



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

- (I)

CRM-M-25884-2024 (O&M)

Sahil Dhingra

...Petitioner

Versus

State of Haryana

...Respondent
- (II)

CRM-M-26941-2024 (O&M)

Satnam Singh

...Petitioner

Versus

State of Haryana

...Respondent
- (III)

CRM-M-27658-2024 (O&M)

Kawaljit Kaur

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision: 05.11.2024

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Shobit Phutela, Advocate,  
for the petitioner in CRM-M-25884-2024.

Mr. Kashish Aggarwal and Mr. Raghav Chadha, Advocates,  
for the petitioner in CRM-M-26941-2024 & CRM-M-27658-2024.

Mr. Neeraj Sheoran, DAG, Haryana.

| FIR No. | Dated      | Police Station | Section/s                                   |
|---------|------------|----------------|---------------------------------------------|
| 23      | 24.02.2024 | Dhand, Kaithal | 406 & 420 IPC and 24 of the Immigration Act |



**GURVINDER SINGH GILL, J. (Oral)**

1. This order shall dispose of the aforesaid three petitions filed on behalf of Sahil Dhingra, Satnam Singh and Kawaljit Kaur respectively, seeking grant of anticipatory bail in the aforementioned case.
2. At the time of issuance of notice of motion in CRM-M-25884-2024, the following order was passed by the Coordinate Bench on 22.05.2024:

“Learned counsel for the petitioner *inter alia* submits that the allegations in the FIR are primarily against one Shera @ Shamsheer Singh Sandhu for having cheated the complainant except for mentioning therein that some amount was handed over to the petitioner on behalf of aforesaid Shera @ Shamsheer Singh Sandhu.

Notice of motion for 05.08.2024.

In the meantime, petitioner will join investigation before the Investigating Officer as and when called. In the event of his arrest, the Arresting Officer would admit him to interim bail, till the next date of hearing, on his furnishing adequate bail bonds/surety bonds to his satisfaction. The petitioner is directed to abide by all the conditions as envisaged under Section 438(2) Cr.P.C.”

3. In CRM-M-26941-2024, the following order was passed by the Coordinate Bench on 24.05.2024:

“[1]. By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of pre-arrest bail to the petitioner in case bearing FIR No.23 dated 24.02.2024 registered under Sections 406, 420 IPC and Section 24 of Immigration Act at Police Station Dhand, District Kaithal, wherein the petitioner has been implicated along with three others for having deceived/cheated the complainant for sending him abroad.

[2]. Learned counsel for the petitioner submits that in the entire FIR except for mentioning that the petitioner happens to be the husband of sister of Shera Sandhu, who assured the complainant of sending him



abroad, no other allegations have been leveled against the petitioner, besides making an averment that that the petitioner collected a sum of Rs.45 lakhs from the complainant for its onward transmission to Shera Sandhu, nothing has been alleged that the petitioner ever retained any money or even assured the complainant of sending him abroad/Dubai or America.

[3]. Learned counsel also relies upon order dated 22.05.2024 passed by this Court in CRM-M No.25884 of 2024 i.e. case of similarly placed co-accused namely Sahil, wherein he has been granted interim protection. Reliance has also been placed upon decision made by the Delhi High Court in case of ***Pankaj Bansal vs. State (Govt. of NCT of Delhi) and others, 2023 SCC OnLine Del 3590*** and ***Vinod Kumar vs. State of U.P. and another, 2019 SCC OnLine All 4821*** for the purposes of maintaining the present petition, directly before this Court. Relevant paragraph Nos.45 and 42 thereof respectively are reproduced hereunder for reference:-

*“45. It is clear upon perusal of Section 438(1) of Cr.P.C, that the provision gives concurrent jurisdiction to both the Court in entertaining an Anticipatory Bail Application. There is no bar on approaching this Court directly under Section 438 of CrPC for the purpose of bail. It is discretionary for the Applicant either to approach the High Court or the Court of Session. There is no restraint cast upon the Applicant to approach this Court first. It is based upon the discretion of the Applicant which Court they want to approach since both the Court have concurrent jurisdiction and the same cannot be restricted by construing the provision of Section 438 of Cr.P.C. narrowly. Section 438 is a procedural provision that is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offense in respect of which he seeks bail. An over-generous infusion of constraints and conditions not to be found in Section 438 can make its provision constitutionally vulnerable since the right to personal freedom cannot depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. These observations have been made in the context that earlier the view taken was that the power of granting anticipatory bail was somewhat*



*extraordinary in character and in exceptional cases it should be granted.*

42. *What would constitute "special circumstances" in light of the nature of the power conferred, must also be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would perhaps be imprudent to exhaustively chronicle what would be special circumstances. As noticed above, it would be impossible to either identify or compendiously propound what would constitute special circumstances. Sibbia spoke of the "imperfect awareness of the needs of new situations". It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute. Without committing the folly of attempting to exhaustively enunciate what would constitute special circumstances or being understood to have done so, the High Court would be justified in entertaining a petition directly in the following, amongst other, circumstances:-*

*(A) Where bail, regular or anticipatory, of a co-accused has already been rejected by the Court of Sessions;*

*(B) Where an accused not residing within the jurisdiction of the concerned Sessions Court faces a threat of arrest;*

*(C) Where circumstances warrant immediate protection and where relegation to the Sessions Court would not subserve justice;*

*(D) Where time or situational constraints warrant immediate intervention."*

[4]. Relying upon the aforesaid exposition of law, which carves out a situation that in case of bail/regular bail or anticipatory bail of a co-accused has been rejected by the Court of Sessions, it can be treated as special case for the High Court to entertain the petition directly for grant of anticipatory bail. In the present case also situation is the same as the prayer for grant of anticipatory bail on behalf of similarly placed co-accused stands rejected and now is pending consideration before this Court.

[5]. Notice of motion.

[6]. On asking of the Court, Mr. Gagandeep Singh Chhina, Asstt. A.G., Haryana appears and accepts notice on behalf of the respondent/State and opposes the prayer made by the petitioner while



objecting to the maintainability of the present petitioner, who before approaching this Court did not file any application before the District and Sessions Judge, Kaithal.

[7]. Though learned State counsel has placed reliance upon order dated 01.03.2023 passed by the Hon'ble Apex Court in case of ***Gauhati High Court Bar Association vs. The State of Assam & Ors., Criminal Appeal No(s) 1562/2027*** while submitting that the point of law as regards maintainability of anticipatory bail application directly before the High Court was pending consideration before the Hon'ble Apex Court, however, no interim order has been brought to the notice of this Court as to whether the interim protection was either granted or declined by the Hon'ble Apex Court and in this regard, learned State counsel prays for some time to address arguments.

[8]. Adjourned to 15.07.2024.

[9]. In the meanwhile, petitioner will join investigation before the Investigating Officer as and when called. In the event of his arrest, the Arresting Officer would admit him on interim bail, till the next date of hearing, on his furnishing adequate bail bonds/ surety bonds to his satisfaction. The petitioner is directed to abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973."

4. In CRM-M-27658-2024, the following order was passed by the Coordinate Bench on 28.05.2024:

"[1]. By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of pre-arrest bail to the petitioner in case bearing FIR No.23 dated 24.02.2024 registered under Sections 406, 420 IPC and Section 24 of Immigration Act at Police Station Dhand, District Kaithal, wherein the petitioner has been implicated along with three others for having deceived/cheated the complainant for sending him abroad.

[2]. Learned counsel for the petitioner submits that in the entire FIR except for mentioning that the petitioner happens to be the sister of Shera Sandhu, who assured the complainant of sending him abroad, no other allegations has been leveled against the petitioner, besides making

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an averment that the petitioner collected a sum of Rs.45 lakhs from the complainant for its onward transmission to Shera Sandhu, nothing has been alleged that the petitioner ever retained any money or even assured the complainant of sending him abroad/Dubai or America.

[3].   xx                   xx                   xx

[4].   Relying upon the aforesaid exposition of law, which carves out a situation that in case bail/regular bail or anticipatory bail of a coaccused has been rejected by the Court of Sessions, it can be treated as special case for the High Court to entertain the petition directly for grant of anticipatory bail. In the present case also situation is the same as the prayer for grant of anticipatory bail on behalf of similarly placed co-accused stands rejected and now is pending consideration before this Court.

[5].   Notice of motion.

[6].   On asking of the Court, Mr. Gagandeep Singh Chhina, Asstt. A.G., Haryana appears and accepts notice on behalf of the respondent/State and opposes the prayer made by the petitioner while objecting to the maintainability of the present petitioner, who before approaching this Court did not file any application before the District and Sessions Judge, Kaithal.

[7].   Though learned State counsel has placed reliance upon order dated 01.03.2023 passed by the Hon'ble Apex Court in case of Gauhati High Court Bar Association vs. The State of Assam & Ors., Criminal Appeal No(s) 1562/2027 while submitting that the point of law as regards maintainability of anticipatory bail application directly before the High Court was pending consideration before the Hon'ble Apex Court, however, no interim order has been brought to the notice of this Court as to whether the interim protection was either granted or declined by the Hon'ble Apex Court and in this regard, learned State counsel prays for some time to address arguments.

[8].   Adjourned to 15.07.2024.

[9].   In the meanwhile, petitioner will join investigation before the Investigating Officer as and when called. In the event of her arrest, the Arresting Officer would admit her on interim bail, till the next date of hearing, on her furnishing adequate bail bonds/ surety bonds to his



satisfaction. The petitioner is directed to abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973.”

5. Today, learned State counsel upon instructions has submitted that pursuant to interim directions issued by this Court, although all the petitioners have joined investigation, but the amount allegedly defrauded has not been got recovered.
6. Having regard to the aforestated position, this Court finds that the aforesaid contention of the learned State counsel as regards non recovery of the amount in question cannot be made basis for declining the grant of bail to the petitioners, as it is not a case where the serial numbers of the currency notes given by the complainant had been noted down. Even if, in case some amount is got recovered, there would be no certainty that the currency notes so recovered are the same currency notes, which had allegedly been handed over by the complainant. As such, all the petitions merit acceptance and are hereby accepted. The interim directions issued by this Court vide orders dated 22.05.2024, 24.05.2024 & 28.05.2024 are hereby made absolute subject to the condition that the petitioners shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.
7. A photocopy of this order be placed on the connected files.

**05.11.2024**

Vimal

**(GURVINDER SINGH GILL)**  
**JUDGE**

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |