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

CRM-M-19150-2025 (O&M)

Date of decision: 07.05.2025

Jatinder Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarun Singla, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been preferred under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking anticipatory bail in FIR No.230 dated 25.11.2024 under Section 303 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') (*offence under Sections 305 & 317(2) of BNS were added and Section 303 of BNS was deleted later on*), registered at Police Station Bajghera, District Gurugram.

2. On 07.04.2025, while granting *ad interim* anticipatory bail to the petitioner, following order was passed by this Court:-

"...Learned counsel for the petitioner, inter alia, contends that



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the Investigating Officer is acting malafidely, for extraneous consideration and has implicated number of persons. Although initial allegations are against co-accused Dhani Ram and stolen vehicle was recovered from the shop of co-accused Sonu. Further, the petitioner has accompanied co-accused Dhani Ram at the time of his joining the investigation. Co-accused of the petitioner, namely Keval Krishan Goyal, has already approached this Court by way of filing a petition i.e. CRWP-3189-2025 seeking directions to the official respondents especially respondent No.3 therein, to protect the life and liberty. The Investigating Officer, on his whims and fancies, is implicating innocent persons, who have no connection with the theft of vehicle in question. In the aforementioned petition, this Court, vide order dated 01.04.2025, issued notice against the conduct of the Investigating Officer, for 19.05.2025. Furthermore, the petitioner has been nominated as accused in the FIR (supra) after a gap of four months.

Notice of motion for 07.05.2025.

In view of the peculiar facts and circumstances of the case, Commissioner of Police, Gurugram is directed to file his affidavit after verifying the veracity of the allegations as well as the investigation conducted by the Investigating Officer regarding any bias or tainted investigation.

*Meanwhile, keeping in view the ratio of law enunciated by the Hon'ble Supreme Court in **Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2010 SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR***



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(Criminal) 833, the petitioner is directed to appear before Investigating Officer within a period of two weeks from today and thereafter, as directed by the Investigating Officer. In the event of arrest, the petitioner will be admitted to interim anticipatory bail on furnishing bail/surety bonds to the satisfaction of Investigating/Arresting Officer. The petitioner shall cooperate with the investigation/Arresting Officer and abide by the conditions as provided under Section 482(2) of BNSS (erstwhile Section 438(2) of the Code of Criminal Procedure, 1973).

If the Arresting Officer does not permit the petitioner to join the investigation, he would appear before learned Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in the investigation, in terms of the order of this Court.

Nothing observed hereinabove shall be construed as an expression of opinion by this Court and learned trial Court shall decide the case on its own merits, strictly in accordance with law.”

3. Learned counsel for the petitioner, *inter alia*, contends that the complainant in the present case is a person of financial fortitude and he is owner of a big construction company namely M/s Karambir Rana Builders. The jurisdictional police authorities in Gurugram are acting under his influence and have falsely implicated number of persons, who are having clean antecedents, purely in the case of theft of vehicle in question. Further, the stolen vehicle was recovered from the shop of co-accused Sonu and apart from disclosure statement of co-accused, there is no concrete evidence



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against the petitioner. One of the co-accused, namely Keval Krishan Goyal, has already approached this Court by way of filing a petition i.e. CRWP-3189-2025 seeking directions to the official respondents especially respondent No.3 therein, to protect the life and liberty. It is further contended that under the garb of joining the investigation, several persons, who are not associated with theft of the vehicle in question, have been harassed and victimized. The Investigating Officer, on the whims and fancies of the complainant and under his influence, has subjected the accused persons to lengthy interrogation and the questions, which are unrelated to the investigation of the case in hand, have been put to them with regard to their educational qualifications, marriage and number of children. The persons, who have submitted bail bonds of co-accused Dhani Ram, have also been arraigned as accused. Moreover, the maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is punishable upto 07 years and even no notice under Section 35(3) of BNSS [*erstwhile Section 41-A of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')*] has been served upon the petitioner. The petitioner is not involved in any other case and is having clean antecedents.

4. In compliance of the order passed by this Court on 07.04.2025, status report by way of an affidavit of Vikas Arora, IPS, Commissioner of Police, Gurugram has been filed in the Court today, which is taken on record and copy thereof has been supplied to learned counsel for the petitioner.

5. Learned State counsel, on instructions from the Investigating



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Officer, submits that the petitioner has joined the investigation and his custodial interrogation is not required.

6. Having heard learned counsel for the parties and after perusing the record, *prima facie*, this Court finds force in the arguments raised on behalf of the petitioner.

7. In the aforesaid status report, which runs into 402 pages, it has been categorically stated that the custodial interrogation of the petitioner is required. It is further stated that the petitioner has not answered the questions put to him and thereby, he has failed to cooperate during the investigation. Further, a specific assertion is made regarding the need for custodial interrogation of the petitioner in order to unearth the entire sequence of events, ascertain the real culprit behind the theft and ascertain the extent of similar crimes committed by him.

8. 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.”

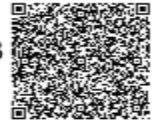
9. A Constitution Bench, consisting of eleven Judges, of the Hon’ble Supreme Court in ***The State of Bombay Vs. Kathi Kalu Oghad,***



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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



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*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)

10. 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.

11. 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



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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.

12. Keeping in view the facts and circumstances of the case and also that maximum sentence for the offences, under which the FIR (*supra*) is registered, is upto 07 years and the petitioner is having clean antecedents, this Court deem it appropriate to grant anticipatory bail to him.

13. Accordingly, the present petition is allowed and the order dated 07.04.2025 passed by this Court, granting *ad interim* anticipatory bail to the petitioner, is hereby made absolute. The petitioner shall abide by the terms and conditions envisaged under Section 482(2) of BNSS (*erstwhile Section 438(2) of Cr.P.C.*).

14. All the pending miscellaneous application(s), if any, shall stand disposed of.

07.05.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No