



[2025:RJ-JD:27658]



[CRLMB-5136/2025]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 5136/2025

██████ D/o Shri ██████, Aged About 36 Years, R/o Ward
No. 3 Village ██████ ██████, Mandal P.s. Mandal, Dist. Bhilwara,raj.

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. T.R. Singh Sodha
For Respondent(s) : Mr. N.S. Chandawat, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reporatble

20/06/2025

1. The petitioner, apprehending arrest in connection with the matter detailed below, which involves a non-bailable offence, has approached this Court by invoking its jurisdiction under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The relevant particulars of the case are set out in the table hereinbelow:-

S.No.	Particulars of the Case	
1.	FIR Number	56/2025
2.	Concerned Police Station	Mandal
3.	District	Bhilwara
4.	Offences alleged in the FIR	Sections 8/16 & 8/18 of the NDPS Act
5.	Offences added, if any	-
6.	Date of passing of impugned order	21.04.2025



2. The case of the prosecution is that on the basis of a credible tip-off received on 12.02.2025 at about 3:15 PM by SHO Rajpal Singh of Police Station Aannhan, it was informed that one Rajendra Prasad @ Raju Teli, was allegedly cultivating illicit poppy plants within a mustard field located on agricultural land he had reportedly taken on lease near the kaccha road leading from [REDACTED] [REDACTED] to Meja. Considering the reliability and specificity of the information, proceedings were initiated under the provisions of the NDPS Act, and intimation under Section 42(2) of the Act was sent accordingly. To ascertain the ownership/ khatedari belongings and possession status of the concerned land, the local Patwari was also summoned. On reaching the site around 4:10 PM, a minor boy was found guarding the field. It was noticed that amidst the mustard crop, several poppy plants were found scattered at different locations within the field . Upon preliminary inquiry, the minor disclosed his identity as [REDACTED] [REDACTED], aged 16 years, resident of [REDACTED] [REDACTED], and stated that the cultivation of the said fields were being undertaken by Rajendra Prasad @ Raju Teli and upkeep of the same field, by his own mother, Smt. [REDACTED] Devi. He further stated that he is guarding the field. The police party, accompanied by independent witnesses and revenue officials, uprooted a total of 1500 opium poppy plants with green capsules, packed and sealed them in marked containers in accordance with the prescribed legal





procedures. The seized narcotic material was not sampled on site but kept intact for sampling under judicial supervision in compliance with the Gazette Notification No. 802 dated 23.12.2022. The land in question, as per the Patwari's report, stood in the revenue records in the name of Sohanlal, son of Devilal, caste Bhil, resident of Suras. No valid licence or permit for poppy cultivation was produced by the minor. Consequently, in view of the minor's confession and his active role in guarding the crop cultivated without authorization, action under Sections 8/16 and 8/18 of the NDPS Act was initiated. The juvenile was apprehended following due legal procedure and was presented before the Juvenile Justice Board , later on 18.02.2025 he was released. The petitioner was apprehending arrest and had filed an anticipatory bail application before the learned Special Judge (NDPS), Bhilwara, which was rejected vide order dated 21.04.2025.

3. The petitioner has prayed for anticipatory bail on the ground that no case for the alleged offences is made out against her and her incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of anticipatory bail to the accused-petitioner and she has been made an accused based on conjectures and surmises.
4. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor as well as learned counsel for the complainant oppose the bail application and



submit that the present case is not fit for grant of anticipatory bail.

5. I have heard and considered the submissions made by both the parties and perused the material available on record.

6. At this stage, it merits emphasis that the prosecution's case against the petitioner hinges solely on the alleged oral disclosure made by a juvenile co-accused, [REDACTED], during his apprehension and while in police custody.

The said minor, admittedly working as a labourer in the field, purportedly implicated his mother—the present petitioner also as a person to guard the crop which has been cultivated by one Rajendra Prasad @ Raju Teli. However, no independent corroboration of this disclosure has been brought on record to substantiate such involvement. Significantly, the Jamabandi placed on record reflects that the agricultural land in question stands in the Khatidari rights of one Sohanlal, and there is no material indicating that the petitioner exercised dominion or conscious possession over the land or participated in sowing, irrigating, tending, or managing the opium crop. It is well settled that statements made by co-accused or persons in custody, particularly minors, possess limited evidentiary value unless corroborated by independent and credible material. Such unverified statements, especially when obtained while the minor is in the clutches of law enforcement, cannot by themselves form a substantive basis to justify custodial



interrogation or pre-trial incarceration—particularly of a female accused. Even assuming arguendo that the land was jointly accessed or used, the doctrine of vicarious liability cannot, in itself, sustain a criminal charge in the absence of clear and affirmative evidence of intentional involvement. In these circumstances, the effort to implicate the petitioner appears, prima facie, to rest on speculation rather than any incriminating material of unimpeachable character, thereby necessitating a cautious and circumspect judicial approach at this stage. The petitioner, is an uneducated woman belonging to a socio-economically marginalized background, hailing from a backward rural area, and has been working as a daily-wage labourer due to financial constraints. In such circumstances, it is not inconceivable that her role, if any, was confined merely to peripheral tasks such as guarding the field—an activity that, in agrarian contexts, is routinely undertaken to prevent damage from stray cattle, wild animals, or to avert theft and ensure that irrigation systems are functioning effectively. The prosecution itself, through its own narrative, lends credence to this limited role by attributing the act of cultivation solely to Rajendra Prasad @ Raju Teli, thereby distancing the petitioner from any overt or substantive act connected with the sowing, nurturing, or harvesting of the illicit crop. Whether her purported involvement extended beyond field watchkeeping remains, at best, a debatable inference rather than a substantiated





allegation. The dominant presence of mustard crops and absence of any evidence linking her to the core act of illicit cultivation further militates against the presumption of culpability. Her position is, in fact, materially indistinguishable from that of the juvenile co-accused, whose role has been viewed as minor and incidental. In this backdrop, her custodial interrogation on the pretext of unearthing further details of poppy cultivation appears unwarranted and disproportionate, particularly in the absence of any prima facie evidence suggesting conscious possession, intent, or active participation.

7. It is well-settled that the concept of anticipatory bail, as envisaged under Section 438 of the Code of Criminal Procedure (now mirrored in Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023), is premised on the apprehension of arrest in a non-bailable offence. The provision is intended to safeguard the liberty of an individual who has reason to believe that he or she may be arrested on accusation of having committed a non-bailable offence, that may ultimately prove unfounded. An anticipatory bail order, by its very nature, is in terrorem and becomes operational only in the event of arrest, ensuring that the person concerned is released on bail without being subjected to custodial detention at the first instance.
8. In the present case, the FIR No. 56/2025 registered under Sections 8/16 and 8/18 of the NDPS Act does name the



petitioner as one of the alleged accused. It is also an admitted position that one of the co-accused has already been arrested in connection with the said offence. Given these circumstances, the petitioner's apprehension of arrest is not illusory or speculative but is rooted in reasonable and concrete grounds. The apprehension thus attains legal significance and furnishes a valid basis for invoking the jurisdiction of this Court under the protective canopy of anticipatory bail.

9. Furthermore, it is pertinent to note that the petitioner is a woman, and under the first proviso to Section 437(1) of the Code of Criminal Procedure, a special statutory dispensation is envisaged in favour of female accused persons. While the present proceedings relate to anticipatory bail and not regular bail, the underlying jurisprudential ethos of Section 437 Cr.P.C. assumes relevance. The said provision is the only statutory source that substantively governs the grant of bail, as Section 439 merely acknowledges the special powers of the Sessions Court and the High Court without laying down any guiding principles for grant or denial. Section 437(1) lays down two conditions for denial of bail in non-bailable offences—(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; or (ii) such person shall not be so released if such offence is a cognisable offence and he had been previously



convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognisable offence punishable with imprisonment for three years or more but not less than seven years. In the present case, the maximum punishment under Sections 8/16 and 8/18 of the NDPS Act may extend up to 10 years, and there is no allegation that the petitioner falls within either of the disqualifying categories under clauses (i) or (ii). In fact, being a woman, the petitioner falls squarely within the protective ambit of the proviso to Section 437(1), which permits the court to direct release even in cases otherwise falling under those restrictive clauses. The legislative intent under Section 437 Cr.P.C. is to balance the gravity of offence with considerations of personal liberty and vulnerability, and it specifically carves out exceptions for women, minors, and infirm persons to ensure their protection from unnecessary pre-trial detention.

10. In this context, the petitioner, being a woman, is squarely entitled to invoke the benefit of this statutory relaxation. It is further noteworthy that the safeguards under Section 437 Cr.P.C. extend to situations where the accused is brought before the Magistrate post-arrest. Even in cases involving offences punishable with death or life imprisonment, if the accused is a woman and there are no adverse antecedents or compelling reasons to deny bail, the Magistrate or Criminal



Court is empowered to enlarge her on bail at the first instance. Thus, even assuming arguendo that the petitioner is arrested in connection with the present offence, the protective provision under Section 437 Cr.P.C. would still operate in her favour at the stage of production before the competent criminal court.

11. It may also be relevant to note that in the present case, a co-accused, being a juvenile, has already been granted bail under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. While Section 437(1) Cr.P.C. ordinarily imposes a bar on grant of bail in serious non-bailable offences, the first proviso thereto introduces a deliberate relaxation for specific vulnerable classes, including women and children below the age of sixteen. The legislative intent behind this relaxation is grounded in equitable jurisprudence and a recognition of the differentiated treatment warranted for such categories of accused, a principle that long predates the codification of the Juvenile Justice Act. In this statutory backdrop, the petitioner-being a woman-undeniably falls within the protective fold of the said proviso. Furthermore, the rationale underlying the introduction of anticipatory bail under Section 438 Cr.P.C. was, inter alia, to obviate needless arrests in those cases where, upon arrest, the accused would in all likelihood be released on bail. The present record does not indicate any material to show that the petitioner was in exclusive



possession or conscious custody of the contraband, nor has any overt act been attributed to her evidencing her direct involvement in the alleged illicit cultivation. In this light, the protective contours of Section 437 Cr.P.C., along with the equitable considerations that informed the grant of bail to the juvenile co-accused, furnish a legitimate basis for a similarly calibrated judicial approach vis-à-vis the petitioner. These factors warrant careful judicial scrutiny while assessing the necessity of custodial detention in the given factual scenario. In any case, if the juvenile—facing identical allegations—has been found entitled to bail, there exists no justifiable reason to deny the same benefit to the petitioner, particularly when she enjoys the additional statutory protection available to women under the first proviso to Section 437(1) Cr.P.C.

12. It is pertinent to clarify the applicability of the statutory bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in the context of anticipatory bail for offences relating to illicit cultivation of opium poppy. Section 37(1)(b) lays down a specific embargo on the grant of bail in cases where the accused is charged under Sections 19, 24, 27A or for offences involving commercial quantity of narcotic drugs or psychotropic substances. In such cases, bail may not be granted unless two cumulative conditions are satisfied: (i) the Public Prosecutor is given an opportunity to oppose the application, and (ii) where opposed, the Court must be satisfied that there are reasonable grounds for believing that





the accused is not guilty of the offence and is not likely to commit any offence while on bail. The statutory expression "reasonable grounds for believing" requires the Court to reach a level of satisfaction higher than mere suspicion but short of actual proof. However, at the stage of anticipatory bail, it is neither appropriate nor permissible for the Court to render any conclusive findings on the guilt or innocence of the accused, as such observations risk prejudicing the eventual trial.

13. In the present case, the petitioner stands accused of the offence of cultivation of opium poppy plants, which is governed by Section 8(b) read with Section 18 of the NDPS Act. Specifically, Section 18(c) applies to cases not involving small or commercial quantity. Unlike Section 18(a) and (b), which relate to defined small and commercial quantities, Clause (c) of Section 18 is a residuary provision under which punishment may extend up to 10 years but does not attract the rigours of Section 37. Notably, Clause (c) does not prescribe any threshold quantity, and hence, neither the count of plants nor their weight holds legal relevance in the context of cultivation. Therefore, the offence in question cannot be classified under "commercial quantity" and, equally, does not fall under Sections 19, 24, or 27A of the NDPS Act. Accordingly, Section 37 of the NDPS Act is not attracted in the instant matter. In the absence of any specific bar under Section 37, there exists no statutory provision that



curtails or limits the discretionary jurisdiction of the High Court or Court of Session under Section 438 Cr.P.C., now reflected in Section 482 of the BNSS, to entertain and decide an application for anticipatory bail in such cases. It is well settled that the availability of pre-arrest bail under the general criminal law remains unaffected unless expressly barred by the special statute, as is the case in Section 18 of the SC/ST (Prevention of Atrocities) Act or Section 49 of the Rajasthan Excise Act. No such bar exists under the NDPS Act with respect to the offence alleged against the petitioner. Therefore, the statutory framework permits consideration of anticipatory bail in the present factual and legal scenario, subject to satisfaction of general principles.

14. The satisfaction required at this stage is limited to a prima facie formation of opinion based on the materials produced, which can only be assessed in the facts and context of each individual case. There can be no straitjacket formula, and the Court must exercise its judicial discretion case to case. If upon such preliminary scrutiny, the Court is prima facie satisfied that a reasonable ground exists for believing that the accused may not be guilty and that there is no necessity for custodial interrogation, bail can be granted, subject to the other condition that the Public Prosecutor has been heard and has had the opportunity to oppose the same. The Court must also take into consideration the aspect that the NDPS Act does not, either expressly or by necessary implication,



exclude the application of anticipatory bail provisions. In the case at hand, the learned Public Prosecutor has been heard at length and he also concedes the facts regarding law of domain of the petitioner over the agricultural land where the poppy plants were found planted. The Public Prosecutor has also shown respect over the special provision of bail to a lady. It is also agreed that her custodial interrogation is not needed in the present case.

15. In the facts of the present case, the prosecution has not placed any substantive material indicating exclusive dominion or conscious possession of the petitioner over the agricultural land from which poppy plants were allegedly recovered. The charge pertains specifically to cultivation of poppy plants, which by its very nature is a prolonged and intentional act, involving distinct and continuous stages such as procurement of seeds, sowing, irrigation, tending, and harvesting. There is nothing on record to suggest that the petitioner procured such seeds, was involved in sowing, or maintained the crop. Moreover, a copy of the Jamabandi has been annexed, which clearly records the land in the name of Sohanlal alone, and not the petitioner. Merely being assigned a job to guard the field majorly having mustard crop does not render her vicariously liable for an activity requiring specific knowledge and intent. For the sake of repetition, even the prosecution's own case is that the land belongs to Sohanlal, was cultivated



by Rajendra Prasad, and that the petitioner along with her son was merely engaged for guarding purposes.

16. Agricultural tenancies are documented and regulated.

Records like Jamabandi and entries maintained by the Patwari form the basis for determining possession and tenancy rights. Ordinarily, the person whose name appears in the revenue records is presumed to be in possession and exercise dominion over the land— which, in the present case, stands in the name of Sohanlal.

17. Criminal law predicates liability on the basis of mens rea and identifiable actus reus, and not merely presence of the accused at or near crime place in the capacity of a daily labour. Therefore, unless there is a specific overt act, incriminating material, or conscious knowledge attributed to the accused, it would be wholly impermissible to invoke penal liability against a female labour. In the facts of the present case, no specific allegation has been made against the petitioner indicating her direct involvement in the cultivation of the illicit crop, nor is there any material on record suggesting that she had asserted exclusive or contributory dominion over the agricultural land in question.

18. Further it must be considered that, prior to the insertion of the provision for anticipatory bail in the Code of Criminal Procedure, 1973 (now incorporated under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023), there existed no express statutory mechanism seeking pre-arrest protection in



non-bailable offences. Recognizing this legislative vacuum, the 41st Report of the Law Commission of India extensively deliberated upon the necessity and desirability of incorporating such a safeguard in the criminal procedure framework, so as to protect individuals from arrest in frivolous or vindictive prosecutions. In Para 39.9 of its Report, the Law Commission underscored the growing misuse of the criminal process wherein influential individuals were often able to orchestrate the arrest of their rivals in false or frivolous cases -sometimes with the intent to harass, disgrace, or exert pressure by ensuring their incarceration even for a few days. The Commission also acknowledged that in many such instances, there were no reasonable grounds to apprehend that the accused would either abscond or misuse the liberty granted to them on bail.

19. It was, therefore, recommended that where the Court is satisfied that post-arrest, bail would be a logical and inevitable consequence, it must be empowered to exercise its discretion to grant pre-arrest bail in appropriate cases. Importantly, the Commission advised that this power be conferred solely upon the High Court and the Court of Session, with directions to take effect at the time of arrest or thereafter. To this end, a draft provision-proposed as Section 497A-was outlined, which broadly resembles the anticipatory bail provision eventually codified as Section 438 in the Cr.P.C., 1973.



20. Significantly, the Law Commission refrained from recommending rigid statutory conditions for the grant of anticipatory bail, noting that it would neither be practicable nor desirable to attempt an exhaustive enumeration. Doing so, in their considered view, risked prejudging the case at the pre-trial stage. Instead, the Commission reposed trust in the judicial discretion of superior courts to evaluate each matter on its own merits and to refrain from making any observations that could prejudice a fair trial. The present statutory framework and jurisprudence surrounding anticipatory bail thus finds its origins in these principled recommendations. The overarching object is to prevent unwarranted arrest and detention in cases where, even after arrest, the accused is otherwise likely to be granted bail. This legislative intent continues to inform the judicial approach to pre-arrest bail applications under both the old and the new Codes.

21. It is pertinent to reflect upon the guiding principles enunciated by the Hon'ble Supreme Court in ***Joginder Kumar v. State of U.P., (1994) 4 SCC 260***, wherein the Court emphatically observed that "no arrest can be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing, the justification for the exercise of it is quite another." The Court underscored that arrest should not be used as a punitive tool, particularly when the investigation can proceed without custodial



detention. In the present case, the petitioner is a woman hailing from a socially and economically backward rural background, and the stigma attached to custodial arrest—especially for a household woman with no antecedents and no demonstrated role in the alleged offence—would irreparably damage her dignity, social standing, and familial harmony. The disproportionate consequences of arrest in such circumstances, despite the lack of necessity for custodial interrogation, militates against the very spirit of personal liberty guaranteed under Article 21 of the Constitution. When liberty is at stake and arrest itself appears unwarranted in light of available facts, the statutory discretion vested under Section 438 Cr.P.C. must be exercised to prevent undue hardship and social prejudice. When it is presumable that she would be released on bail upon her production before the Court, there exist no compelling circumstances that would justify subjecting her to the cycle of arrest, incarceration, and subsequent release.

22. In view of the aforesaid, this Court deemed it suitable to grant the benefit of anticipatory bail to the petitioner in the present matter. Needless to say, none of the observations made herein under shall affect the rights of either of the parties during trial and this Court refrains from commenting on the niceties of the matter. In view of the absence of evidence establishing exclusive and conscious possession of the petitioner over the prohibited crop; the absence of any



material suggesting her direct involvement in cultivation; the absence of any presumption arising from possession; and the fact that the petitioner is a woman entitled to the statutory relaxation under the first proviso to Section 437 Cr.P.C., and release of similarly situated accused soon after his arrest, this Court is satisfied, for the limited purposes of this application, that reasonable grounds exist to believe that the petitioner may not be guilty, and that her custodial interrogation is not warranted.

23. Accordingly, the instant bail application under Section 482 BNSS is allowed. The S.H.O/I.O/Arresting Officer, Police Station Mandal, District Bhilwara in F.I.R. No.56/2025 is directed that in the event of arrest of the petitioner she shall be released on bail, provided she furnishes a personal bond in the sum of Rs.50,000/- with two sureties in the sum of Rs.25,000/- each to the satisfaction of the S.H.O/I.O/Arresting Officer of the concerned Police Station on the following conditions:-

- (i) that the petitioner shall make herself available for interrogation by a police officer as and when required;
- (ii) that she shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or any police officer, and
- (iii) that she shall not leave India without previous



permission of the court.

(FARJAND ALI),J

152-Mamta/-

