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

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Date of decision: 25.08.2025

Sahil @ Shammi

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Raj Kumar Gupta, Advocate for the petitioner.

Mr. Gaurav Gurcharan S. Rai, Sr. DAG Punjab.

SUMEET GOEL, J. (Oral)

1. The present petition is the second attempt under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'the BNSS') for grant of pre-arrest/anticipatory bail to the petitioner in case bearing FIR No.207 dated 19.11.2024, registered for the offences punishable under Section 15 of the NDPS Act at Police Station Mahilpur, District Hoshiarpur.

The petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court which was dismissed as withdrawn on 28.05.2025. The relevant part of said order reads as under:-

"This is a petition under Section 482 BNSS seeking anticipatory bail to the petitioner in FIR No.207 dated 19.11.2024 under Section 15 NDPS Act, P.S. Mahilpur, District Hoshiarpur.

After arguing for some time, learned counsel for the petitioner prays for withdrawal of the present petition.

Prayer is accepted.

Dismissed as withdrawn."



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Thereafter, the present petition i.e. the second petition for grant of anticipatory/pre-arrest bail has been preferred by the petitioner on 20.08.2025.

2. The gravamen of the FIR in question reflects that on the day of occurrence, ASI Gurnek Singh, alleged that while present at the police station, he received reliable secret information that Sahil @ Shammi (petitioner herein) had stored poppy husk in his cattle haveli for sale. The information was entered in the rojnamcha and conveyed to the senior officers. Pursuant thereto, the police party proceeded to the spot with the investigation kit. On seeing the police party, the accused-petitioner allegedly fled from the spot. An independent witness, namely Ravinder Singh (Panchayat Member) was associated and on search of the haveli premises, three black bags were recovered from beneath a haystack near the cattle feeding area. On weighing, the total contraband came to 54.892 kg of poppy husk. The bags were sealed with the seal "GS", numbered 1 to 3 and taken into police custody vide recovery memo signed by the witnesses. The seal was thereafter handed over to ASI Balbir Singh. On the basis of aforesaid recovery, it was alleged that the accused-petitioner had committed an offence under Section 15, 61, 85 of the NDPS Act. On these set of allegations, instant FIR was registered.

3. Learned counsel for the petitioner has iterated that the present FIR is vitiated *ab initio* as it was allegedly registered on secret information received after sunset. Learned counsel has further iterated that the mandatory requirements under Section 42 of the NDPS Act have never been complied with which amounts to a case of complete non-compliance with the statutory safeguards and hence rendering the prosecution case

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unsustainable in law. Learned counsel has further submitted that the alleged conscious possession and identification of the petitioner is baseless and unsupported by any corroborative or incriminating evidence. In the absence of credible material, the version of the prosecution is highly doubtful. Furthermore, the police narrative that the petitioner fled on seeing the raiding party is inherently improbable. It has been further submitted that the petitioner has no connection with the alleged recovery and is not the owner of the haveli from where the contraband is alleged to have been recovered. It has been further argued that there is no need for custodial interrogation of the petitioner as nothing incriminating remains to be recovered from him. Learned counsel asserts that the petitioner has no intention of evading the process of law and undertakes to cooperate fully with the investigation. It is next submitted by the learned counsel that the petitioner is ready to join the investigation and hence no useful purpose would be served by sending him behind the bars. On the basis of the aforementioned submissions, the grant of the instant petition is entreated for.

4. *Per contra*, learned State counsel (on the strength of advance notice) *has* opposed the grant of anticipatory bail to the petitioner by arguing that the present petition is not maintainable, as it constitutes a second petition for anticipatory bail, without there being any substantial change in circumstances, thereby failing both on procedural grounds and on merits. Learned State counsel has submitted that the first petition was dismissed as withdrawn on 28.05.2025 before this Court and neither any prayer was made nor was any liberty granted to the petitioner to file afresh with better particulars. Accordingly, the State counsel has argued that the instant petition deserves dismissal on this score alone. Learned State



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counsel, opposing the plea in hand on merits, submits that the FIR in the present case was duly registered on the basis of specific and reliable secret information regarding the involvement of the petitioner in trafficking of narcotic substances. Learned State counsel has further submitted that the plea of the petitioner of false implication is baseless and is unsupported by any evidence. The presence of an independent Panch witness rules out the possibility of manipulation or fabrication by the police party. According to learned State counsel, the immediate flight of the petitioner from the scene is a strong incriminating circumstance against the petitioner. Learned State counsel asserts that the nature of the offence and the conduct of the petitioner raise serious concerns regarding his involvement in a wider nexus of narcotic trafficking activities. Furthermore, granting bail to the petitioner at this stage may seriously hamper the ongoing investigation and embolden the petitioner to tamper with evidence or influence key witnesses. Given the gravity of the offence, the larger public interest involved in curbing the menace of drug trafficking, and the potential threat to the fair conduct of the trial, it is most respectfully submitted that the petitioner does not deserve the concession of anticipatory bail and it is prayed that the present petition deserves to be dismissed.

5. I have heard the learned counsel for the rival parties and have gone through the available record of the case.

6. It would be apposite to refer herein to a judgment passed by this Court in a titled as ***Bhisham Singh vs. State of Haryana, 2024(3) RCR(Criminal) 65***, relevant whereof reads as under:-

“11. As an epilogue to the above rumination, the following principles emerge:



I Second/successive anticipatory bail petition(s) filed under Section 438 of Cr.P.C., 1973 is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II Such second/successive anticipatory bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive anticipatory bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Accordingly, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive anticipatory bail petition(s).

V In case a Court chooses to grant second/successive anticipatory bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.

VI Once a plea for anticipatory bail has been dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or dismissed on merits by the High Court, no second/successive anticipatory bail petition(s) shall be entertained by a Sessions Court.”

7. The present petition is a second petition for grant of anticipatory bail by the petitioner. A second anticipatory bail petition is indeed maintainable under law; however, it requires demonstration of a

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substantial change in circumstances since the earlier petition. It is a settled proposition of law that such a change must be significant and not merely superficial or technical, to warrant reconsideration. This ensures that the remedy of successive bail petitions is not misused through repeated filings but is available when new and material factors arise which alter the earlier assessment of the case. The first anticipatory bail filed by the petitioner was dismissed as withdrawn on 28.05.2025. The instant petition i.e. second petition for grant of anticipatory bail has been filed thereafter on 20.08.2025. No fresh substantial change in circumstance has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of anticipatory bail. From the entire factual conspectus brought forward in the present petition, no fresh ground or circumstance is made out so as to enable the petitioner to file and maintain the second anticipatory bail petition. However, since the first anticipatory bail petition was dismissed as withdrawn without adjudication on merits, this Court deems it appropriate to also examine the petition on merits.

8. As per the case put forth in the FIR in question, indubitably, serious allegations have been levelled against the petitioner. It emerges from the record that the FIR *ibid* was registered on the basis of specific and reliable secret information received by the police. It was disclosed that the petitioner (herein) was allegedly indulging in the illicit trade of poppy husk and has concealed a large quantity of the same in a haveli adjoining his house with the intention of selling it. On receipt of such information the Investigating Officer made the requisite entry and proceeded to the disclosed spot. On arrival, it was found that the accused-petitioner, having gained knowledge of the presence of the police party, fled from the scene.

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Before undertaking the search, an independent witness namely Mangat Ram, Member Panchayat of village, was duly associated with the proceedings. In his presence, the search of the premises was conducted whereby three plastic sacks concealed beneath a haysack on the southern side of the haveli were recovered.

9. From the record, it is *prima facie* evident that a recovery of 54.892 kgs of poppy husk has been effected from the haveli in possession of the accused-petitioner. The said quantity is well above the commercial quantity as defined under the NDPS Act. At this stage, there is no material to cast doubt upon the prosecution version, which is duly supported by association of an independent witness and compliance of mandatory procedural safeguards. It is well settled that once the recovery of commercial quantity is established, the rigours of Section 37 of the NDPS Act come into operation. The statutory presumption under Sections 35 and 54 of the NDPS Act also strengthens the case of the prosecution shifting the burden upon the accused to rebut the presumption of conscious possession. In the absence of any such rebuttal, the prosecution case cannot be disbelieved at this stage.

10. Mere non-recovery of the contraband from the petitioner does not absolve him especially when circumstantial evidence links him to the offence. The nature of the offence and the fact that the investigation is at a nascent stage necessitate custodial interrogation. Furthermore, the apprehension expressed by the prosecution that the petitioner, if released on bail, may abscond or attempt to influence witnesses who may be vulnerable to coercion cannot be brushed aside. Given the seriousness of the offence, the stage of investigation, the possibility of tampering with evidence or



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obstructing justice, and the overarching public interest in deterring the menace of narcotic drug trafficking, this Court is of the view that the petitioner does not merit the concession of bail at this juncture. Moreover, in view of the serious allegations, the custodial interrogation of the petitioner is indispensable and crucial for unearthing the broader conspiracy and identifying the other potential accomplices that may be within the exclusive knowledge or possession of the petitioner. Moreover, the grant of anticipatory bail at this premature stage may seriously prejudice the ongoing investigation and potentially result in tampering with evidence or influencing material witnesses.

11. It is befitting to mention here that while considering a plea for grant of anticipatory bail, the Court has to equilibrate between safeguarding individual rights and protecting societal interest(s). The Court ought to reckon with the magnitude and nature of the offence; the role attributed to the accused; the need for fair and free investigation as also the deeper and wide impact of such alleged iniquities on the society. At this stage, there is no material on record to hold that *prima facie* case is not made out against the petitioner. The material which has come on record and preliminary investigation, appear to be establish a reasonable basis for the accusation of the petitioner. Thus, it is not appropriate to grant anticipatory bail to the petitioner, as it would necessarily cause impediment in effective investigation. In **State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039**], the Supreme Court held as under : (SCC p.189, para 6)

“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous



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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.”

12. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail in the factual *milieu* of the case in hand. Moreover, custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The present petition is, thus, devoid of merits and is hereby dismissed.

13. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.

14. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 25, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No