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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC011056942025**+ **BAIL APPLN. 5001/2025 & CRL.M.A. 38493/2025**Date of Decision: **24.08.2026****IN THE MATTER OF:**

VIVEK JAIN

.....Petitioner

Through: Mr. Rahul Sharma and Ms. Chanchal
Jakhar, Advs.

versus

STATE (GOVT. OF N.C.T. OF DELHI)

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for
the State.
SI Amrendra, ANTF/Crime Branch.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. This order shall dispose of an application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ['BNSS'] (corresponding to Section 438 of the erstwhile Code of Criminal Procedure, 1973), whereby the applicant, Vivek Jain, seeks anticipatory bail in connection with FIR No. 122/2025, registered at Police Station Crime Branch, Delhi, for offences under Sections 20(b)(ii)(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ['NDPS Act']. The present application has been preferred consequent upon dismissal of the applicant's anticipatory bail

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application by the Special Judge (NDPS)/Additional Sessions Judge, North-East District, Karkardooma Courts, Delhi, vide order dated 20.12.2025 passed in Bail Matter No. 1064/2025, titled '*State v. Vivek Jain*'.

2. The genesis of the prosecution's case lies in secret information received by ASI Mukesh, pursuant to which a truck was intercepted at Sonia Vihar, Delhi, on 20.05.2025. Two persons, namely Intejar Malik and Rizwan, who were found driving/accompanying the said vehicle, were apprehended and found in conscious possession of 348.176 kg of ganja, concealed in seventeen plastic bags amidst a consignment of watermelons. FIR No. 122/2025 was registered on the strength of the said recovery, and a chargesheet has since been filed against Malik and Rizwan. It is not in dispute that neither of them named the present applicant at any stage of investigation, nor was the applicant named in the FIR.

3. Approximately five months later, on 08.10.2025, one Raghuveer Roy was arrested. During interrogation, Raghuveer Roy is stated to have made a disclosure implicating the applicant, alleging that 150 kg out of the 348.176 kg of ganja recovered on 20.05.2025 was destined to be delivered to him. It was on the strength of this disclosure that notices came to be issued to the applicant. On his failure to appear despite service and raids at his premises, proceedings under Section 84 of the BNSS were set into motion against him, and non-bailable warrants were procured, which, on the applicant's own showing, have remained unexecuted.

4. The applicant thereupon moved an application for anticipatory bail before the Special Judge. Upon consideration of the status report filed by the State, the Special Judge, vide order dated 08.12.2025, directed the applicant to join investigation and further directed that no coercive action be taken

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against him meanwhile. In compliance, the applicant joined investigation between 11.12.2025 and 15.12.2025. A fresh status report was thereafter filed by the Investigating Officer on 16.12.2025, and interim protection was extended. Eventually, the Special Judge, *vide* the impugned order dated 20.12.2025, declined to grant anticipatory bail to the applicant, giving rise to the present application.

5. Mr. Rahul Sharma, learned counsel for the applicant, submits that the applicant has been falsely implicated solely on the strength of the disclosure statement of a co-accused, and that such a statement, being one recorded under Section 67 of the NDPS Act, is inadmissible in evidence as a confession qua a co-accused, in view of the law declared in ***Tofan Singh v. State of Tamil Nadu***¹ and ***Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence***². He submits that no recovery whatsoever has been effected from the applicant, and that he stands on an altogether different footing from Malik, Rizwan and Roy, from whose possession the contraband was actually recovered.

6. Learned counsel further submits that the bank transactions relied upon by the prosecution, said to be of a few thousand rupees during 2024-25 between the applicant and Raghuveer Roy, do not *ipso facto* establish complicity, more so as there is no material to show that the amount in question was deposited by the applicant himself. The alleged visits of the applicant to Raghuveer Roy in jail, said to date to the year 2020, are denied for want of corroborative material. It is also submitted that a rent agreement of the year 2024 furnishes no rational basis to implicate the applicant in an

¹(2021) 4 SCC 1.

²Criminal Appeal No. 949/2018, decided on 31.07.2018.



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offence alleged to have occurred in 2025, that the chargesheet against the principal accused has already been filed, and that custodial interrogation of the applicant is consequently unnecessary. The applicant, it is submitted, has consistently cooperated, having appeared before the Investigating Officer as and when required after being granted interim protection.

7. On the question of antecedents, it is submitted that the applicant stands discharged in one of the two matters referred to by the prosecution and has been enlarged on regular bail in the other, and that neither, therefore, constitutes a conviction or an antecedent of the kind that would disentitle him to anticipatory bail.

8. Mr. Sharma also places reliance on the decisions of the Supreme Court and of this case and on the strength of these decisions, he submits that the disclosure statement as well as the CDR etc. should not be the sole factor to establish the complicity of the accused persons.

9. The reference is made to the decision in the cases of **Babli v. State of NCT of Delhi**, in Bail Appl. 3258/2023, **Shyam Gupta and Ors. v. State** in Crl. Rev. P. 421/2019, **Surinder Kumar Khanna v. Intelligence Officer Directoreate of Revenue Intelligence** in Crl. Appeal No.949/2018, **Kishan Singh v. State of Rajasthan** in Crl. Rev.P. 49/1994, **Amrik Singh v. State** in CRM-M No.48484, **Laddi Singh @ Charan v. State of Punjab** in CRM-M-1607-2019, **Satish v. State of Harayana** in CRM-M-3240-2017, **Md. Irshad v. State NCT of Delhi** in Bail Appl. 994/2022, **Mohit Aggarwal v. NCB** in Bail Appl. 2585/2020, **Amit Ranjan v. NCB** in Bail Appl. 1189/2020, **Vikas @ Vicky v. State of Haryana**, CRM-M-24236/2023, **Mamta Sapra v. The State Govt. of NCT of Delhi** in Crl. Rev. P. 294/2023, **Prabhakar Tewari v. State of U.P. & Anr.** in Crl. Appeal No. 152/2020 and **Asha Dueby v. State**

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of Madhya Pradesh in Crl. Appal. No. 4564/2024.

10. The application is vehemently opposed by Mr. Naresh Kumar Chahar, learned APP for the State. He submits, at the outset, that 348.176 kg of ganja recovered in the present case is a quantity far in excess of the commercial quantity of 20 kg prescribed for ganja under the notification issued under the NDPS Act, and that the rigours of Section 37 of the NDPS Act are consequently and squarely attracted.

11. Learned APP submits that the applicant's implication does not rest on the disclosure statement of Raghuveer Roy alone. Referring to the status reports and the reply filed by the Investigating Officer, he submits that there exists Call Detail Record [CDR] connectivity between the applicant and the co-accused persons across as many as seven mobile numbers, for which the applicant has offered no explanation. That unexplained financial transactions passed between the applicant and Raghuveer Roy during 2024-25; and that the visitor's register of the prison at Hyderabad where Raghuveer Roy was lodged records three visits paid by the applicant to Raghuveer Roy, on 25.02.2020, 26.02.2020 and 06.03.2020, during which the applicant is recorded to have described himself as Raghuveer Roy's brother/friend, a description the applicant does not claim to be accurate.

12. It is further submitted that the applicant did not join investigation despite repeated notices and raids at his premises, resulting in issuance of non-bailable warrants and initiation of proceedings under Section 84 of the BNSS, which remain unexecuted. Additionally, upon eventually joining investigation, the applicant furnished no fruitful information and did not disclose his use of seven SIM cards; and that the applicant's complicity is also to be viewed against the backdrop of his prior involvement in two other

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cases registered under the NDPS Act i.e., FIR No. 169/2018 and FIR No. 265/2024, both for offences under Sections 20/25/29 of the NDPS Act. It is submitted that custodial interrogation of the applicant is essential to unearth the full extent of the drug trafficking network, that investigation is presently at a nascent stage, and that release of the applicant at this stage would seriously prejudice the same.

13. I have heard learned counsel for the applicant and learned APP for the State at considerable length and have perused the record.

14. At the outset, it is necessary to record that the quantity of contraband allegedly recovered in the present case, 348.176 kg of Ganja, is, without doubt, commercial quantity within the meaning of the NDPS Act, being over seventeen times the threshold of 20 kg prescribed therefor. The rigours engrafted in Section 37 of the NDPS Act are, therefore, squarely attracted to the present application, notwithstanding that it is one for anticipatory, and not regular, bail.

15. The Supreme Court, in ***Union of India v. Ram Samujh and Anr.***,³ while considering the scope of Section 37 of the NDPS Act, observed as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while the persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and deadly impact on the society; they are hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely.

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the

³(1999) 9 SCC 429.



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NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail, are satisfied. ... Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended."

16. It is well settled, and has since been reiterated by the Supreme Court, that the power to grant anticipatory bail is an extraordinary power, to be exercised with circumspection, and cannot be equated with the ordinary rule that bail, and not jail, is the norm.

17. In **Srikant Upadhyay & Ors. v. State of Bihar & Anr.**,⁴ the Supreme Court held:-

"30. ... the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. ... At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

18. The observations extracted above assume particular significance on the facts of the present case, inasmuch as it is not in dispute that non-bailable warrants were procured against the applicant, and proceedings



under Section 84 of the BNSS, which is in *pari materia* with Section 82 of the erstwhile Code of Criminal Procedure, 1973, providing for proclamation against a person absconding or concealing himself to avoid arrest, were initiated against him on account of his failure to join investigation despite service of notices and raids at his premises.

19. On the applicant's own showing, the said non-bailable warrants and proclamation proceedings remain outstanding and unexecuted. In light of the law declared in **Srikant Upadhyay** (supra), this circumstance, by itself, considerably diminishes the applicant's entitlement to invoke the extraordinary remedy under Section 482 BNSS.

20. On the factors germane to the exercise of the discretion to grant or refuse bail, the Supreme Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee**⁵ has authoritatively laid down the following parameters, which this Court is required to bear in mind:-

"9. ... It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

21. Similarly, in **Lavesh v. State (NCT of Delhi)**,⁶ it was held as under:-

Before considering the claim of the appellant, it is useful to refer Section 438 of the Code relating to grant of bail to a person who is apprehending arrest which reads as under:

⁴2024 SCC OnLine SC 282.

⁵(2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765.

⁶(2012) 8 SCC 730.



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“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.” It makes it clear that in a non-bailable offence if a person has reason to believe that he may be arrested, he is free to apply to the High Court or the Court of Session praying that in the event of such arrest, he shall be released on bail. The belief that the applicant may be arrested must be founded on reasonable grounds. While considering such a request, the Court has to take into consideration the nature and the gravity of the accusation, antecedents, possibility of the applicant to flee from justice etc. Further, normally, the Court should not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her in-laws was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the Court.

22. Turning to the principal plank of the applicant’s defence, that his implication rests solely on the disclosure statement of a co-accused, which is inadmissible under Section 67 of the NDPS Act in view of **Tofan Singh** (supra) and **Surinder Kumar Khanna** (supra). This Court finds that the said contention, even assuming it to be correct in principle, does not avail the

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applicant at the present, anticipatory-bail stage. The Supreme Court, in ***State of Haryana v. Samarth Kumar***⁷, was confronted with materially similar facts, where pre-arrest bail had been granted by the High Court solely on the ground of absence of recovery and implication only through the disclosure statement of a co-accused, in reliance upon ***Tofan Singh*** (supra). Setting aside the grant of pre-arrest bail, the Supreme Court held as under:-

“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.

...

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.”

[Emphasis Supplied]

23. The ratio of ***Samarth Kumar*** (supra) is unambiguous. The evidentiary inadmissibility of a co-accused’s disclosure statement, as expounded in ***Tofan Singh*** (supra), is a matter to be agitated at the stage of regular bail or at the conclusion of trial, and cannot be pressed into service to claim anticipatory bail.

24. In any event, and quite apart from the applicability of ***Samarth Kumar*** (supra), this Court is unable to accept the submission that the applicant’s implication rests on the disclosure statement of Raghuveer Roy alone. The record discloses independent, corroborative circumstances, namely: (a) CDR connectivity between the applicant and the co-accused

⁷2022 SCC OnLine SC 2087.



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persons across seven mobile numbers; (b) financial transactions between the applicant and Raghuveer Roy during 2024-25, for which no explanation has been furnished; and (c) an official prison visitor's register recording three visits paid by the applicant to Raghuveer Roy in the year 2020, during which the applicant is recorded to have represented himself as Raghuveer Roy's brother/friend, a relationship he does not assert to be genuine.

25. The applicant's bare denial of these jail visits, unaccompanied by any explanation as to how his identity came to be recorded in an official prison register on more than one occasion, does not, at the *prima facie* stage, dislodge the presumption of regularity ordinarily attaching to such official records. If anything, the misdescription of the relationship in the register, a description the applicant himself does not claim to be accurate, raises a serious question as to the propriety and antiquity of the applicant's association with Raghuveer Roy, and lends credence to the prosecution's case that the two were connected well before the date of recovery of the contraband.

26. It is well settled that criminal antecedents of an accused constitute a relevant factor bearing upon the 'likelihood of committing an offence while on bail', the second limb of Section 37(1)(b)(ii) of the NDPS Act, as recognised in **Prasanta Kumar Sarkar** (supra) and **Lavesh** (supra). In the present case, it is the stand of the State that the applicant's name figures in two other FIRs registered under the NDPS Act i.e., FIR No. 169/2018 and FIR No. 265/2024, both for offences under Sections 20/25/29 of the NDPS Act.

27. While it is true, as submitted by learned counsel for the applicant, that he stands discharged in one of these matters and has been enlarged on

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regular bail in the other, and that neither amounts to a conviction, the recurrence of the applicant's name across three FIRs registered under the same special enactment is a circumstance this Court cannot be oblivious to while forming an opinion on the 'reasonable grounds' contemplated under Section 37(1)(b)(ii) of the NDPS Act.

28. Insofar as learned counsel for the applicant places reliance on the decisions noticed above, this Court finds, on a careful examination, that none of them assists the applicant on the facts of the present case. **Shyam Gupta** (supra), **Kishan Singh** (supra) and **Mamta Sapra** (supra) arose out of challenges to orders framing charge and do not bear on the grant of anticipatory bail. **Surinder Kumar Khanna** (supra) was rendered in appeal against a judgment of conviction, at the stage of final adjudication of guilt, and consequently does not detract from the position in **Samarth Kumar** (supra) that such a plea is unavailable at the anticipatory-bail stage.

29. **Mohit Aggarwal** (supra), **Amit Ranjan** (supra), and **Vikas @ Vicky** (supra), were all applications for regular, and not anticipatory, bail, a distinction of substance, given the qualitatively more circumscribed remedy that Section 438 Cr.P.C./482 BNSS represents. **Prabhakar Tewari** (supra) and **Asha Dubey** (supra) did not arise under the NDPS Act at all.

30. That leaves **Babli** (supra), **Amrik Singh** (supra), **Laddi Singh** (supra), **Satish** (supra) and **Md. Irshad** (supra) being decisions concerning anticipatory bail under the NDPS Act; none of them, however, involved an accused against whom non-bailable warrants and proclamation proceedings were pending, or whose implication by disclosure statement stood corroborated by CDR connectivity, unexplained financial transactions and an official record of undisclosed jail visits to a co-accused, or who carried



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the antecedent of prior involvement in two similar FIRs. The facts of the present case are, in that sense, materially and qualitatively distinguishable from the decisions relied upon.

31. It also bears notice that the Supreme Court, on facts bearing close resemblance to those at hand, where an accused not named in the FIR was subsequently implicated purely on a co-accused's disclosure statement in a case involving recovery of commercial quantity, declined, as recently as 07.07.2025, to interfere with refusal of anticipatory bail, observing that "*anticipatory bail is never granted in NDPS case*", in ***Dinesh Chander v. State of Haryana***⁸. While the applicant in the present case stands on a weaker footing still, the observation reinforces the stringent approach courts are enjoined to adopt while considering pre-arrest bail in offences of this nature.

32. This Court is equally mindful that no straitjacket formula can be prescribed for the exercise of discretion under Section 438 Cr.P.C./482 BNSS, and that each case falls to be examined on its own facts, as held in ***Pravinbhai Kashirambhai Patel v. State of Gujarat***⁹. Tested on that anvil, the cumulative effect of the commercial quantity of contraband recovered, the corroborated nature of the applicant's implication, his continued non-cooperation and evasion resulting in outstanding non-bailable warrants and proclamation proceedings, and his antecedent involvement in two similar FIRs, persuades this Court that custodial interrogation of the applicant is necessary to unearth the full extent of his role and the larger conspiracy, and that this is not a case warranting exercise of the extraordinary jurisdiction to

⁸SLP (Crl) No. 9540/2025, order dated 07.07.2025.

⁹(2010) 7 SCC 598.



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grant anticipatory bail.

33. For the reasons recorded above, this Court is of the considered opinion that the applicant has failed to make out reasonable grounds for believing that he is not guilty of the offence alleged, and has equally failed to demonstrate that he is not likely to commit any offence while on bail. The twin conditions engrafted in Section 37(1)(b)(ii) of the NDPS Act are, therefore, not satisfied, and the applicant does not deserve the concession of anticipatory bail. Unless the applicant surrenders and is taken into custody, the entire investigation will not be taken to its logical conclusion.

34. The present application, along with the connected application being Crl. M.A. 38493/2025, is accordingly dismissed. Any interim protection granted to the applicant during the pendency of these proceedings shall stand vacated with immediate effect.

35. If the applicant surrenders and applies for regular bail, let the same be considered in accordance with law.

36. Application stands disposed of. Pending application is also disposed of.

PURUSHAINDRA KUMAR KAURAV, J

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