

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37091-2024
Reserved on: 06.09.2024
Pronounced on: 27.09.2024

Rakesh Kumar ...Petitioner

Versus

State of U.T., Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurbir Singh Sandhu, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T., Chandigarh with
Mr. Navjit Singh, Advocate and
Mr. Saurya Nagpal, Advocate.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
53	03.07.2024	Sector-19, Chandigarh	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 13 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 the brief facts of the case are that the instant FIR was registered on basis of a complaint by Jaspreet Singh S/o Surjeet Singh with the allegations that he along with one Gagandeep Singh and Lakhwinder Singh, i.e., victims were in search of a job when they came in contact with co-accused Jaswinder Singh, a home guard and had a talk regarding job. The co-accused Jaswinder Singh disclosed that the instant petitioner/accused was his known and that the instant petitioner/accused could help them get a job. Co-accused Jaswinder Singh also informed the complainant that the petitioner/accused shall charge Rs. 6,00,000/- per person and get them a job in Punjab Police. In furtherance of the said discussion, three Mice persons, i.e., complainant and his two others acquaintances paid a sum of Rs. 18,00,000/- in cash to the petitioner/accused in presence of co-accused and in security of said amount, the petitioner/accused

handed over to them six blank cheques of HDFC Bank. The petitioner/accused did not return their amount and also threatened to get them involved in some false cases. On the basis of the above said allegations, the present FIR was registered against the petitioner and other co-accused.”

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 their family.

5. The State's counsel opposes bail and refers to the status report, and explicitly to Para 4, which reads as follows:

“4. That after the registration of instant FIR, in furtherance of ongoing investigation, the petitioner/accused was served a notice dt. 20.07.2024 under Section 35(3) BNSS to join the investigation in the instant FIR on 26.07.2024, however, the petitioner/accused still did not join the investigation and is still at large and is neither cooperating with the investigating officials.”

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

“ROLE OF THE PETITIONER:

5. That the petitioner/accused is the main accused in the instant offence as the petitioner/accused was the one who had demanded a sum of Rs. 18,00,000/- from the complainant and two other persons namely Gagandeep and Lakhwinder on the pretext of getting them employed in Punjab Police. As per the complaint, the said sum was obtained in cash by the petitioner/accused in the year 2016 and also in security of the said amount, the petitioner/accused had given the complainant six blank, signed cheques of HDFC Bank which have been dishonoured later-on.

6. That the complainant cannot be held responsible for the delay of nearly five years in registering the complaint as the petitioner/accused is an Inspector in Chandigarh Police and the complainant and his acquaintances were under an apprehension of threat of getting involved in false cases. However, the sentence under Section 420 IPC is upto seven years so the instant FIR is not hit by bar under Section 468 Cr.P.C.”

7. The incident occurred in 2016, and there is no convincing explanation about the petitioner's influence that led to his incapacity or fear of informing police or filing a complaint.

8. There is sufficient prima facie evidence connecting the petitioner with the alleged offense; it is neither a case for custodial interrogation nor pre-trial incarceration. Although the evidence might be prima facie sufficient to launch prosecution or to frame charges, this Court is not considering the evidence at that stage but is analyzing it for the bail stage.

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 Ilaka 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

27.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.