



108

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

**CRM-M No.22053 of 2025
Date of Decision: 25.04.2025**

Akash @ Ravi**..... Petitioner****Versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Yajur Sharma, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed praying for the grant of anticipatory bail to the petitioner in case bearing FIR No.25, dated 25.03.2025, under Sections 22 & 29 of NDPS Act, 1985, registered at Police Station Garhdiwal, District Hoshiarpur (Annexure P-1). Further prayer has been made for staying the arrest of the petitioner during the pendency of the present petition.

2. Succinctly the facts of the case are that the police party while on patrolling on 25.03.2025, saw a person coming while he was carrying a plastic gunny bag in his right hand. On seeing the police, he got perplexed and threw the bag being carried by him. Suspecting him to be carrying some contraband, he was apprehended and on asking, he disclosed his name as Vansh, son of Dildar Masih. On giving the offer,



search of the plastic gunny bag was carried out and intoxicant powder weighing 265 grams was recovered from the same. He failed to produce any licence regarding the conscious possession of the same. Hence the FIR was registered and he was arrested on the spot. During the investigation, complicity of the petitioner was disclosed by the co-accused and the offence under Section 29 of NDPS Act was added. Thus, the petitioner was arrayed as an accused in the present case. Apprehending his arrest, the petitioner approached the Court of learned Judge, Special Court, Hoshiarpur praying for the grant of anticipatory bail. However after hearing both the sides, the learned Judge, Special Court, Hoshiarpur dismissed the petition filed by the petitioner vide his order dated 22.04.2025. Hence being aggrieved, the petitioner is before this Court by way of filing the present petition praying for the grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that neither the petitioner is named in the FIR nor any recovery has been effected from him and thus he has been falsely implicated in the present case. He has submitted that the intoxicant powder weighing 265 grams has been recovered from the co-accused, Vansh and thus, the only evidence against the petitioner is the disclosure statement of co-accused, which is not an admissible evidence.

4. Notice of motion.

5. On asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State. He, on the other hand has vehemently opposed the submissions made by



learned counsel for the petitioner. He has submitted that on due compliance of mandatory provisions of NDPS Act, the intoxicant powder weighing 265 grams was recovered from the co-accused. During the investigation, complicity of the petitioner has been found. He has submitted that though the FSL report is awaited, however the petitioner is a habitual offender as he is involved in 05 more cases, out of which 03 are of the similar nature being under the NDPS Act. He has submitted that the investigation is at threshold and thus, no case for the grant of anticipatory bail to the petitioner is made out and the present petition being devoid of merit deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner has been arrayed as an accused in the present case on the basis of disclosure statement of co-accused. Though the FSL report is awaited, however the Court cannot ignore the fact that the petitioner is already facing prosecution in 05 other cases. The investigation is at threshold.

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

“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."*

9. As per the law settled by the Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab***, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

“31. *In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid*



down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

10. The Hon'ble Supreme Court in ***State Vs. Anil Sharma***, (1997) 7SCC 187, 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 ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.*”

11. 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 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.



12. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioners has been prima facie found. Needless to say, the investigation is at the initial stage and in the facts and circumstances, custodial interrogation of the petitioner would be essential and granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation. The contentions raised by learned counsel for the petitioner could be appreciated at the relevant stage and not at the present stage.

13. In view of the overall facts and circumstances of the case, the petitioner does not qualify for the grant of anticipatory bail and the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

25.04.2025

rittu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(RAJESH BHARDWAJ)
JUDGE