

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45456-2024
Reserved on: 12.11.2024
Pronounced on: 28.11.2024

Davinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kapil Khanna, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

Ms. Sheena Khanna, Advocate,
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0089	31.07.2024	Rahon, Distt. SBS Nagar (Punjab)	406, 420, 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 18 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“3. That it is further submitted that the brief facts of the present case are that the present FIR No.89 dated 31.07.2024, registered under Section 406, 420, 120-B of IPC, was registered at Police Station Rahon, District SBS Nagar on the complaint No.833-Peshi dated 27.05.2024, moved by complainant Surjit Ram, son of Raj Kumar, resident of village Daryapur, PS Rahon, alleging therein that complainant is doing the agriculture work and the son of complainant namely, Rohit Sondhi, aged about 22 years, who is doing the work of truck repair, is aspirant to go abroad. In this

regard, complainant had a talk with accused-Charanjit Kaur wife of Harpal Singh, Bheete daughter of Harpal Singh, Manpreet daughter of Harpal Singh and Sarabjit Kaur wife of Jaswinder Kumar alias Jassi, pursuant to which Sarabjit Kaur disclosed that her husband Jaswinder Kumar alias Jassi and his partner namely Amandeep Singh Bajwa are working as travel agents and they can send Rohit Sondhi to England. The aforesaid accused got the complainant and his son introduced with accused-Jaswinder Kumar alias Jassi and Amandeep Singh Bajwa in their office at Jalandhar, who assured to send Rohit Sondhi (son of complainant) to England, within three months against payment of Rs. 15,00,000/-. The complainant further alleged that on 17.05.2022, Rohit Sondhi, transferred Rs.1 lakh from his bank account maintained in Punjab & Sind Bank, in the account of accused Jaswinder Kumar alias Jassi and on 20.05.2022 another amount of Rs. 34,500/- in the account of accused Amandeep Singh Bajwa. Thereafter, on 10.06.2022, as per demand raised by accused Jaswinder Kumar alias Jassi, an amount of Rs.3,30,000/-, was transferred by Rohit Sondhi, in the account of accused Amandeep Singh Bajwa and another amount of Rs.20,000/- on 13.06.2022. Even thereafter, as per demands raised by the accused, a total sum of Rs.11,62,000/- was deposited in the accounts of all the accused. Further cash amount of Rs. 1 lakh was paid to accused Amandeep Singh Bajwa, Rs. 1 lakh to accused Jaswinder Kumar alias Jassi, Rs.1 lakh to accused Sarabjit Kaur and Rs.38,000/- was paid to present petitioner-Davinder Kumar. The complainant further alleged that in this manner, the accused persons received the total sum of Rs. 15 lakh, on different dates, with the promise to send Rohit Sondhi to England. After three months, when complainant and his son, met the accused at their office at Jalandhar, accused Jaswinder Kumar and Amandeep Singh showed their helplessness to send Rohit Sondhi to England, on the pretext of strictness in issuance of visa by the U.K and assured to send Rohit Sondhi to New Zealand, with three years work permit, failing which to return the money. However, the accused failed to fulfill their promise of sending Rohit Sondhi to New Zealand and rather sent him to Thailand, from where Rohit Sondhi came back on 14.03.2023, as accused failed to send Rohit Sondhi to New Zealand from Thailand. Accused have now refused to return the amount of Rs.15 lakh and have committed cheating with the complainant. The complainant further requested to take legal action against the accused according to law.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to the following portions of the status report, which read as follows:

"8. That it is further submitted that there are specific allegations against the petitioner to the effect that the complainant paid a sum of Rs.38,000/- to present petitioner out of total payment of Rs.15,00,000/-. It is further submitted that the petitioner in connivance with his other co-accused cheated the complainant to the tune of Rs.15,00,000/- on the pretext of sending his son abroad but they neither sent the son of the complainant to abroad nor returned his amount. Moreover, investigation of the present case is still going on and accused including the present petitioner are yet to be arrested. The custodial interrogation of the petitioner is very much required in this case for proper investigation of the case and to recover the amount paid by the complainant and if the petitioner is released on pre-arrest bail then he will hamper the pending investigation and will temper the prosecution evidence, therefore the petitioner is not entitled for any kind of relief from this Hon'ble Court."

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

8. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on anticipatory bail in the FIR captioned above subject to

furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

11. This order is subject to the petitioner’s complying with the following terms.

12. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. The necessary steps, such as interrogating the petitioner, must be taken to recover the money. If the investigator fails to recover the money, the State shall be at liberty to file an application for cancellation of this bail.

14. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

15. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added

section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

16. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

17. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

18. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

19. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.11.2024
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No