

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.24579 of 2024
Reserved on: 09.08.2024
Pronounced on: 30.08.2024

Durga Shanker Pandey ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Arnav Sood, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
70	23.04.2024	Civil Lines, District Gurugram	381, 411, 34 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, 1973, seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That the brief facts of the present case are that on 23.04.2024 the complainant Raj Rohit Mishra submitted a complaint alleging therein that his company Srishti Tele Enterprises Pvt. Ltd. had taken a contract from Tata Projects of Power Cable in Gurugram at Patel Nagar. They received a cable drum on 07.03.2024 from Tata Warehouse which was dropped at their warehouse at Patel Nagar. Durga Shankar Pandey was appointed as the Supervisor of their Warehouse, who had stolen the cable drum. He checked the warehouse on 10.04.2024 and came to know about the theft of cable drum. Prayer was made to take legal action. Thereupon, the above mentioned FIR No. 70 dated 23.04.2024 u/s 381 IPC registered at P.S. Civil Lines, Gurugram.



3. *That the investigation of the present FIR was conducted by HC Kulwinder. During the course of investigation, the place of occurrence was inspected and the site plan was prepared. The CCTV footage pertaining to the present occurrence was obtained. In the said CCTV footage, his boss Atul Tiwari can be seen. The supplementary statement of the complainant was recorded on 24.04.2024 wherein he named the petitioner Durga Shankar Pandey and co-accused Atul Tiwari. Copy of supplementary statement of the complainant is attached herewith as Annexure R-1. The enquiry regarding the owner of canter no. UP-14-KT-3726 (in which the stolen articles were transported) was made and the enquiry was made from the driver of the said canter namely Mohd. Yakub @ Parmatma. He was cited as prosecution witness."*

4. The petitioner's counsel contends that he had to leave his job as he suffered a serious spinal injury and was unable to work or stand. He further submits that after first week of February, 2024, the petitioner never visited the work site. As such, the present FIR is nothing but has been registered for certain ulterior reasons.

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 their family.

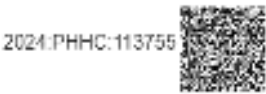
6. The State's counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"7. That the role and evidence against the petitioner Durga Shankar Pandey and the evidence against the petitioner in the present case is that he was appointed by the accused Atul Tiwari as Manager / Supervisor in his company namely AT & Company, with which the complainant had made the sub-contract. The petitioner Durga Shankar Pandey and co-accused Atul Tiwari, in connivance with each other, had stolen six heavy electric wire cable drums and sold the same to various scrap dealers after cutting the wires into pieces. The petitioner has been named by the complainant in the present FIR as well as in his supplementary statement. Further, the plea taken by the petitioner in the present petition is not sustainable as he was duly authorized by the complainant for receiving and return of heavy electric wire cable drums from Tata company and accordingly, he had received the heavy electric wire cable drums from Tata company on 07.03.2024."

8. There is sufficient prima facie evidence connecting the petitioner with the alleged offense; still, it is neither a case for custodial interrogation nor pre-trial incarceration.

9. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.



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. This order shall come into force from the time it is uploaded on this Court's official webpage.

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 and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. 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. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

17. 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.

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

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.