



THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 1257 of 2025

Reserved on: 01.08.2025

Date of Decision: 06.08.2025

Krishan Kumar Kasana

...Petitioner

Versus

State of Himachal Pradesh & another

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr. Anand Sharma, Senior Advocate, with Mr. Karan Sharma, Advocate.

For the Respondent : Mr. Parshant Sen, Deputy Advocate General.

For the informant : Mr. Jyotirmay Bhatt, Advocate.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking pre-arrest bail in FIR No. 107 of 2025 dated 23.04.2025, registered at Police Station Baddi, District Solan, H.P., for the commission of offences punishable under Sections 221,224, 351(2) and 78 of Bharatiya Nyaya Sanhita (BNS), 2023

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. It has been asserted that the petitioner is a law-abiding citizen. He was telephonically called by the Station House Officer of Baddi Police Station and was told about a complaint dated 23.04.2025 registered against him at the instance of the informant. He enquired about the complaint and found that an F.I.R. No. 107 of 2025, dated 23.04.2025, was registered against him. The allegations in the F.I.R. are false. The petitioner had made complaints against the informant regarding the demand for a bribe from various persons, and the informant filed the F.I.R. against the petitioner as a counterblast to the complaints made by the petitioner against him. The petitioner would cooperate with the investigation and abide by all the terms and conditions which the Court may impose. Hence, the present petition.

3. The petition is opposed by a filing of a status report asserting that the informant made a complaint to the police, asserting that he was posted as a Regional Officer in Himachal Pradesh, State Pollution Control Board, with additional responsibility. The petitioner is a proprietor of M/s K.K. Enterprises. The informant took action against the petitioner. The petitioner tried to intimidate the informant on

07.10.2024. He tried to hit the vehicle of the petitioner on 07.10.2024 at a lonely place between Baddi and Shimla. The petitioner made videos of the informant's wife and took her photographs. He tried to compel the informant to grant undue favour to him (petitioner). Therefore, it was prayed that the necessary action be taken against the petitioner. The police registered the F.I.R. and conducted the investigation. The police obtained the call detail record. The location of the informant was found to be at village Mullapur, SAS Nagar, Punjab, whereas the location of the petitioner was found to be at Sheetla Mata Shishma, Punjab, Kharad and thereafter at village Mullapur. This shows that the petitioner was following the informant. The petitioner joined the investigation. The investigation is continuing. Hence, the status report.

4. The informant also filed objections to the petition, asserting that the informant made a complaint to the Member Secretary, State Pollution Control Board on 08.10.2014. He also filed a complaint against the petitioner and one Debashish Bhattacharya on 12.12.2024, but no action was taken. Hence, the complaint was made to the police. The contents of the F.I.R. were reproduced. It was prayed that the present petition be dismissed.

5. The petitioner has filed reply to the objection, denying its contents.

6. I have heard Mr. Anand Sharma, learned Senior Counsel, assisted by Mr. Karan Sharma, learned counsel for the petitioner, Mr. Parshant Sen, learned Deputy Advocate General, for the respondent/State, and Mr. Jyotirmay Bhatt, learned counsel for the informant.

7. Mr. Anand Sharma, learned Senior Counsel for the petitioner, submitted that only the offence punishable under Section 78 of BNS is non-bailable. The allegations in the F.I.R. do not constitute the commission of an offence punishable under Section 78 of BNS. The custodial interrogation of the petitioner is not required. No fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

8. Mr. Parshant Sen, learned Deputy Advocate General, submitted that the call detail record shows that the petitioner was following the informant. The investigation is continuing. Releasing the petitioner on bail would hamper the investigation. Therefore, he prayed that the present petition be dismissed.

9. Mr. Jyotirmay Bhatt, learned counsel for the informant, submitted that the informant had taken action against the petitioner for violation of environmental law. The petitioner tried to intimidate the informant and hit the informant's vehicle. He also took the photographs of the informant's wife. Releasing the petitioner on bail would endanger the informant's life. Therefore, he prayed that the present petition be dismissed.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. It was laid down by the Hon'ble Supreme Court in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24: (2019) 3 SCC (Cri) 509: 2019 SCC OnLine SC 1143 that the power of pre-arrest bail is extraordinary and should be exercised sparingly. It was observed:

“69. Ordinarily, an arrest is a part of the procedure of the investigation to secure not only the presence of the accused but also several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power, and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the

applicant fleeing justice and other factors are considered to decide whether it is a fit case for the grant of anticipatory bail. Grant of anticipatory bail to some extent interferes with the sphere of investigation of an offence, and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule, and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

12. This position was reiterated in *Srikant Upadhyay v.*

State of Bihar, 2024 SCC OnLine SC 282, wherein it was held:

“25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule, and the question of its grant should be left to the cautious and judicious discretion of the Court, depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious, as the grant of interim protection or protection to the accused in serious cases may lead to a miscarriage of justice and may hamper the investigation to a great extent, as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest, and we say that such orders shall be passed in eminently fit cases.”

13. It was held in *Pratibha Manchanda v. State of Haryana,*

(2023) 8 SCC 181; 2023 SCC OnLine SC 785 that the Courts should balance individual rights, public interest and fair investigation

while considering an application for pre-arrest bail. It was observed:

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome.”

14. It was held in *Devinder Kumar Bansal v. State of Punjab*, (2025) 4 SCC 493: 2025 SCC OnLine SC 488 that pre-arrest bail can be granted in exceptional circumstances where the Court is of the view that the petitioner was falsely implicated in the case, and the presumption of innocence cannot be a reason to grant bail. It was observed at page 501:

“21. The parameters for the grant of anticipatory bail in a serious offence like corruption are required to be satisfied. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has been falsely implicated in the crime or the allegations are politically motivated or frivolous. So far as the case at hand is concerned, it cannot be said that any exceptional circumstances have been made out by the

petitioner-accused for the grant of anticipatory bail, and there is no frivolity in the prosecution.

22. In the aforesaid context, we may refer to a pronouncement in *CBI v. V. Vijay Sai Reddy* [*CBI v. V. Vijay Sai Reddy*, (2013) 7 SCC 452: (2013) 3 SCC (Cri) 563], wherein this Court expressed thus: (SCC p. 465, para 34)

“34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond a reasonable doubt.” (emphasis in original and supplied)

23. The presumption of innocence, by itself, cannot be the sole consideration for the grant of anticipatory bail. The presumption of innocence is one of the considerations which the court should keep in mind while considering the plea for anticipatory bail. The salutary rule is to balance the cause of the accused and the cause of public justice. Over solicitous homage to the accused's liberty can, sometimes, defeat the cause of public justice.

15. The present petition is to be decided as per the parameters laid down by the Hon’ble Supreme Court.

16. Section 78 of BNS deals with stalking and punishes a person who follows a woman and contacts such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman or monitors the use by a woman of the internet, email or other form of electronic communication.

17. In the present case, the allegations in the complaint do not show that the petitioner had followed the informant's wife and contacted her to foster personal interaction. The only allegation is that the petitioner had taken the photographs of the informant's wife. *Prima facie*, these allegations do not satisfy the definition of stalking.

18. The status report shows that the informant was found at SAS Nagar, Mohali, whereas the location of the petitioner was found at Sheetla Mata Shisma New Gurudwara Kharad and SAS Nagar, Punjab on 07.10.2025 (Sic). As per the complaint, the informant was going to Shimla, and the petitioner had tried to hit his vehicle at a desolate place on 07.10.2024. Thus, the call detail record does not corroborate the allegations made in the FIR.

19. Perusal of the status report shows that the petitioner had joined the investigation. The status report does not show that

the custodial interrogation of the petitioner is required. Therefore, no fruitful purpose would be served by detaining the petitioner in custody.

20. In view of the above, the present petition is allowed and the order dated 29.05.2025 passed by this Court is made absolute.

21. The observations made heretofore shall remain confined to the disposal of the petition and will have no bearing, whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

06th August 2025.
(ravinder)