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

CRM-M-63782-2024

Date of decision: 23.05.2025

Sushil Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvinder Sidhu, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.
Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking anticipatory bail in case bearing FIR No.0145 dated 27.05.2024 under Sections 420/120-B/204 of IPC (Section 66 of the Information Technology Act, 2000 added later on) registered at Police Station Cyber Crime, Gurugram, District Gurugram.

2. On 26.12.2024, following order was passed:

"1. Learned counsel representing the petitioner inter alia contends that he is not named in the FIR and he is sought to be implicated on the disclosure statement of co-accused, namely, Sonu, which is alleged to have gave Rs.90 lacs to the petitioner in cash.

2. Learned counsel representing the petitioner relies upon interim order passed in CRM-M-32511-2024, CRM-M-36124-2024 and CRM-M-38365-2024.

3. Keeping in view the aforesaid facts, the petitioner is directed to join the investigation in the event of arrest.

4. Adjourned to 22.01.2025.

5. In the meantime, in the event of arrest, the petitioner shall be released on the interim bail subject to furnishing personal bonds and surety bonds to the satisfaction of the Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C."



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3. On 22.01.2025, learned counsel for the petitioner apprised this Court that the petitioner has joined the investigation with the police, however, this fact was not disputed by the learned State counsel who on instructions from SI Kulwant Singh, submitted that the petitioner is required by the police for the purpose of further investigation in this case.

4. Today, the learned State counsel, on instructions of ASI Naveen, submits that the petitioner is not cooperating as he is not confessing to his guilt by making a statement inculcating himself.

5. 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.

6. 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)

7. 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.

8. 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.

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9. Keeping in view the fact that the petitioner has joined the investigation, the order dated 26.12.2024, 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.*)

10. The petition is accordingly disposed of.

11. 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.

(HARPREET SINGH BRAR)
JUDGE

23.05.2025*Neha*

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