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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010357152026

+ **BAIL APPLN. 3149/2026**

RABIUL @ MANIA

.....Petitioner

Through: **Mr. Ayaz Ahmed, Advocate.**

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: **Ms. Shubhi Gupta, APP.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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06.08.2026

CRL.M.A. 23722/2026

1. Exemptions allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 3149/2026

1. The present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 438 of the Code of Criminal Procedure, 1973, has been preferred on behalf of the petitioner, seeking grant of anticipatory bail in FIR No. 121/2026, registered at Police Station New Friends Colony, Delhi, for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, "the NDPS Act"). The present application arises out of, and impugns, the order dated 28.07.2026 passed by the ASJ, Special Judge, NDPS, South-East



District, Saket Courts, New Delhi, whereby the applicant's first application seeking anticipatory bail was dismissed.

2. As per the case set up by the prosecution, on 27.04.2026, Head Constable Sonu, along with Constable Bishal Kumar (No. 2280/SE), while on patrol duty, reached the MCD Children's Park, D-Block, New Friends Colony, New Delhi, where they noticed a person sitting with a bag. On seeing the police party, the said person got up and started fleeing in the opposite direction. Upon being chased for about 15-20 steps, he was apprehended and, upon inquiry, was identified as Mohd. Jalaluddin S/o Mohd. Shahbuddin. On being questioned as to why he ran on sighting the police, he could not furnish any satisfactory explanation, and he was also found trying to conceal a blue-coloured bag with white spots behind his back. On being asked about the contents of the bag, he again could not offer any satisfactory reply, and it is stated that he thereafter informed the police officials that the bag contained ganja. Upon checking the said bag, a cannabis-like substance packed in polythene packets was recovered. Owing to darkness at the spot, Mohd. Jalaluddin, along with the recovered contraband, was taken to the nearby Police Post, Mata Mandir, and the present FIR came to be registered.

3. During the course of investigation, it is the case of the prosecution that the co-accused, Mohd. Jalaluddin, from whose conscious possession the contraband stood recovered, made a disclosure implicating the present petitioner as the supplier of the said contraband. Pursuant thereto, the Investigating Officer proceeded to the applicant's address, which was found locked, and it is recorded that the petitioner was found to be absconding. Three notices under Section 67 of the NDPS Act were thereafter pasted at



the applicant's address, calling upon him to join the investigation; however, the petitioner did not comply. Non-Bailable Warrants were consequently issued against the petitioner by the Trial Court, returnable for 03.07.2026, which could not be executed despite efforts, whereupon fresh Non-Bailable Warrants came to be issued.

4. Aggrieved by the aforesaid state of affairs and apprehending arrest, the petitioner approached the Trial Court seeking anticipatory bail. It was urged on his behalf that he has been falsely implicated; that neither his name nor his description finds mention in the FIR, which specifically attributes recovery to the co-accused, Mohd. Jalaluddin; that the entirety of the investigation *qua* recovery already stands completed, obviating any requirement of custodial interrogation; that he is a person of clean antecedents belonging to a respectable family; and that his implication rests solely upon the disclosure statement of the co-accused, unsupported by any independent, cogent material connecting him to the offence.

5. Additional Sessions Judge, *vide* the impugned order dated 28.07.2026, declined to extend the privilege of anticipatory bail to the petitioner. The Trial Court, in paragraphs 6 and 7 of the impugned order, took note of the fact that the applicant's involvement emerges from the disclosure statement of the co-accused, who named him as the supplier of the contraband; that upon search of his address being found locked, he was treated as absconding; that despite service of three notices under Section 67 of the NDPS Act, the petitioner neither joined the investigation nor extended cooperation; and that Non-Bailable Warrants issued against him, on two occasions, could not be executed.

6. The Trial Court further recorded that the case diary reflected the



applicant's antecedents and involvement in other criminal cases, and, on this cumulative conspectus, held that custodial interrogation of the petitioner was necessary to ascertain the source of the contraband and unravel the larger chain of the transaction, and that he did not deserve the discretionary indulgence of anticipatory bail.

7. Learned counsel appearing for the petitioner, reiterating the grounds urged before the Trial Court, submits that the petitioner has been falsely roped into the present case at the instance of a bare disclosure statement made by the co-accused, Mohd. Jalaluddin, from whom alone the contraband was recovered; that no contraband, incriminating article, or recovery whatsoever has been effected from the petitioner or at his instance; that the investigation, insofar as the seizure is concerned, already stands concluded; and that, in the absence of any independent corroborative material, a mere disclosure statement recorded under Section 67 of the NDPS Act cannot furnish the foundation to deny the petitioner the privilege of pre-arrest protection.

8. Learned counsel further submits that the petitioner is the sole bread-earner of his family, has clean antecedents, undertakes to join the investigation as and when called upon to do so, and that this is his first application for anticipatory bail, no similar relief having been sought earlier before this Court or the Supreme Court.

9. Per contra, Ms. Shubhi Gupta, learned APP for the State, opposing the grant of anticipatory bail, submits that the petitioner is stated to be the supplier of the recovered contraband and not a mere bystander to the transaction; that he deliberately evaded the investigation by remaining absent from his address despite service of three statutory notices under



Section 67 of the NDPS Act; that Non-Bailable Warrants issued against him on two separate occasions could not be executed, evidencing a sustained and continuing attempt to defeat the process of law; and that the case diary discloses his involvement in other criminal cases.

10. Learned APP submits that custodial interrogation of the petitioner is imperative to trace the source from which the contraband was procured and to unearth the larger conspiracy and money trail underlying the transaction, and that the conduct of the petitioner disentitles him to the extraordinary and equitable relief of anticipatory bail.

11. Before advertent to the facts of the present case, it would be apposite to recapitulate the well-settled principles governing the exercise of the discretionary jurisdiction to grant anticipatory bail. The foundational pronouncement on the subject remains the judgment of the Constitution Bench of the Supreme Court in **Gurbaksh Singh Sibbia v. State of Punjab**², wherein it was held that the discretion conferred upon the High Court and the Court of Session under Section 438 of the Code of Criminal Procedure, 1973 is a wide one, and ought not to be fettered by rigid, judicially-invented pre-conditions foreign to the statute.

12. The Court cautioned, however, that this wide discretion is not an unguided one, and is to be exercised having regard to the nature and gravity of the accusation, the antecedents of the applicant, and the possibility of the applicant fleeing from justice. This position was reiterated and elaborated by a three-Judge Bench in **Siddharam Satlingappa Mhetre v. State of Maharashtra**³ and was further affirmed by the Constitution Bench in

² (1980) 2 SCC 565.

³ (2011) 1 SCC 694.



Sushila Aggarwal v. State (NCT of Delhi)⁴. What emerges from this line of authority is that the grant of anticipatory bail, while premised on the salutary object of shielding an individual from humiliation and unnecessary loss of liberty at the hands of a possibly vindictive or unwarranted process of arrest, remains an equitable and extraordinary relief, granted upon a holistic assessment of the conduct of the applicant, the nature of the accusation, and the necessity, or otherwise, of custodial interrogation.

13. It further requires to be noticed that the aforesaid general principles operate within the more stringent statutory architecture of the NDPS Act. Section 37 thereof, which opens with a non-obstante clause, superimposes additional and cumulative limitations upon the ordinary power to grant bail, whether regular or anticipatory, in respect of offences to which it applies, and courts have consistently emphasised that a liberal approach to the grant of bail is uncalled for in matters involving trafficking in narcotic and psychotropic substances, having regard to the deleterious effect of such offences on the health and well-being of society. It is in this context that the conduct of the applicant seeking pre-arrest protection, including the extent of his cooperation, or lack thereof, with the investigating agency, assumes considerable significance.

14. Turning to the facts of the present case, what weighs with this Court is not merely the disclosure statement of the co-accused, Mohd. Jalaluddin, implicating the petitioner as the supplier of the contraband, but the conduct subsequently exhibited by the petitioner in the face of the investigation. The record shows that upon the Investigating Officer proceeding to the applicant's address, the same was found locked; that three notices under

⁴ (2020) 5 SCC 1.



Section 67 of the NDPS Act, calling upon the petitioner to join the investigation, were pasted at his address and remained uncomplished with; and that Non-Bailable Warrants issued against the petitioner, not once but on two occasions, could not be executed.

15. This is not the conduct of a person who harbours a mere apprehension of arrest and seeks the protective umbrella of the Court in aid of due process; it is, rather, conduct that bespeaks a sustained and deliberate design to remain beyond the reach of the investigating agency. The findings recorded by the Trial Court in paragraphs 6 and 7 of the impugned order, to this effect, therefore, do not warrant interference:-

“6. The allegations against the applicant/accused are serious in nature. As per the report of IO, during investigation the co-accused Mohd. Jalaluddin, from whose possession the illegal contraband i.e. 'ganja' was recovered, disclosed the name of the present applicant/accused as the supplier of the said contraband. Thereafter, the search of the applicant/accused was conducted at his address, but his address was found locked and he was found absconding. Three notices u/s 67 NDPS Act were pasted at his address to join the investigation however, the applicant/accused has not joined the investigation of the case and deliberately evading the investigation.

7. Further during the course of arguments, it was brought to the notice of this Court that NBW's against the applicant/accused were issued by this court, returnable for 03.07.2026 and thereafter, on execution of NBW' efforts were made to find him but he could not be traced out and further vide order dated 03.07.2026, fresh NBWs against the applicant/accused were also issued by this court. The present applicant/accused is alleged to be the source of the recovered contraband and that the custodial interrogation of the applicant/accused is very much required to ascertain the other source of contraband and to unearth the chain of money trail.”

16. Learned counsel for the petitioner has placed considerable emphasis on the circumstance that no recovery has been effected from the petitioner and that his implication rests solely upon the disclosure statement of the co-accused, seeking to invoke, in aid of this submission, the ratio of the



Supreme Court in ***Tofan Singh v. State of Tamil Nadu***⁵, wherein it was held that a statement recorded by an officer under Section 67 of the NDPS Act, being in the nature of a confession made to an officer who is, for this purpose, to be treated as a police officer, cannot be treated as a confessional statement admissible in evidence against the maker or a co-accused. This very submission, however, came to be considered and expressly repelled by the Supreme Court in ***State of Haryana v. Samarth Kumar***⁶, a decision this Court considers dispositive of the present controversy.

17. In ***Samarth Kumar*** (supra), the High Court of Punjab and Haryana had granted pre-arrest bail to the respondents, who stood implicated under Sections 17, 27A, and 85 of the NDPS Act, on the singular ground that no recovery had been effected from them and that they had been named only in the disclosure statement of the main accused, placing reliance on the majority view in ***Tofan Singh*** (supra). Setting aside the said orders, the Supreme Court held that:-

“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC 1.”

18. Repelling this very reasoning, the Supreme Court, while allowing the appeals of the State, observed as follows:

“8. In cases of this nature, *the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra)*, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

⁵ (2021) 4 SCC 1.

⁶ (Criminal Appeal No. 1005 of 2022, arising out of SLP (Crl.) No. 6575 of 2021, decided on 20.07.2022).



9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

[Emphasis Supplied]

19. The aforesaid pronouncement is of direct and binding application to the case at hand. The Supreme Court, while not disturbing the evidentiary position enunciated in **Tofan Singh** (supra) *qua* the admissibility of a Section 67 statement at trial, has authoritatively clarified that the said decision furnishes no ground, by itself, for the grant of anticipatory bail, and that its benefit, if any, is available to an accused only at the stage of regular bail, after the filing of the charge-sheet, or at the culmination of trial, and not at the anterior, pre-arrest stage.

20. The reason for this distinction is straightforward. Whether a Section 67 statement is admissible is a question that goes to proof of guilt, and that question can only be meaningfully examined once the investigation has actually proceeded and produced a charge-sheet, or at trial. It cannot be raised at the pre-arrest stage to short-circuit an investigation before it has even begun, and this is truer still where, as here, the applicant has not submitted to the investigation but has actively evaded it. Were it otherwise, anticipatory bail would become a means of shielding an absconding accused from investigation altogether, which is not the object either of the NDPS Act or of the ratio laid down in **Samarth Kumar** (supra).

21. The circumstance that the petitioner has, on his own showing, remained unavailable to the investigating agency despite service of notices under Section 67 of the NDPS Act, and that Non-Bailable Warrants issued against him could not be executed on two occasions, further militates against



the grant of anticipatory bail. It is well settled that the grant of anticipatory bail is an equitable relief, and a person who deliberately evades the process of investigation, rendering execution of coercive process against him impossible, cannot, ordinarily, be permitted to simultaneously invoke the protective jurisdiction of this Court.

22. Custodial interrogation of the petitioner, in the considered opinion of this Court, is warranted, having regard to his role as the person alleged to have supplied the contraband, so as to enable the investigating agency to trace the source thereof and to ascertain the larger chain of the transaction, an exercise that cannot fruitfully be undertaken absent his presence before the Investigating Officer.

23. For the reasons aforesaid, this Court finds no infirmity in the view taken by the Trial Court in the order dated 28.07.2026. The present application, being devoid of merit, is accordingly dismissed. It is, however, clarified that the observations made hereinabove are confined to the disposal of the present application and shall have no bearing on the merits of the case.

24. The application stands dismissed. Pending applications, if any, also stand disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 6, 2026

tr/nk