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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-35683-2025
Decided on:10.07.2025

Dharmendra Upadhyay

...Petitioner

Versus

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice Rajesh Bhardwaj

Present: Mr. M.K. Sood, Advocate,
for the petitioner.

Rajesh Bhardwaj, J. (Oral)

1. Prayer in the present petition, filed under Section 482 of the BNSS, 2023, is for grant of anticipatory bail to the petitioner in a case FIR No.0601 dated 21.07.2024, registered under Section 20 of the NPDS Act, 1985 (Section 29 of the NDPS Act, 1985 added during investigation), at Police Station Sector 58, Faridabad.

2. Succinctly, the facts of the case are that the police party, while patrolling on 20.07.2024, received a secret information to the effect that Narinder Shah was involved in smuggling of Ganja and he was in possession of a commercial quantity of Ganja at his residence and if the raid was conducted, he could be apprehended along with commercial quantity of Ganja. On receiving the secret information, the police raiding party was constituted and house of Narender Shah was raided. On search of his house, 195 Kgs. 810 grams of Ganja was recovered from his house. He failed to produce any license and, thus, the FIR was registered and the investigation commenced. During investigation, the complicity of the petitioner was found and, thus, he was arrayed as an accused. Apprehending arrest, he approached the Court of the Addl. Sessions Judge, Faridabad for grant of concession of anticipatory bail, however, after hearing both the sides, the said relief was declined to him

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vide order dated 20.05.2025. Hence, aggrieved against the said order, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He submits that neither the petitioner is named in the FIR nor any recovery has been effected from him. However, he has been implicated in the present case on the basis of the disclosure statement of the co-accused Narender Shah, which is not admissible in evidence. It is submitted that the petitioner has no relationship with co-accused Narender Shah and, thus, his false implication is evident. He submits that even no *prima facie* case, as alleged, is made out against the petitioner and, thus, he deserves the concession of anticipatory bail.

4. Notice of motion.

5. On asking of the Court, Mr. Sumit Jain, Addl. A.G., Haryana, accepts notice on behalf of the respondent-State and has vehemently opposed the bail application and it has been submitted that during investigation conducted so far, the complicity of the petitioner has been found and, thus, for the free and fair investigation, his custodial interrogation is essential for unravelling the truth. He further submits that the recovery in the present case from co-accused Narender Shah is of 195 Kgs. 810 grams of Ganja, which is a heavy commercial quantity and thus, the bar under Section 37 of the NDPS Act, 1985 is attracted. He, thus, submitted that the present petition, being devoid of merit, deserves to be dismissed.

6. After hearing learned counsel for the parties and perusing the available record, it is deciphered that huge quantity of 195 Kgs. 810 grams of Ganja has been recovered from co-accused of the petitioner. During the raid by the police party, the co-accused Narender Shah was arrested who suffered his disclosure statement to the effect that the recovered contraband was provided to him by the petitioner and on his instructions, co-accused Narender Shah had

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deposited an amount of Rs.1,48,500/- in the account of the petitioner. Since the recovery effected of Ganja falls within the category of commercial quantity, therefore, bar under Section 37 of the NDPS is attracted in the present case. The contentions raised by the learned counsel for the petitioner cannot be appreciated at this stage where he has approached this Court for the grant of concession of anticipatory bail. However, the same could be appreciated at the relevant stage.

7. For the consideration of anticipatory bail, the statutory parameters are given under Section 482 (1) & (2) of BNSS which reads as under:-

“482. Direction for grant of bail to person apprehending arrest:

1. *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 the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
2. *When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including*
 - (i) *a condition that the person shall make himself available for interrogation by a police officer as and when required;*
 - (ii) *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;*
 - (iii) *a condition that the person shall not leave India without the previous permission of the Court;*
 - (iv) *such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.”*

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8. Hon'ble Supreme Court in State represented by **CBI Vs. Anil Sharma**, (1997) 7 SCC 187 has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

9. Hon'ble Apex Court in plethora of judicial precedents including **Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632**, has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of his fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which should be exercised in the extraordinary circumstances.

10. The petitioner has approached this Court praying for grant of anticipatory bail, however, Hon'ble Supreme Court in **The State of Haryana vs. Samarth Kumar, 2022 Livelaw (SC) 622** has held that in the cases like the present one, the accused may take advantage of facts like no recovery was effected from him and that he was implicated on the basis of disclosure

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statement made by the main accused, at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

11. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been *prima facie* established. The investigation is at its threshold. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

12. In view of the facts and circumstances of the present case, this Court is of the opinion that the petitioner do not qualify for exercising the extraordinary power by this Court in his favour. Resultantly, the present petition, being devoid of any merit, is hereby dismissed.

13. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

July 10, 2025
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(Rajesh Bhardwaj)
Judge

Whether Speaking/Reasoned: NO/YES
Whether Reportable: NO/YES