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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Bare Khan

...Petitioner

V/s

State of Punjab and another

...Respondents

Date of decision: 28.07.2026

Date of Uploading : 29.07.2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Nakul Sharma, Advocate for the petitioner.

Mr. Jaypreet Singh, DAG Punjab.

Mr. G.S. Ghuman, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483(3) of the BNSS, 2023 seeking cancellation of anticipatory bail granted to respondent No.2 vide order dated 31.01.2026 (Annexure P-2) passed by Additional Sessions Judge, Fatehgarh Sahib in FIR No.21 dated 21.01.2026 registered for offences punishable under Sections 406 and 420 of IPC and Section 24 of the Immigration Act at Police Station Amloh, District Fatehgarh Sahib.

2. The relevant portion of the order passed by Additional Sessions Judge, Fatehgarh Sahib, reads as under:

“8..... The net result of the entire discussion is that no logical purpose is to be served by compelling the accused to custodial interrogation. Hence, the accused is admitted to the concession of anticipatory bail with the condition to appear before the IO within a period of four working days from today, with further condition that he shall comply with all the conditions of Section 482 BNSS. As and when he joins the investigation, the IO shall release him on anticipatory bail. In



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the event of non compliance with directions issued vide this order, the Investigating Officer may proceed as per law. Accordingly, the anticipatory bail application is allowed. Nothing expressed herein shall be construed as an expression on the merits of the case. Papers of bail application be consigned to record-room (Sessions), Fatehgarh Sahib, after due compliance.”

3. Learned counsel for the petitioner has iterated that the Court below has passed the said *impugned order* in a mechanical manner without appreciating the seriousness and gravity of the allegations and the same is illegal, arbitrary and contrary to the settled principles governing grant of anticipatory bail. Learned counsel has further iterated that the Court below has failed to appreciate the seriousness and gravity of the allegations against respondent No.2 who under false assurances to secure employment in the United States of America, dishonestly induced the complainant to part with an amount of ₹50,00,000/-, out of which only ₹20,00,000/- was returned, while the remaining amount of ₹30,00,000/- is still to be recovered. It has been further contended that respondent No.2 is a habitual offender and has been involved in several criminal cases of a similar nature and despite his criminal antecedents having been brought to the notice of the learned Court below, the same were completely ignored while extending the concession of anticipatory bail. According to learned counsel, the Court below has failed to appreciate that the custodial interrogation of respondent No.2 was necessary not only for recovery of the remaining cheated amount but also for tracing the money trail, identifying other persons involved in the transaction and carrying out an effective and fair investigation. It has been further contended that the Court below has mechanically observed that the

custodial interrogation of respondent No.2 was not necessary without



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considering the peculiar facts of the present case which has seriously prejudice the investigation at its very inception. Learned counsel has further contended that respondent No.2 has misused the concession of anticipatory bail by threatening and intimidating the complainant and his family members with dire consequences. It has been further argued that the impugned order has been passed without application of mind. Thus, keeping in view the gravity of offence, cancellation of the anticipatory bail granted to respondent No.2 is entreated for.

4. Learned State counsel has filed short reply dated 10.03.2026 by way of affidavit of Gurdeep Singh, PPS, Deputy Superintendent of Police, Sub-division Amloh, District Fatehgarh Sahib and has raised submissions in tandem with the said status report; relevant whereof reads as under:

“9. That it is further submitted that during the course of inquiry and investigation, no material has come on record to indicate that any person extended any threat or intimidation to the complainant Bare Khan (present petitioner) with respect to the present case. The allegations regarding threat as mentioned in the present petition have not been found substantiated from the police record at this stage of investigation.

Role of the Accused/Respondent No.2

10. That respondent No.2 Rajiv Kumar @ Rajiv Verma played a direct role in inducing the complainant Bare Khan (present petitioner) to part with a total amount of Rs.50 lakhs on the representation that he would send the complainant to the United States of America through proper channels. During inquiry, it surfaced that respondent No.2 was not a licensed immigration agent under the Immigration Act, yet he represented himself as capable of arranging immigration abroad and thereby dishonestly obtained the said amount from the complainant in the presence of Tarandeep Singh and Harjinder Singh. Out of the said amount, respondent No.2 returned Rs.20 lakhs but retained Rs.30 lakhs and neither arranged the immigration nor returned the passport and other documents of the complainant.



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5. Learned counsel appearing for respondent No.2 has iterated that the present petition has been misconceived as the petitioner has failed to make out any grounds that would warrant cancellation of anticipatory bail already granted by the Court below. Furthermore, the order granting anticipatory bail is a well reasoned and speaking order which has been passed after considering the material placed before the Court. According to learned counsel, the respondent No.2 has cooperated fully with the investigation and no supervening circumstances or misuse of liberty have been shown by the petitioner. On the strength of these submissions, the dismissal of the instant petition is prayed for.

6. I have heard learned counsel for the rival parties and have perused the record.

7. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dinesh Madan vs. State of Haryana and another*** in ***CRM-M-9029-2023***, decided on 17.05.2024; relevant whereof reads as under:-

“12. The concept of “cancellation of bail” is statutorily manifested in terms of Section 439 (2) of 1973 Code. This concept was embodied in the earlier statute i.e. 1898 Code as well albeit with difference(s). The ratio decidendi of judgment in case of ***Gurcharan Singh*** (supra) makes it clear that, in the 1898 Code, the bail granted by the High Court could be cancelled only by it & bail granted by a Sessions Court could be cancelled by such Sessions Court only. However, Section 439(2) of 1973 Code has vested power to cancel bail which has been granted “under this chapter” upon both the High Court as also the Sessions Court. The words “under this Chapter” relates to Chapter XXXIII of Cr.P.C. of 1973 & hence the unequivocal result thereof is that the High Court as also the Sessions Court have requisite powers to cancel “any bail” granted by “any Court” by way of powers



vested under this Chapter. In other words; the High Court is well empowered to cancel a bail granted by itself or by a Sessions Court or by the Court of a Magistrate while the Sessions Court is empowered to cancel a bail granted by High Court or by itself or by a Magistrate. However, a Sessions Court can cancel bail granted by High Court only on account of supervening/new circumstances or on account of misconduct of such accused or on account of violation of any condition(s) imposed by the High Court while granting bail. The Magistrate can, of course, cancel bail granted by him but he cannot cancel a bail granted by High Court or Sessions Court except when such accused has violated/contravened any condition(s) imposed upon by such High Court or Sessions Court while granting bail to such accused. This position, is indubitable, as a Magistrate has been vested with powers for cancellation of bail only in terms of Section 437(5) of 1973 Code whereas the High Court and Sessions Court have been vested with powers under Section 439 of Cr.P.C., of 1973 to cancel “any bail granted under Chapter XXXIII of 1973 Code”.

12.1 Section 439(2) of Cr.P.C., 1973 deals with “any person who has been released on bail under this Chapter” i.e. Chapter XXXIII of 1973 Code, which engirths in itself, Section 438 of the Code (provision envisaging anticipatory bail/pre-arrest bail) as well. Hence such power operates in realm of all kinds of bails, whether regular bail or anticipatory bail. Ergo, there is no conceptual difference between cancellation of regular bail and cancellation of anticipatory bail except that a Magistrate will not have statutory power to cancel an anticipatory bail granted by High Court or Sessions Court.

*12.2. At this juncture, it would be profitable to consider an issue often springing up before Courts. Petition(s) labelled as plea(s) for “cancellation of bail” are filed in Court(s), more often than not, whether such applicant is actually seeking “cancellation of bail” on account of the accused misusing the grant of bail or on account of any supervening developments disintitling such accused to remain on bail OR where the plea raised is that, the bail ought not to have been granted at all vide the impugned order, in the factual conspectus of such case. The 1973 Code neither stipulates the words “cancellation of bail” nor “setting-aside of a bail order” but only stipulates the words “any person who has been released on bail be arrested and committed to custody”. There is no gainsaying that there is a foundational difference between “cancellation of bail” and “setting-aside of a bail order”; a difference which, by way of simile, can be said to be as stark as between chalk and cheese. The Hon’ble Supreme Court in cases of **Ranjit***



Singh (supra) and Neeru Yadav (supra) has incontestably articulated that “cancellation of bail” is sought for on account of supervening circumstances/subsequent developments/misconduct of accused etc. whereas “setting-aside of a bail order” is sought for by laying challenge to the said bail order on ground of it being perverse or based on irrelevant material(s). The parameters for consideration of the two are, accordingly, different and contrastive.

13. *The next aspect that craves attention is as to what are the factors relevant for considering of a plea for “cancellation of bail” or “setting-aside of a bail order.” At the very outset; it deserves to be noted that, it is too far well settled a principle to be ratiocinated upon, that consideration(s) for grant of bail vis.-a-vis. cancellation/setting-aside thereof are entirely different.*

14. *In a plea seeking “cancellation of bail”; such applicant ought to show, primarily, subsequent supervening circumstances such as accused having endeavored to influence/intimidate witness(s) or accused having violated bail condition(s) or accused having committed another offence(s) or accused having secured bail by misrepresenting/concealing material fact(s) or bail having been granted in ignorance/violation of statutory provisions and factors of akin nature. The Hon’ble Supreme Court in the case of **Himanshu Sharma** (supra) has delineated the nature and kind of such factors as have been stated by this Court hereinabove.*

14.1. *Further, the Hon’ble Supreme Court in the case of **Sanjay Gandhi** (supra) has enounced regarding the nature and degree of burden upon the applicant (seeking cancellation of bail). The plea of such an applicant has to be tested on the anvil of preponderance of probabilities & such an applicant is not required to prove, beyond reasonable doubt, the facts pleaded by him in support of such a plea.*

15. *In a plea seeking “setting-aside of a bail order”; the factors required to be considered are as to whether bail has been granted on relevant consideration(s); grounds required to be evaluated for grant of bail have been duly factored into the order granting bail and other factors of akin nature. The Hon’ble Supreme Court in the case of **Jagjit Singh** (supra) has held that the High Court or Sessions Court can set-aside an order granting bail passed by an inferior Court if such order is based on irrelevant considerations, order granting bail has resulted in miscarriage of justice etc. It goes without saying that the High Court or Sessions Court; while dealing a plea for setting-aside a bail order; sits in a jurisdiction, which is akin to appellate jurisdiction & hence it can look into the veracity and propriety of*



the order (granting bail) from all the perspectives. However, a Court while dealing with such a plea, ought not to substitute its own opinion with the one expressed in the impugned order.

16. *It would not be pragmatic to even attempt to lay-down exhaustive parameters in this regard as every case, especially a criminal case, is sui generis. Such a quixotic attempt ought to be avoided as no inexorable formulae can be laid down in this regard.*

17. *As an epilogue to above discussion, the following principles emerge:*

I. (i) *There is a conceptual distinction, between “cancellation of bail” & “setting-aside of a bail order”. In a plea seeking “cancellation of bail”; the factors required to be considered are akin to supervening circumstances/events or mis-conduct of accused whereas in a plea seeking “setting-aside of a bail order”; the factors required to be considered are akin to the order in question being unjustified or illegal or not based on relevant consideration(s). In other words, a plea seeking “setting aside of a bail order” is more in the nature of laying challenge to an order granting bail before a superior Court upon merits thereof.*

(ii) *It would be pragmatic as also desirable, for the cause of ease and clarity, that a plea filed under Section 439 of Cr.P.C., 1973 clearly states as to whether the plea is for “cancellation of bail” or for “setting aside of a bail order.” or on both accounts.*

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IV. *Plea seeking cancellation of anticipatory bail/pre-arrest order*

(i) *A High Court has power to cancel an anticipatory bail granted by it or by a Sessions Court.*

(ii) *A Sessions Court has power to cancel an anticipatory bail granted by High Court or earlier granted by it. However, the Sessions Court can cancel anticipatory bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting such bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel anticipatory bail granted to an accused by High Court only on account of such likes supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby such bail was granted to such accused.)*



(iii) *In case cancellation of an anticipatory bail granted by Sessions Court is sought for; such plea ought to be filed ordinarily before Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. of 1973, the filing of such a plea straight away before the High Court is not barred. At the same time, it would be expedient that such a plea (straight away filed before High Court) must show cogent reasons for not approaching the Sessions Court in first instance.*

(iv) *The factors for consideration in a plea for cancellation of an anticipatory bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material, and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.*

(v) *Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.*

(vi) *The degree and nature of proof required to be shown by an applicant (seeking cancellation of an anticipatory bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.*

V. Plea seeking setting aside of an anticipatory bail/pre-arrest bail order

(i) *A plea seeking setting aside of an anticipatory bail/pre-arrest bail order by a Sessions Court has to be essentially filed before High Court.*

(ii) *The factor, required to be considered in a plea seeking setting aside of an anticipatory/pre-arrest bail order; is as to whether the impugned order (granting anticipatory bail/pre-arrest bail) has objectively dealt with nature and gravity of allegations against accused, role of accused in the crime(s) alleged, need for custodial interrogation, likelihood of accused influencing the investigation/witnesses, likelihood of the accused absconding from process of justice etc.*

VI. *Where a plea made under Section 439(2) of Cr.P.C. 1973 raises grounds regarding “cancellation of bail” as also for “setting aside of bail order”, such plea has to be essentially made before the superior Court.*



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8. The averments made in the petition as also the arguments raised by learned counsel for the petitioner, indubitably, show that petition has been filed for cancellation of the anticipatory bail granted to the respondent No.2 vide order dated 31.01.2026 (Annexure P-2) passed by Additional Sessions Judge, Fatehgarh Sahib. In the present case, the petitioner has not brought on record any material to demonstrate that after the grant of anticipatory bail, respondent No.2 has attempted to influence the witnesses, tamper with evidence, evade investigation or violate any condition imposed by the Court. The apprehensions expressed by the petitioner are largely speculative and not supported by any cogent material. The principal contention raised on behalf of the petitioner is that while granting anticipatory bail, the learned Court below has failed to appreciate the gravity of the allegations, the criminal antecedents of respondent No.2, the requirement of custodial interrogation and the necessity of recovery of the alleged cheated amount. It has further been contended that respondent No.2 has misused the concession of bail by threatening the complainant and, therefore, the order granting anticipatory bail deserves to be set aside. The scope of consideration in a petition seeking cancellation of anticipatory bail is altogether different from that applicable while considering an application for grant of bail. The material placed before this Court does not persuade this Court to hold that the impugned order suffers from any patent perversity or illegality which would justify interference in exercise of jurisdiction for cancellation of bail. Although the petitioner has alleged that respondent No.2 has criminal antecedents and has extended threats after grant of anticipatory bail but no material has been placed before this Court to



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substantiate that respondent No.2 has violated any of the condition(s) imposed while granting anticipatory bail or he has failed to join investigation as directed by the learned Court below. There is also no material showing that respondent No.2 has attempted to abscond, has interfered with the investigation or has committed any overt act which would make it impossible for a fair investigation or trial to proceed. The allegations regarding intimidation and influence over witnesses are serious in nature. However, bald allegations unsupported by any independent material evidence cannot, by itself, constitute sufficient grounds for cancellation of anticipatory bail.

9. At the stage of consideration of anticipatory bail, the Court is not required to conclusively determine culpability or to conduct a detailed examination of evidence. If the petitioner is aggrieved by the manner of investigation, appropriate remedies are available under law; however, such grievances cannot automatically result in cancellation of bail already granted. It is worthwhile to note herein that respondent No.2 has joined the investigation pursuant to the grant of anticipatory bail and that the prosecution has not sought cancellation of bail on this ground. It is conceded position before this Court that the FIR was registered on 21.01.2026 and the investigating agency has not reported any non-cooperation or attempt by respondent No.2 to interfere with the investigation. It is trite law that the consideration(s) for grant of bail and for cancellation of bail are distinct. Cancellation of bail already granted requires demonstration of supervening circumstances such as misuse of liberty, tampering with evidence, intimidation of witnesses or deliberate evasion of



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the judicial process. Mere dissatisfaction with the reasoning of the Court below which has granted the bail or the seriousness of the offence, by itself, is not sufficient to recall such an order. Learned counsel has laid much emphasis that the allegations against the respondent No.2 are serious in nature, which according to the petitioner, ought to have been considered by the Court below at the time of grant of anticipatory bail. In the considered opinion of this Court, the petitioner has not brought any fresh or supervening material before this Court. A mere allegation of seriousness of offence without concrete material cannot justify the cancellation of bail. Moreover, such a plea cannot, by itself, render the order granting the bail perverse. The order passed by the Additional Sessions Judge, Fatehgarh Sahib is a well-reasoned speaking order and cannot be said to be suffering from vice of non-application of judicial mind. This Court, keeping in view the entirety of the facts and circumstances of the case(s) in hand, does not find any good ground to hold that the Sessions Court, while passing the impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition(s) in hand deserves rejection.

10. Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to set-aside the anticipatory bail earlier granted to respondent No.2 vide the impugned order. Therefore, the petition in hand deserves rejection.

11. As a sequel to the above discussion, the present petition filed under Section 483(3) of the BNSS, 2023, seeking cancellation of



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anticipatory bail order dated 31.01.2026 (Annexure P-2) passed by learned Additional Sessions Judge, Fatehgarh Sahib is dismissed.

12. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

13. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

July 28, 2026
Ajay

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