(1) RCR (Criminal) 762, has held as under:

"9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A1 and A2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act

10 It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arresis made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the coaccused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 177374/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

4.2 Still further, the Hon'ble Supreme Court; while dealing with a plea for grant of anticipatory bail in a case under NDPS Act, 1985; in a judgment titled as '**Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s) 1266/2023 decided on 17.05.2023**', has held as under:

"The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail



was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the coaccused. The petitioner concededly was not present at the spot but was named by the coaccused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail. Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed. All pending applications are disposed of."

5. In view of above, the petition is allowed and interim order dated 09.07.2025, passed by this Court is made absolute, subject to the conditions as enumerated under Section 482(2) BNSS, 2023.

6. This order should not be treated as "blanket" order. It will not be interpreted as granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned ibid and will not operate in respect of any other incident that involves commission of an offence.

7. Liberty is reserved in favour of State to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 482(2) BNSS, 2023 or upon showing any other sufficient cause.

8. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

9. Pending applications, if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

05.08.2025

jatin

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No