IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 16520/2026)

RONAK AGARWAL **APPELLANT(S)**

VERSUS

UNION OF INDIA **RESPONDENT(S)**

ORDER

1. Leave granted.

2. We have heard Mr. Rahul Kaushik, learned Senior counsel for the appellant and Ms. Archana Pathak Dave, learned Addl. Solicitor General for the respondent-Union of India.

3. Appellant is aggrieved by order dated 28.07.2026 passed by the High Court of Madhya Pradesh at Indore (briefly the 'High Court' hereinafter), rejecting the prayer for anticipatory bail of the appellant.

4. Appellant had approached the High Court upon receipt of notice dated 07.05.2026 under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act) to join the investigation in connection with Crime No.01/2026/C.B.N./Ujjain registered under Sections 8/22 and 29 of the NDPS Act.

Signature Not Verified
Digitally signed by ABHINAV KUMAR
Date: 2026.11.26 09:53:46 IST
Reason:

5. Insofar the appellant is concerned, the accusation against him is that he was supplying 2-Bromo-4-Methlypropiophenone to the co-accused without any supporting trading bills/vouchers. On the basis of the disclosure statement made by the co-accused Prakash Bhai, the aforesaid notice was issued to the appellant, for which the appellant had gone to the High Court.

6. This Court, by order dated 10.09.2026, issued notice and directed the appellant to respond to the notice of the Central Narcotics Bureau and to appear before the investigating authorities on 17.09.2026 at 11 AM and join the investigation. Subject to such co-operation, interim protection was granted to the appellant.

7. Following the notice issued by this Court, respondent-Union of India has filed counter affidavit which we have perused.

8. Mr. Rahul Kaushik, learned Senior counsel for the appellant has basically urged two grounds. The first ground is based on the decision of this Court in *Tofan Singh versus State of T.N. [(2021) 4 SCC 1]* by contending that the statement recorded under Section 67 of the NDPS Act (in this case made by the co-accused) cannot be used as a confessional statement in the trial and on that basis, appellant cannot be implicated in this case. He has also placed reliance on certain decisions of this Court including in the case of *Vijay Singh versus State of Haryana [2023 SCC Online SC 1235]*, where the petitioner,

who was implicated on the basis of the confessional statement made by the co-accused, was granted anticipatory bail by this Court.

8.1 His other submission is that the contraband, i.e. 2-Bromo-4-Methlypropiophenone, came to be included in Schedule-A to the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 at Serial No.8 as well as in Schedule-B and Schedule-C thereof after Serial No.45 at Serial No.46, vide the notification dated 11.03.2026 issued by the Department of Revenue, Ministry of Finance, Government of India. On the above basis, he submits that when the interception and seizure were made in January, 2026, the above two commodities were not prohibited substances under the NDPS Act. Therefore, appellant cannot be prosecuted, not to speak of arrest, for an act which was not a prohibited act when it was committed.

9. Opposing the submissions made on behalf of the appellant, Ms. Archana Pathak Dave, learned Addl. Solicitor General for the respondent-Union of India has placed reliance on a decision of this Court in *2022 SCC OnLine SC 2087 [State of Haryana versus Samarth Kumar]*, where this Court had clarified that the respondent (accused) may take advantage of the decision in *Tofan Singh's* case, perhaps at the time of the arguing the regular bail application or at the time of final hearing, after conclusion of trial; grant of anticipatory bail in a

NDPS matter was not warranted. Insofar the notification dated 11.03.2026 is concerned, she has placed reliance on the averments made in the counter affidavit as well as on paragraph Nos.8, 11 and 16 of the impugned order of the High Court to contend that the contraband is used in the manufacture of Mephedrone drug, which is a prohibited substance under the NDPS Act. Therefore, though the seized substance came to be prohibited pursuant to the notification dated 11.03.2026, still the person carrying on trade or any transaction of such substances, that too without any invoices and bills, would face prosecution under Section 29 of the NDPS Act. She submits that since the country is facing the menace of drug addiction on a large scale, the Court should be slow in granting the benefit of anticipatory bail to an accused facing accusations under the NDPS Act.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. The submissions of Ms. Archana Pathak Dave, learned Addl. Solicitor General for the respondent-Union of India are well meaning and well intended, which is acknowledged. But, at the same time, the Court has also to look into the related provisions of the statute as well as the constitutional limitations. It goes without saying that more severe the accusations are, the bar becomes that much higher for the investigation and prosecution.

12. Article 20(1) of the Constitution of India makes it

abundantly clear that there cannot be any retrospectivity of criminal law. A person cannot be accused and prosecuted for committing an act which was not an offence on the date when the act had taken place. Any departure therefrom would amount to diluting the constitutional limitations under Article 20(1) of the Constitution which is a fundamental right of an accused.

13. Having noted the above, we may refer to the notification dated 11.03.2026, which is extracted hereunder:

"MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION

New Delhi, the 11th March, 2026

S.O. 1259(E). In exercise of the powers conferred by section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby makes the following order further to amend the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, namely:

1. Short title and Commencement:-

(1) This Order may be called the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Amendment Order, 2026.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, in the SCHEDULE, -in SCHEDULE-A, after serial number 7 and the entries relating thereto, the following serial number and entry shall be inserted, namely :-

"8. 2-Bromo-4-Methylpropiophenone";

(b) in SCHEDULE-B, after serial number 45 and the entries relating thereto, the following serial number and entry shall be inserted, namely :-

"46. 2-Bromo-4-Methylpropiophenone";

(c) in SCHEDULE-C, after serial number 45 and the entries relating thereto, the following serial number and entry shall be inserted, namely :-

"46. 2-Bromo-4-Methylpropiophenone".

[F. No. N-17011/1/2025-NC-II-DOR]

MUKESH SUNDRIYAL,
Under Secy.

Note.- The principal order was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.191(E), dated the 26th March, 2013 and lastly amended vide number G.S.R. 71(E), dated the 23rd January, 2025.

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SARVESH KUMAR SVASTAVA
(DIGITALLY SIGNED)"

14. A perusal of the aforesaid notification makes it clear that the same came into force on the date of its publication in the official gazette, which is 11.03.2026. On and from the said date, the substance 2-Bromo-4-Methlypropiophenone, has been included in the prohibited list under the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013. Even in the counter affidavit filed by the respondent-Union of

India, it is clearly stated that the prosecution case arises from the seizure effected on 10.01.2026 of 31.250 kgs of Mephedrone powder, being commercial quantity.

15. Since we are at the stage of consideration of anticipatory bail, we do not want to give any definite opinion in this regard in the absence of detailed pleadings and a full-fledged hearing but it is clear that when the seizure was made, the seized substance was not included in the prohibited list.

16. At this stage, we had put a query to Mr. Rahul Kaushik, learned Senior counsel for the appellant, who submits that pursuant to the interim protection granted by this Court, appellant has appeared before the investigating authority. However, Ms. Archana Pathak Dave, learned Addl. Solicitor General for the respondent-Union of India submits that the appellant has not handed over any of the documents in his possession including the mobile phone to the investigating agency; therefore, it cannot be said that appellant has co-operated with the investigation.

17. While reiterating the right of an accused to remain silent and the right against self incrimination, as provided under Article 20(3) of the Constitution of India, it is for the investigating agency, by application of its investigative skills, to extract information from the accused for the purpose of investigation. We need not delve more on this aspect.

18. Thus, we feel that a case for anticipatory bail is made out.

19. Having regard to the above and considering the discussions made above, we set aside the impugned order of the High Court dated 28.07.2026 insofar appellant Ronak Agarwal is concerned and make our order dated 10.09.2026 absolute, subject to the continued co-operation of the appellant in the investigation.

20. Consequently, the Criminal Appeal is allowed.

21. Pending application(s), if any, shall stand disposed of.

……...J.

[UJJAL BHUYAN]

……...J.

[ATUL S. CHANDURKAR]

NEW DELHI;
23rd NOVEMBER, 2026.
AK

ITEM NO.3 COURT NO.12 SECTION II-E

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 16520/2026

[Arising out of impugned final judgment and order dated 28-07-2026 in MCRC No. 24772/2026 passed by the High Court of Madhya Pradesh at Indore]

RONAK AGARWAL **Petitioner(s)**

VERSUS

UNION OF INDIA **Respondent(s)**

FOR ADMISSION
(IA No. 265859/2026 - EXEMPTION FROM FILING O.T.)

Date : 23-11-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE UJJAL BHUYAN
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

For Petitioner(s): Mr. Rahul Kaushik, Sr. Adv.
Mr. Amit Wadhwa, Adv.
Dr. Nitin Sharma, Adv.
Mr. Sanjay Kumar Hadala, Adv.
Mr. Rajesh Yadav, Adv.
Mr. Pramod Tiwari, Adv.
Mr. Vivek Tiwari, Adv.
Ms. Priyanka Dubey, Adv.
Ms. Saumya Mishra, Adv.
Dr. Vinod Kumar Tewari- 1866, AOR

For Respondent(s): Ms. Archana Pathak Dave, A.S.G.
Ms. Aastha Singh, Adv.
Ms. Medha Pushkarna, Adv.
Mr. Kamal Digpaul, Adv.
Ms. Seema Bengani, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. Amrish Kumar- 2986, AOR
Dr. Arun Kumar Yadav, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.

2. The Criminal Appeal is allowed in terms of the

signed order placed on the file.

3. Pending application(s), if any, shall stand disposed of.

(ABHINAV KUMAR)
COURT MASTER (SH)

(POOJA KOHLI)
COURT MASTER (NSH)