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

CRM-M-22555-2025 (O&M)

Reserved on : 22.08.2025

Pronounced on : 01.09.2025

Kapil Sharma**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Ms. Mansi, Advocate for
Mr. Bhisham Kumar, Advocate
for the petitioner.

Ms. Himani Arora, DAG, Haryana.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking anticipatory bail in case bearing FIR No. 119 dated 20.02.2025, registered under Sections 191(3), 190, 115(2), 126(2) and 103(1) of Bharatiya Nyaya Sanhita, 2023 (*for short 'BNS'*) at Police Station Palla, District Faridabad.

2. The aforementioned FIR has been registered on the basis of a written complaint filed by complainant Subhash Chandra alleging therein that on the night of 18.02.2025, he received an information that someone had an altercation with his son Akash @ Kallu and his son was lying admitted in B. K. Hospital. The complainant rushed to the hospital and found his son to be lying admitted therein in unconscious and injured condition. His friend Vikram was present there, who disclosed that on the same evening, his son was present on a vacant plot near Om Enclave Part-II along with Vikram, when accused Suraj @ Kallu reached there. A verbal altercation had taken

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place between them. Accused Suraj called the petitioner and some more youths, who came there on three motorcycles and opened an assault upon complainant's son Akash @ Kallu, who became unconscious and then all of them had fled away. On the complaint of the complainant, initially a case under Section 191(3), 190, 115 and 126 of BNS was registered. Investigation proceedings were initiated. The petitioner and co-accused Suraj Singh were joined into investigation on 24.02.2025 and were arrested. They suffered disclosure statements admitting their involvement in the crime. They were subsequently released on bail. The victim remained admitted in the hospital from 19.02.2025 till 04.03.2025. His statement could not be recorded as he was declared unfit to make the same. He died on 21.03.2025 due to the impact of the injuries sustained by him. Offence under Section 103(1) of BNS was added. Investigation is still underway. Apprehending his arrest on addition of aforementioned offence, the petitioner moved an application for grant of anticipatory bail, which has been dismissed by the Court of learned Additional Sessions Judge, Faridabad, vide order dated 08.04.2025.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He had neither caused any injury to the victim nor any specific injury or overt act has been attributed to him. He was already extended benefit of bail. He is ready to join the investigation even now. Since nothing is to be recovered from him, his custodial interrogation is not required. It is, therefore, urged that the petition deserves to be allowed and the petitioner deserves to be given benefit of anticipatory bail.

4. Status report has been filed by the respondent-State. Learned State has taken a preliminary objection as to the maintainability of this petition while relying upon the authorities cited as *Manish Jain vs. Haryana*

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State Pollution Control Board : 2022 (1) SCC (Cri) 676 and Zubair Ahmad Wani vs. Governor of J & K, Bail Application No. 78 of 2022, decided on 15.07.2022, decided by the High Court of Jammu & Kashmir and Ladakh. It is further argued by learned State counsel that the allegations levelled against the petitioner are quite serious. He had hit the victim with a *danda*. He was specifically named in the FIR. Specific role has also been attributed to him. For conducting thorough and proper investigation in the matter on addition of offence punishable under Section 103(1) of BNS, his custodial interrogation is must. It is also argued that even otherwise, the petition is not maintainable as the petitioner is presumed to be in constructive custody of the Court and hence the proper course for him was to surrender before the trial Court and to move an application for grant of regular bail. Therefore, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. The petitioner had been extended benefit of regular bail by the Court of learned Judicial Magistrate First Class, Faridabad, vide order dated 25.02.2023. Now offence under Section 103(1) of BNS has been added against him. In ***Manish Jain***'s case (supra), it was observed by Hon'ble Supreme Court that a person released on bail is already in constructive custody of law and if the law requires him to come back to custody for some specified reason, an application for anticipatory bail apprehending his arrest would not lie since there cannot be any apprehension of arrest by a person already in constructive custody of law. In ***Juber Wani***'s case (supra), the petitioner/accused had been given benefit of interim bail for commission of offence punishable under Section 489-C of IPC. Subsequently, offence under

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Section 489-D of IPC was added. He moved an application for grant of anticipatory bail, which was dismissed. It was observed that the proper course for the petitioner was to surrender before the Sessions Court and apply for grant of regular bail as he was in constructive custody of law. Reliance was placed upon *Manish Jain*'s case (supra) and it was further held that there can be no apprehension of arrest by a person, who is already in constructive custody of law.

7. The petitioner herein was extended benefit of regular bail for commission of offences punishable under Sections 191(3), 190, 115 and 126 of BNS. Subsequently, offence under Section 103(1) of BNS has been added. Accordingly, in view of ratio of law laid down in *Manish Jain*'s case and *Juber Wani*'s case (supra), the petitioner is deemed to be in constructive custody of law and as such, in the considered opinion of this Court, since the law now requires him to come back to custody on account of his committing offence under Section 103(1) of BNS, hence, an application for grant of anticipatory bail apprehending his arrest would not lie as there can be no apprehension of arrest by a person already in constructive custody of law. The proper course for the petitioner is to surrender before the Sessions Court and apply for grant of regular bail. Reliance can also be placed upon the authority cited as *Pradeep Ram vs. State State of Jharkhand and another : AIR 2019 SC 3193*, wherein it was held that it is open to the investigating agency to approach the concerned Court seeking cancellation of the bail or for obtaining an order for arrest of the accused on addition of a new offence, which shall be considered on its own merit. In the present case also, the investigating agency had moved an application before the Court of learned Judicial Magistrate First Class, Faridabad seeking re-arrest of the petitioner and the said application

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had been allowed, vide order dated 25.03.2025. As such, since an order had been passed by the Court concerned cancelling the bail of the petitioner and ordering his arresting, it would no longer be open to him to approach this Court for grant of anticipatory bail.

8. In view of the proposition of law laid down in aforesaid case and also keeping in view the gravity of the allegations levelled against the petitioner as well as the attendant facts and circumstances of the case, there is no hesitation in holding that since the petitioner was presumed to be in constructive custody of law, the prayer for grant of pre-arrest bail is not maintainable. Accordingly, finding no merit in the petition, the same is hereby dismissed.

01.09.2025*Wassem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*