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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 16.01.2025

Gurpreet Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gurbir Singh Sidhu, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The present second petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS') seeking pre-arrest/anticipatory bail in FIR No.89 dated 14.07.2022 registered under Sections 18(c) & 29 of the NDPS Act (added later on) at Police Station Khamano, District Fatehgarh Sahib.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:

"Copy of ruqa, "Station House Officer PS Khamano" Jai Hind, Today I ASI along with ASI Ram Singh 344/FGS, HC Amrik Singh, 948TGS, S/C Gurpreet Singh 1000/FGS, PHG Navin Kumar 96/FGS with laptop printer on a private vehicle was patrolling and search of suspects and bad persons was present at Pul Sua Khamano, then time would be around 10.00 PM that a white scooter without number make Aactiva was seen coming from Ludhiana side, which was being driven by a hair cut youth, who immediately panicked on seeing the police party standing in front stopped his scooter and started turning backwards, to whom I ASI controlled with the help of fellow employees and asked for his name, address, who disclosed his name as Rajwinder Singh alais Raji son of Davinder Singh resident of village Baddowal police station Mullanapur Dakha District Ludhiana, to whom I ASI informed about my identity and designation that I am ASI Taranjit Singh posted at investigating officer at



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police station Khamano and I am suspected that you are having some intoxicant substance with you due to which I want to search you and your scooty but you have the legal right to have your and your scooty's search conducted by a Gazetted officer or a Magistrate, who can be called on the spot or you can be taken before them, upon which said Rajwinder Singh was served with notice u/s 50 NDPS Act and was read and pronounced, who after reading and hearing the notice u/s 50 NDPS Act and admitted it to be correct put his signatures and signatures of witnesses were also obtained. Then said Rajwinder Singh above mentioned thought for some time and said that I want to get myself and my scooty searched by the Gazetted officer, upon which said Rajwinder Singh's statement of disagreement was written on which said Rajwinder Singh signed, the witness also signed the same. Then I ASI contacted Sh. Raminder Singh PPS Deputy Superintendent of Police Khamano and told him about the circumstances and requested through my mobile number 98786- 96153, upon which after some time Sh. Raminder Singh PPS Deputy Superintendent of Police Khamano along with fellow employees come present on the spot on an official vehicle, who told said Rajwinder Singh about his identity and designation that I am Raminder Singh PPS. I am a Deputy Superintendent of Police Khamano and I am a Gazetted officer of the Punjab Government. I am having suspicion of having some intoxicant substance in your possession, for which it is necessary to search you and your scooty, but you have the legal right to get search yourself and your scooty searched from some other Gazetted officer of Magistrate who can be called on the spot or you can be taken before them, who after thought said that I am having full faith on you, you can conduct my search and the search of my scooty, upon which memo of consent of said Rajwinder Singh above mentioned recorded, on which said Rajwinder Singh above mentioned put his signature and witnesses also signed the same. Tehn I ASI as per the instructions of Sh. Raminder Singh PPS Deputy Superintendent of Police Khamano searched the scooty of said Rajwinder Singh and from the trunk of scooty, one plastic envelope color white was recovered which was opened and checked from which opium was recovered, recovered opium was weighted on computer scale which was 05 kilogram opium along with envelope plastic, which was put in the same envelope and was put in a plastic box and a parcel was prepared. I ASI sealed the same with my seal as TS and Sh. Raminder Singh PPS Deputy Superintendent of Police Khamano also put his seal as RS, sample seal separately prepared. After use seal handed over to ASI Ram Singh



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344/FGS. Recovered parcel of plastic box containing opium weighing 05 kilogram sealed along with sample seal vide memo of recovery taken into police possession as evidence and scooty without number make Honda Activa color white was also taken into police possession vide separate memo of possession, on the memos signatures of witnesses were obtained. Rajwinder Singh alias Raji above mentioned by keeping 05 kilogram opium in his possession has committed offence u/s 18C/61/85 NDPS Act. Hence, ruqa for registration of case as per above mentioned offence against above said Rajwinder Singh alias Raji sent by hand S/C Gurpreet Singh 1000/FGS to police station. Case be registered and file number be informed. Special reports be prepared and be sent to Officers and Hon'ble Illaqa Magistrate. I ASI along with fellow employees am busy in investigation on the spot. sd/- Taranjit Singh ASI PS Khamano Date 13.07.2022, in the limits of Pul Sua Khamano at 11-50 PM.”

3. The petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court which was dismissed on 07.09.2022. The relevant part of said order reads as under:-

“Recovery effected from the co-accused is heavy ‘commercial’ quantity, which strongly points out that the contraband was intended for commercial/business purpose and not for personal consumption. In view of the ratio of the abovementioned judgment, this Court is of the considered view that for proper investigation; to find any nexus between the petitioner and his co-accused and for knowing the source of contraband, the custodial interrogation of the petitioner is necessary.

In view of above, petition is dismissed. ”

Thereafter, the present petition (i.e. the second petition for grant of anticipatory/pre-arrest bail) has been preferred by the petitioner on 13.01.2025.

4. Learned counsel for the petitioner has iterated that the petitioner has been implicated solely on the basis of the disclosure statement made by the co-accused namely Rajwinder Singh @ Rajji, under Section 67 of the NDPS Act, who has already been extended the concession of regular bail by



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this Court vide order dated 22.08.2024 (Annexure P-7). Apart from this disclosure, there is no other evidence to substantiate the involvement of the petitioner in the alleged offence. Learned counsel has further iterated that the disclosure statement recorded under Section 67 of the NDPS Act by a police officer is inadmissible as evidence. To buttress his argument, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court titled as *Tofan Singh vs. State of Tamil Nadu (Criminal Appeal No.152 of 2013, decided on 29.10.2020)* wherein it was unequivocally held that a confession made to a police officer cannot be used as evidence against an accused person. Learned counsel further asserts that the petitioner was granted interim bail by the learned Special Judge, Fatehgarh Sahib. However, when the petitioner joined the investigation as directed, the investigating officer forcibly obtained his signature on a statement under Section 27 of the Indian Evidence Act, which is wholly illegal. Learned counsel further asserts that the petitioner has been falsely implicated in a baseless and frivolous case. 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. Moreover, there is no likelihood of the petitioner absconding from the process of justice in case he is enlarged on pre-arrest bail.

5. On the strength of advance notice, Mr. Yuvraj Singh, AAG Punjab has entered appearance on behalf of the respondent-State. He has vehemently opposed the grant of anticipatory bail to the petitioner on account of the present petition, being non maintainable, as it is the second petition for grant of anticipatory bail. Learned State counsel has further



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submitted that the first petition was dismissed on merits on 07.09.2022 and neither any prayer was made nor any liberty was granted therein to the petitioner to file afresh. Accordingly, the learned State counsel has argued that the instant petition deserves dismissal on this score alone. Opposing the plea on merits, learned State counsel has submitted that the FIR in question pertains to recovery of 05 kilograms of opium which falls under the category of “commercial quantity” and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted.

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

7. It would be apposite to refer herein to a judgment passed by this Court in ***Bhisham Singh vs. State of Haryana, 2024:PHHC:048105***; relevant whereof reads as under:-

10. *The pivotal issue, in any plea for grant of bail whether anticipatory bail or regular bail, is the liberty of an individual. Liberty occupies a place of pride in our society and jurisprudence. The framers of the Constitution hence provided inter alia in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C. is one such procedural law which permits curtailment of liberty of antisocial and antinational elements. Hence while interpreting any aspect pertaining to bail, a Court ought to keep the above concept in cardinal focus.*

10.1 *An analytical perusal of Cr.P.C. would elucidate that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking anticipatory bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights.*

10.2 *The Hon’ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court*



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*from considering another one later in point of time. It can be safely inferred that the decision of a Court qua bail petition (whether regular bail petition or anticipatory bail petition) is essentially an interlocutory order and hence the concept of res judicata does not apply. Almost all the Hon'ble High Courts have enunciated the view that second/successive plea(s) for grant of anticipatory bail is maintainable albeit with some circumspection and material change of circumstance(s) being a prime requirement. The full bench of Hon'ble Rajasthan High Court in case of **Ganesh Raj** case (supra), the full bench of Hon'ble Calcutta High Court in case of **Sri Sudip Sen** case (supra), the division bench of Hon'ble Andhra Pradesh High Court in case of **K.Gajendra Naidu** case (supra), the division bench of Hon'ble Madhya Pradesh High Court in case of **Imratlal Vishwakarma** case (supra) and the division bench of Hon'ble Gauhati High Court in case of **Runu Roy** case (supra) have, inexorably, echoed this exposition.*

10.3 *Judicial experience indicates that, more often than not, an attempt is made by the non-applicant i.e. the State/complainant/victim to differentiate between the situations wherein first/earlier anticipatory bail petition has been dismissed as withdrawn/dismissed as not pressed vis-à-vis where the earlier petition has been dismissed on merits thereof. In other words, it is canvassed that where the first/earlier petition has been dismissed as withdrawn, that the petitioner/applicant-accused has given up on his right(s) and hence subsequent anticipatory bail petition is not maintainable. The Hon'ble Supreme Court in case of **Rani Dudeja** case (supra) has held that the second anticipatory bail would be maintainable even in case wherein earlier one was dismissed as withdrawn. A division bench of this Court, while answering a reference in this regard, has held in case of **Manjinder Kaur** case (supra) that the second anticipatory bail petition would be maintainable wherein the first one has been dismissed as withdrawn. To the similar effect is the ratio decidendi of a division bench of Madhya Pradesh High Court in the case of **Imratlal** case (supra). Hence, this seeming conundrum stands set at naught. Accordingly, it is ineluctable that the second/successive petition(s) for grant of anticipatory bail is maintainable even when the first/earlier one was dismissed as withdrawn.*

10.4 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive anticipatory bail petition(s). The concordant view of all the Hon'ble High Courts is that the essential prerequisite for consideration of second/successive anticipatory bail petition(s) is material/substantial change in circumstances, unearthing of substantial new material and other factors of akin nature. The Hon'ble*



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Supreme Court in case of **G.R. Ananda Babu** case (*supra*) has enunciated that specious reason of change in circumstances cannot be relied upon for invoking successive anticipatory bail petition(s). Accordingly, the new grounds pleaded/change in circumstances ought to be substantial in nature.

10.5 No rigid or universal criteria can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may make a sea of difference between two cases. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court in accordance with the settled norms of our jurisprudence.

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

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dismissed on merits by the High Court, no second/successive anticipatory bail petition(s) shall be entertained by a Sessions Court.”

8. Indubitably, the first petition (for grant of anticipatory bail) preferred by the petitioner was dismissed by this Court on 07.09.2022. The contention(s) raised on behalf of the petitioner that he has been falsely implicated into the FIR in question on the basis of disclosure statement of co-accused and the nature/seriousness of allegations, were considered at that time and thereafter the said petition was dismissed. Thereafter, in the instant petition i.e. second petition (for grant of anticipatory bail), the petitioner has reiterated the grounds previously taken (at the time of rejection of the first petition on 07.09.2022) except for the ground that the co-accused namely Rajwinder Singh has been granted the concession of regular bail by this Court vide order dated 22.08.2024 (Annexure P-7). It is not in dispute that the co-accused of the petitioner has voluntarily subjected himself to the legal process and suffered incarceration for a period exceeding 02 years. In contrast, the petitioner has willfully evaded his arrest and failed to submit to the process of law till now. Such conduct demonstrates a clear disregard for the judicial process and constitutes a compelling ground to deny the grant of anticipatory bail to the petitioner. The prolonged evasion of the petitioner weighs heavily against the exercise of discretion in his favour under the provisions governing anticipatory bail. Furthermore, the first petition was dismissed on 07.09.2022 and the instant petition has been preferred after a gap of more than 2½ years. It is evident that the petitioner has evaded the process of law for over 2½ years. The conduct of the petitioner in avoiding arrest for such a prolonged period without any reasonable cause must be

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considered while adjudicating this second petition. Process of justice is meant to treat every individual in a manner which is equitable and fair. However; if the petitioner-accused chooses to employ irregular and convoluted tactics, including undue delay, strategically aimed at frustrating the lawful proceedings/investigation, it tantamounts to an abuse of the process of justice. While liberty and dignity of an individual must be held high, however, no one can be permitted to subvert and cause devolution in the process of justice. Protracted absence, eluding the process of law and abrupt repetition of pleas for pre-arrest bail, in absence of convincing reason(s) is certainly not an act/behaviour which calls for sympathy/indulgence of the Court. The hiatus of more than 2½ years on part of the petitioner (herein) is inexplicable *nay* contumacious. Therefore, the conduct of the petitioner when examined in the backdrop of the nature/severity of allegations made against the petitioner, dis-entitles him for grant of anticipatory bail.

9. Furthermore, no fresh substantial change in circumstances has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of anticipatory bail. All the grounds urged by the petitioner in the present petition have already been considered & decided and view thereupon has been taken vide judgment dated 07.09.2022. 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. Accordingly, the present petition deserves to be dismissed on merits thereof as well.



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10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.
11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

January 16, 2025
Ajay

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