

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33587-2024
Reserved on: 13.01.2025
Pronounced on: 27.01.2025

Naresh Kumar @ Buntty ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Deepak Kumar, Advocate for the petitioner.

Mr. Sukhdev Singh, A.A.G, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
31	23.04.2024	Talwara, District Hoshiarpur	406, 420 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 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from status report dated 03.08.2024 filed by the State, which reads as follows:

“2. That it is submitted that the complainant submitted an application No.10694-PD dated 22.12.2023 to SSP, Hoshiarpur against the petitioner with the allegations that the petitioner was studying with complainant and had fallen prey to the assurances of the petitioner of procuring Visa for South Africa for two years and for this purpose, the petitioner demanded an amount of Rs.1,80,000/-. The complainant had transferred an amount of Rs.50,000/- in the account of Neha Rani (wife) of the petitioner and an amount of Rs.80,000/- in cash on 08.05.2023 to the petitioner at Ludhiana. Apart from it, another amount of Rs.50,000/- in different installments were transferred on mobile number of the petitioner by way of Google pay. The petitioner

obtained passport etc of complainant in the month of February, 2023 and after 4 months, he got procured visa of South Africa and got a ticket for Africa Ethiopian Air Lines and handed over a copy of said ticket to complainant. When, complainant went to Delhi on 03.06.2023, in order to go South Africa, the petitioner did not hand over the original air ticket and called him back to Talwara. The ticket and Visa was got verified and found to be fake. When, complainant has come to Talwara on 13.06.2023 and asked the petitioner to return his amount, who started dilly-dallying the matter on one pretext or the other. The petitioner neither sent the complainant abroad nor returned the amount.”

4. Counsel for the petitioner has referred to order dated 11.12.2024 passed by this Court in which his following statement was recorded, which reads as under:

“Counsel for the petitioner submits that he had already compromised the matter and out of the settled amount of Rs.1.5 Lacs, an amount of Rs.1.00 lac has already been paid and a cheque of Rs.50,000/- has been given which would be encashed in the month of January, 2025 and a petition for quashing of FIR in question, on the basis of compromise is already pending for hearing on 15.01.2025. xxx.....”

5. 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.

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

7. It would be appropriate to refer to the following portions of the status report dated 03.08.2024, which read as follows:

“ROLE OF PETITIONER:

6. That it is submitted that the present case was registered against the petitioner after an inquiry conducted by SHO, P.S. Talwara, District Hoshiarpur on the application of complainant. The petitioner was school mate of the complainant and was travel agent and he won over the complainant and he assured the complainant that he will get him Visa of South Africa for work of driver in South Africa for 2 years and he will charge Rs.1,80,000/- from him. On this, the complainant transferred Rs.50,000/- in the account of Neha, wife of petitioner and the instance of the petitioner. Then the complainant gave Rs.80,000/- on 08.05.2023 in

Ludhiana and thereafter the petitioner got transferred Rs.50,000/- on different dates on Google Pay of mobile No.94631-xxxxx of petitioner. Thereafter, the petitioner got issued fake Visa and fake ticket of South Africa to the complainant and thereby committed fraud of Rs.1,80,000/- with the complainant.”

8. Although the allegations against the petitioner were serious in nature but once the complainant is stated to have compromised the matter with the petitioner, which is not disputed by the State, as such, there is no reason to deny bail to the petitioner.
9. 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.
10. 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.
11. 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.
12. 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) | |
13. This order is subject to the petitioner’s complying with the following terms.
14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

27.01.2025
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.