

into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in *King Emperor v. Khwaja Nazir Ahmad* [1944] L.R. 71 IndAp 203, where the Privy Council observed as under:

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.

[26] . This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

5. In *M.C. Abraham and ors. v. State of Maharashtra and ors*, 2002-INSC-575, Supreme Court holds,

[13]. This Court held in the case of *J.A.C. Saldanha* (supra) that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment.

Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the code of Criminal Procedure, its duty comes to an end.

On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

6. In *G.R. Ananda Babu v. State of Tamil Nadu*, [Law Finder Doc Id # 1800715], decided on 28.1.2021, a three-judge bench of Hon'ble Supreme Court holds,

[7]. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

[8]. To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

7. In *Ramadhar Sahu v. The State of Madhya Pradesh*, SLP (Crl) no. 11130-2023, decided on 16-10-2023, while dealing with a bail of an accused who was in custody, held as follows:

[5]. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

8. In the light of the judicial precedents mentioned above and in the given facts and circumstances peculiar to this case, the petitioner justifies the filing of the second application for anticipatory bail under section 438 CrPC in the same court.

9. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

"3. That brief facts of the case are that complainant moved an application

no.233-PC-7/23 dated 17.01.2023 before the SSP, Moga with the allegations that he is Canadian Citizen and is having one limit account bearing No.357XXXXXX07 with State Bank of India khosa Pando and one cheque book of said account was issued on the name of complainant. However, said cheque book was lost somewhere from him. In the month of August 2021 Rs.9,45,000/- were lying deposited in his said account. In the month of December 2022 when he returned to his village then he received a notice dated 10.01.2023 issued by the bank for not depositing the instalment amounting to Rs. 10,98,839/-, whereas he had not withdrawn any amount from the limit account. When he visited the bank, he came to know that an amount of Rs.945000/- has been transferred in the account of Ramandeep Kaur through cheque on 09.08.2021. Said amount has been got transferred by Ramandeep Kaur in connivance with bank employees by using the cheques lost by him.”

10. 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.

11. The State's counsel opposes bail and refers to para 8 of the reply:

“8. Role of the petitioner: Petitioner alongwith her co-accused Harpreet Singh, have transferred the amount of Rs.9,45,000/- from the account of complainant in the account of petitioner with State Bank of India and then withdraw the same. In this way petitioner and Harpreet Singh have played a fraud with complainant.”

12. Counsel for the petitioner refers the order dated 22.10.2024 passed by Coordinate Bench of this Court in CRM-M-20899-2024, Harpreet Singh v. State of Punjab, whereby anticipatory bail to the similarly placed accused was granted. Given this, the petitioner is also entitled to a similar relief.

13. 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.

14. 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.

15. 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.

16. 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 Ilaqa 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.

17. 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)	

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

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.