



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

CRM-M-8247-2025
Date of decision: 08.05.2025

DARPAN

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Grewal, 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.7 dated 04.01.2025 under Sections 420, 506, 120-B of the Indian Penal Code, 1860 (now Sections 318(4), 351(2), 61(2) of the Bharatiya Nyaya Sanhita, 2023), registered at Police Station Gandhi Nagar, District Yamuna Nagar.

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.7 dated 04.01.2025 under Sections 420, 506, 120-B of the Indian Penal Code, 1860 (now Sections 318(4), 351(2), 61(2) of the Bharatiya Nyaya Sanhita, 2023), registered at Police Station Gandhi Nagar, District Yamuna Nagar.

Learned counsel for the petitioner, inter alia, contends that the petitioner is working as Deed Writer and he has no connection with the dispute between the complainant and other accused. The role of the petitioner is limited to the extent of arranging a meeting between the



complainant and main accused, who is a property dealer. The petitioner is not beneficiary of the alleged fraud. Further, the maximum sentence provided for the offences, under which the FIR (supra) is registered, is punishable upto 07 years and no notice under Section 35(3) of BNSS [erstwhile Section 41-A of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')] has been served upon the petitioner. The petitioner is having clean antecedents and is not involved in any other case.

Notice of motion.

Ms. Geeta Sharma, DAG, Haryana, who is present in the Court, accepts notice on behalf of the respondent-State and Mr. Balkar Singh, Advocate appears on behalf of the complainant and files his Vakalatnama in the Court today, which is taken on record. Registry is directed to tag the same at the appropriate place of the case file.

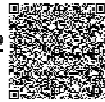
Learned counsel for the complainant vehemently opposes the prayer for grant of anticipatory bail to the petitioner on the ground that he is member of a gang, whose kingpin is co-accused, who is involved in 17 more cases.

Learned State counsel, however, could not controvert the fact that the petitioner is not involved in any other case.

Adjourned to 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 Cr.P.C.).

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. A perusal of the status report filed by respondent-State reveals that nothing has been indicated to answer the query of this Court, in terms of the order passed by this Court on 12.03.2025. Rather, an attempt has been made to show that the petitioner is not co-operating in the investigation and his custodial interrogation is required, merely because he has not admitted to his guilt. The status report has been filed in a most casual and cavalier manner and does not meaningfully assist this Court in any way. The jurisdictional police authorities, especially an IPS officer, must be held to high standards by this Court, owing to the crucial duty they discharge in service of the public. Thus, such conduct on part of Additional Superintendent of Police, Yamunanagar, must be depreciated in no uncertain terms.

4. 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.** For example, the accused person may be in possession of a document which is in his writing or which contains his signature or his thumb impression. The production of such a document, with a view to comparison of the writing or the signature or the impression, is not the statement of an accused person, which can be said to be of the nature of a personal testimony. When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony.' The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation, cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness.'"

5. 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.

6. 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.

7. Keeping in view the fact that the petitioner has joined the investigation in compliance of the order passed by this Court on 13.02.2025, 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.*)

8. The petition is accordingly disposed of.

9. 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

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