



210 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8071-2025
Date of decision: 08.05.2025

BILAL CHAUDHARY

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarun Chawla, Advocate for
 Mr. Mandeep Nehra, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Instant petition is preferred under Section 482 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking anticipatory bail
in FIR No.24 dated 25.01.2025 under Sections 21 & 25 of the Narcotic Drugs
and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at
Police Station Kunjpura, District Karnal.
2. On 13.02.2025, following order was passed:

*"Instant petition is preferred under Section 482 of
Bharatiya Nagarik Suraksha Sanhita, 2023 (for short
'BNSS') seeking anticipatory bail in FIR No.24 dated
25.01.2025 under Sections 21 & 25 of the Narcotic Drugs
and Psychotropic Substances Act, 1985 (for short 'NDPS
Act'), registered at Police Station Kunjpura, District
Karnal.*

*Learned counsel for the petitioner, inter alia,
contends that the petitioner is having clean antecedents
and he is not involved in any other case under NDPS Act.
Admittedly, the alleged contraband was recovered from
exclusive possession of co-accused and the same does not
fall within the ambit of commercial quantity. The petitioner*



was not named in the FIR (supra) and he has been nominated as accused only on the basis of disclosure statement of co-accused while he was in police custody and such statement has no evidentiary value in the eyes of law, as the same is hit by Section 25 of Indian Evidence Act (now Section 23(1)(2) of Bharatiya Sakshya Adhiniyam, 2023).

Notice of motion for 12.03.2025.

Keeping in view the ratio of law enunciated by the Hon'ble Supreme Court in Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2010 SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR (Criminal) 833, the petitioner is directed to appear before Investigating Officer within a period of two weeks from today and thereafter, as directed by the Investigating Officer. In the event of arrest, the petitioner will be admitted to interim anticipatory bail on furnishing bail/surety bonds to the satisfaction of Investigating/Arresting Officer. The petitioner shall cooperate with the investigation/Arresting Officer and abide by the conditions as provided under Section 482(2) of BNSS (erstwhile Section 438(2) of the Code of Criminal Procedure, 1973).

If the Arresting Officer does not permit the petitioner to join the investigation, he would appear before learned Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in the investigation, in terms of the order of this Court.

Nothing observed hereinabove shall be construed as an expression of opinion by this Court and learned trial Court shall decide the case on its own merits, strictly in accordance with law."

3. On 12.03.2025, learned State counsel informed this Court that the petitioner has joined the investigation, however, he is not co-operating and the



Supervisory Officer of the jurisdictional police station was directed to file his affidavit regarding in what manner, the petitioner was not co-operating and for what purpose his custodial interrogation was required. In compliance thereof, affidavit was filed. A perusal of the status report filed by respondent-State reveals that the petitioner was subjected to lengthy interrogation and it was submitted in the affidavit that during the investigation, he gave evasive replies, as such, the petitioner has misused the concession of interim anticipatory bail granted by this Court vide order dated 13.02.2025. It is further indicated in the affidavit that call detail records of the co-accused and the petitioner were obtained and perusal of the same reveals that there was a conversation between the co-accused and petitioner on several occasions. However, the petitioner has denied the same.

4. In view of the above, it is clear that the petitioner has joined the investigation. Further, he is not involved in any other case and there is no concrete evidence except the disclosure statement made by co-accused, which has no evidentiary value in the eyes of law and the same is hit by Sections 26 and 27 of the Evidence Act. Furthermore, under the garb of co-operation with the investigating agency, a person cannot be compelled to admit his guilt or testify against himself by making a self-incriminatory statement.

5. This Court has observed a curious trend where the jurisdictional police authorities deem the bail applicant to be uncooperative merely because he would not confess to his guilt. Article 20(3) of the Constitution of India categorically provides protection against self incrimination, which reads as follows:



Article 20- Protection in respect of conviction for offences

(3) No person accused of any offence shall be compelled to be a witness against himself.

A Constitution Bench, consisting of eleven Judges, of the Hon'ble Supreme Court in ***The State of Bombay vs. Kathi Kalu Oghad, 1961 AIR Surpeme Court 1808***, clarified the scope of Article 20(3) of the Constitution and speaking through Justice B.P. Sinha, opined as follows:

"10. To be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification. "Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution makers for the simple reason that-though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English Law on the subject-they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice...

11. ...Evidence has been classified by text writers into three categories, namely, (1) oral testimony; (2) evidence furnished by documents; and (3) material evidence. We have already indicated that we are in agreement with the Full Court decision in Sharma's case, that the prohibition in clause (3) of Article 20 covers not only oral testimony given by a person accused of an offence but also his written statements which may have a bearing on the controversy with reference to the charge against him. The accused may have documentary evidence in his possession which may throw light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of Section 139 of the Evidence Act, which, in terms, provides that a person may be summoned to produce a document in his possession or power and that he does not become a witness by the mere fact that he has produced it; and therefore, he cannot be cross-examined. Of course, he can be cross-examined if he is called as a witness who has made statements conveying his



*personal knowledge by reference to the contents of the document or if he has given his statements in Court otherwise than by reference to the contents of the documents. In our opinion, therefore; the observation of this court in Sharma's case, that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well-founded in law. **It is well established that clause (3) of Article 20 is directed against self-incrimination by an accused person. Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.** ...” (emphasis added)*

6. Further, a Constitution Bench of the Hon’ble Supreme Court in *Selvi vs. State of Karnataka (2010) 7 SCC 263* and a Division Bench of this Court in *Dewan Singh @ Ram Singh vs. State of Haryana 2023(4) R.C.R. (Criminal) 17*, have categorically held that there is a distinction between the physical evidence and testimonial evidence. . While there is no bar in directing the accused to give any physical evidence such as his fingerprints, blood sample, signatures specimen etc, he cannot be expected to make self-inculpatory statements as that would amount to testimonial compulsion.

7. It appears that under the garb of non-cooperation during investigation, the investigating agency is compelling the petitioner to make self-incriminating statements. It is the duty of the Investigating Officer to conduct a fair, impartial, and thorough investigation by gathering all relevant evidence, both oral and documentary, to establish the truth of the matter. Relying solely on self-incriminating statements made by the accused is not only legally unsound but also contrary to the principles of natural justice and fair trial. It is the responsibility of the investigating officer to actively seek out such corroborative material and build a case based on objective findings rather than mere admissions, which may be influenced by coercion, fear, or



misunderstanding. Opposing the release of an accused on bail solely because he refuses to testify against himself is a draconian practice that, in good conscience, cannot be allowed to continue unchecked by this Court.

8. Keeping in view the fact that the petitioner has joined the investigation, the order dated 13.02.2025, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 482(2) BNSS, 2023 (*Erstwhile Section 438(2) Cr.P.C.*)

9. The petition is accordingly disposed of.

10. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

May 08, 2025
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No