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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision : 27.10.2026***

\# **CNR No.DLHC010512312026**

\+ **BAIL APPLN. 4532/2026, CRL.M.A.33419/2026**

KANHAI .....Petitioner

Through: Mr. Suraj Prakash Sharma, Adv.

versus

THE STATE (NCT OF DELHI) & ANR. .....Respondent

Through: Mr. Utkarsh (APP)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

CRL.M.A. 33420/2026 (Exemption from filing certified copies of annx.)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

BAIL APPLN. 4532/2026

3. The petitioner/applicant, *via* the present application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "*BNSS*") read with Section 438 of the Code of Criminal Procedure, 1973, seeks anticipatory bail in FIR No. 2/2026, dated 17.02.2026, registered at P.S. IGI Airport Metro (Delhi), under Sections 318(4)/ 3(5) of the Bharatiya Nyaya Sanhita, 2023. The FIR was registered on the complaint of respondent no. 2.

4. The petitioner's/applicant's previous application for anticipatory bail was dismissed by the Ld. Additional Sessions Judge-04, Patiala House

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Courts, New Delhi, *vide* order dated 13.05.2026. The aforesaid order recorded that despite a notice under Section 35(3) of the BNSS being served twice on the applicant's father-in-law, the applicant did not cooperate with the investigation, and that, consequently, Non-Bailable Warrants (NBWs) have been issued against him.

5. Learned counsel for the petitioner/applicant submits that the applicant has been falsely implicated and that he is ready to join the investigation. He further submits that notice under Section 35(3) of the BNSS should have been served on him personally, instead of his father-in-law.

6. While opposing the current application, learned APP for the State submits that the present application is thoroughly misconceived. He submits that the petitioner/applicant has already been declared a Proclaimed Offender (PO) by the trial Court. To that effect, during the course of hearing, he has handed over a copy of the order dated 30.07.2026 passed by the Ld. ACJM-01, Patiala House Courts, New Delhi. The same reads as under:

> "A separate statement of Process Server/SI Ashok Kumar, who executed the process under Section 84 BNSS against the accused Kanhai S/o Mintu Raj, R/o F-279, JJ Colony, Bawana, Delhi has been recorded in which he affirmed the report Ex.D1 on oath. The copy of the process was duly affixed at the main door of the premises of the accused and the local residents were duly affirmed by way of *munadi*.
>
> ***In view of his statement and report, the proclamation under Section 84 BNSS stands duly executed. As accused Kanhai S/o Mintu Raj, R/o F-279, JJ Colony, Bawana, Delhi has failed to appear in the court within the stipulated period of time, he is declared as proclaimed person***."
>
> (emphasis supplied)

7. It is pertinent to note that the petitioner/applicant has urged the

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following ground in the present petition:

> m) Because the petitioner has already joined the investigation and is further ready to join the investigation as and when directed to do so.

8. The assertion of the petitioner/applicant that he has already joined the investigation is contrary to his assertion regarding non-service of Section 35(3) of the BNSS notice on him. It is untenable for the petitioner/applicant to assert that no notice reached him, while simultaneously asserting, in ground (m) of the present application, that he has already joined the investigation.

9. Learned APP for the State, on instructions from the concerned Investigating Officer (IO), who is present in the Court, vehemently refutes the aforesaid assertion of the petitioner/applicant that he has joined the investigation. He states that the petitioner/applicant has been remiss in this regard despite passage of more than five (5) months after the order dated 13.05.2026, rejecting his previous anticipatory bail application, was passed.

10. Moreover, as noted above, the petitioner/applicant has since been declared a PO on 30.07.2026. This factor has not been disclosed in the present application. On the contrary, the applicant's affidavit states that he has never been declared a PO. The same is reproduced hereinbelow:

7. **COERCIVE PROCESS**

- Yes, non-bailable warrant was issued against the applicant/accused person in the above said case.
- It is submitted that applicant/accused never declare the proclaimed offender.

That it is true and correct statement

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11. The legal position is well settled that an accused who has been declared an absconder/PO is not entitled to the relief of anticipatory bail. In this regard, a reference may be made to the judgment of the Supreme Court delivered in ***Lavesh v. State (NCT of Delhi),*** **(2012) 8 SCC 730**, wherein it observed as under:

> "*12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation declared as "absconder".* ***Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.***"
>
> (emphasis supplied)

12. The Supreme Court in ***Abhishek v. State of Maharashtra,*** **(2022) 8 SCC 282** reiterated this legal position in the following terms:

> "*68.* ***As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC.*** *What has been observed and said in relation to Section 438 CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submission on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.*"
>
> (emphasis supplied)

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13. Furthermore, in ***State of Haryana v. Dharamraj*, (2023) 17 SCC 510**, the Supreme Court observed as under:

> "*17.* ***The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail.*** *Looking to the factual prism, we are clear that the respondent's application under Section 438 CrPC should not have been entertained, as he was a proclaimed offender.*"
>
> (emphasis supplied)

14. The petition is accordingly dismissed. Pending application also stands disposed of.

15. It shall be open to the petitioner/applicant to surrender before the learned trial Court and move an appropriate application for regular bail, which shall be considered on its own merits and in accordance with law, uninfluenced by the dismissal of the present bail application.

SACHIN DATTA, J

OCTOBER 27, 2026/*uk/vk*

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