

Bail application no. 1430/2026 and 1431/2026

FIR no. Not known

PS : Karol Bagh

u/s: Not Known

**State vs (i) Prashant Pachori
(ii) Abhishek Pachori @ Mukul**

05.08.2026

These are applications under section 482 of BNSS for grant of anticipatory bail moved by applicants/accused Prashant Pachori and Abhishek Pachori @ Mukul.

Present : Sh. Vishal Gupta, Ld. Substitute Addl. PP for the State.
Sh. Abhimanyu Chauhan, Sh. Prateek Vidyarthi and Sh. Mayank
Khari, Ld. Counsels for the applicants.
IO SI Bhupender in person.

Reply to the applications filed. Copy supplied.

Arguments heard.

COMMON ORDER

1. These are two connected applications under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking anticipatory bail, moved by two real brothers, arising out of one and the same DD No. 32 dated 23.06.2026, PS Karol Bagh, and one and the same enquiry. A consolidated reply/status report has been filed by the IO in both matters. The applications are, accordingly, taken up together and disposed of by this common order.

2. The enquiry arises from a complaint of Sh. Rahul Mehta, who runs a shoe trading shop/godown in the Karol Bagh area, alleging that the applicant Prashant Pachori, stated to have been working as a storekeeper at his shop, along with his brother, the applicant Abhishek Pachori @ Mukul, and others, removed approximately 600-700 pairs of shoes valued at approximately ₹15-16 lakh. As

per the status report, the statement of one witness, Sh. Mohit Kumar, has been recorded during enquiry, *inter alia* to the effect that amounts of ₹48,000/- and ₹32,700/- were routed through his bank account and handed over in cash to the applicant Prashant Pachori, and that the said applicant made an extra-judicial admission of having removed and sold the stock with the help of his brother and others. It is not necessary, and would not be appropriate, to dilate any further on the merits of these allegations at the stage of enquiry.

3. The procedural history is material. On 07.07.2026, the Ld. Duty Court directed that the applicants be not arrested in DD No. 32 and adjourned the matters for reply. On 10.07.2026, upon the consolidated reply being filed, the Ld. Addl. PP submitted that no FIR has been registered and that the applicants have only been asked to join the enquiry proceedings. Ld. Counsel for the applicants pointed out that the only notice dated 28.06.2026 was sent through WhatsApp, and that too on the WhatsApp number of the applicant Prashant Pachori alone, for both applicants. ASI Sanjeev Kumar, on behalf of the IO, then stated that the IO would serve fresh notice, as per law, upon both applicants, and sought a week's time for the purpose. On 20.07.2026, Ld. Counsel for the applicants submitted that, despite the said statement, no notice in terms of Section 35 BNSS had been issued to the applicants; the IO was exempted for the day and was directed to be physically present today, and interim protection was continued subject to the applicants joining the investigation/enquiry as and when directed.

4. Today, a further status report dated 05.08.2026 of SI Bhupender Singh, PS Karol Bagh, has been filed in BA No. 1430/2026 and 1431/2026. The report states that, on the last date of hearing, the applicant, through his counsel, 'undertook' to join the enquiry; that a fresh notice was accordingly 'again served upon him through WhatsApp'; that despite the same the applicant has neither joined nor cooperated with the enquiry; and that, as on date, no FIR has been

registered and only a preliminary enquiry on the complaint is in progress. Two aspects of this report merit being recorded at once. *First*, it is the State's own showing that, even after the statement made on behalf of the IO on 10.07.2026 that fresh notice would be served 'as per law', the fresh notice was again effected only through WhatsApp. *Second*, the assertion that Ld. Counsel 'undertook' before this Court on the last date to join the enquiry is not borne out by the record: the order dated 20.07.2026 records no such undertaking; what the record does contain is the submission of Ld. Counsel on 10.07.2026 that the applicants are ready to join the enquiry proceedings.

5. What is decisive, however, is the stand taken by the State. In the consolidated reply/status report dated 09.07.2026, the IO stated in terms that, at this stage, the arrest or custodial interrogation of either applicant is not required, and that what is sought is only that the applicants be directed to join the enquiry and cooperate. Today's report dated 05.08.2026 reiterates that no FIR has been registered and only a preliminary enquiry is in progress and does not resile from the aforesaid position; the same is reaffirmed at the bar. This statement of the IO, made on instructions and forming part of the record, binds the State.

6. The legal position is settled. Registration of an FIR is not a condition precedent to the exercise of jurisdiction to grant anticipatory bail. Equally settled, however, is that the jurisdiction is attracted only where the applicant demonstrates a reasonable apprehension of arrest founded on tangible material, and not on a vague or speculative possibility.

7. Tested on that anvil, no reasonable apprehension of arrest survives on the present record, for three cumulative reasons. *First*, no FIR stands registered; the matter remains at enquiry. *Second*, the only notice on record is the notice dated 28.06.2026 sent through WhatsApp, and, qua the applicant Abhishek Pachori @ Mukul, sent on the mobile number of his brother. The Hon'ble Supreme Court, in

its order dated 21.01.2025 in the continuing mandamus proceedings in *Satender Kumar Antil v. CBI [(2022) 10 SCC 51]*, has held in terms that service of notice under Section 41-A CrPC / Section 35 BNSS through WhatsApp or other electronic modes cannot be treated as valid service in substitution of the modes prescribed by law. The fresh notice served after 20.07.2026 was, on the State's own showing in the report dated 05.08.2026, again effected only through WhatsApp. Neither notice is, therefore, notice in the eyes of law. An invalid notice cannot found either an apprehension of arrest or a grievance of non-cooperation; the applicants' non-joining pursuant to such notices, therefore, cannot at this stage be held against them. *Third*, the State has itself disclaimed, on record, any requirement of arrest or custodial interrogation at this stage.

8. It follows equally that the interim protection granted on 07.07.2026, and continued on 10.07.2026 and 20.07.2026, was a holding measure passed when the stand of the State was not known and cannot now be continued. Anticipatory protection presupposes an apprehension of arrest; once every foundation for such apprehension is absent, its continuation would invert the logic of Section 482 BNSS and would, in effect, rest judicial protection upon a notice that is itself invalid in law. Nor are the applicants left unprotected thereby: for an offence of the present punishment range, the statutory discipline of Section 35 BNSS, read with *Arnesh Kumar v. State of Bihar [(2014) 8 SCC 273]* and the directions in *Satender Kumar Antil (supra)*, itself mandates that no arrest can be effected except upon valid prior notice and upon reasons recorded in accordance with law. What the statute already commands, this Court need not judicially supplement.

9. One aspect, however, cannot pass without notice. The DD entry is dated 23.06.2026. More than six weeks have elapsed, and the matter continues in 'enquiry', with no decision either to register an FIR or to close the complaint.

Section 173(3) BNSS permits a preliminary enquiry, in respect of cognizable offences punishable with three years or more but less than seven years, only with the prior permission of an officer not below the rank of DCP and requires such enquiry to be completed within fourteen days. Nothing on record shows compliance with either requirement. The principles in *Lalita Kumari v. Govt. of U.P.* [(2014) 2 SCC 1] continue to inform the corresponding scheme of the BNSS. The State cannot, on the one hand, oppose anticipatory bail by reference to the merits of the allegations and, on the other, keep the matter in enquiry limbo indefinitely. This aspect requires the attention of the supervisory hierarchy and is dealt with in the operative directions.

10. In view of the above, the following order is passed:

10.1. **Both applications are disposed of, as not calling for exercise of jurisdiction under Section 482 BNSS at this stage, there being no reasonable apprehension of arrest on the present record. It is expressly clarified that the applications are not being decided on merits, and nothing in this order shall be construed as any expression on the merits of the allegations or of the defence.**

10.2. The interim protection granted on 07.07.2026, as continued from time to time, stands vacated upon disposal, having outlived its purpose. It is, however, clarified as a statement of the legal position and not as a grant of protection that any coercive step against either applicant, if at any stage warranted, must be preceded by a notice under Section 35 BNSS validly served in the mode prescribed by law, and by compliance with Section 35 BNSS and the law laid down in *Arnesh Kumar (supra)* and *Satender Kumar Antil (supra)*.

10.3. The applicants shall remain bound by their own undertaking, recorded in their applications and at the bar, to join the enquiry as and when validly called upon by notice served in accordance with law, and to cooperate with the

same. Non-joining after valid service shall be a relevant circumstance in any future proceeding at the instance of either applicant.

10.4. The IO/SHO, PS Karol Bagh, shall act strictly as per law, including by taking a reasoned decision on registration of FIR or closure of the enquiry without further delay, and by ensuring compliance with Section 173(3) BNSS.

10.5. **Ahlmad is directed to send copy of this order to the Ld. DCP (Central District), Delhi, for information and for such directions as deemed appropriate, regarding (i) the pendency of the enquiry in DD No. 32 dated 23.06.2026, PS Karol Bagh, beyond the timeline contemplated by Section 173(3) BNSS; and (ii) the repeated resort to service of notice through WhatsApp including after a statement was made on behalf of the IO before this Court on 10.07.2026 that fresh notice would be served as per law notwithstanding the directions of the Hon'ble Supreme Court in the *Satender Kumar Antil compliance* proceedings; and for ensuring an effective and time-bound conclusion of the enquiry/investigation in accordance with law.**

10.6. Liberty is reserved to the applicants to approach the competent court afresh in the event an FIR is registered or a genuine apprehension of arrest arises on a valid foundation.

11. Copy of this order be given *dasti* to Ld. Counsel for the applicants and to the IO and be also sent to the Ld. DCP (Central District) as directed above.

Both applications be consigned to the record room after due compliance.

**(SHREYA ARORA MEHTA)
JUDGE BAIL ROSTER
ASJ/SFTC-02(CENTRAL)
THC: DELHI : 05.08.2026**