

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-51857-2024
Reserved on: 14.11.2024
Pronounced on: 26.11.2024

Ajay Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bhupender Singh, Advocate
for the petitioner.

Mr. Jasjit Singh, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
119	21.07.2022	Lalru, District SAS Nagar	457, 380 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 11 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:

“2. That with regard to the subject matter of the present petition, it is submitted that case/FIR No. 119 dated 21.07.2022 u/s 457, 380 IPC was registered at PS Lalru, District SAS Nagar against Ajay Kumar (petitioner) and Pawan Kumar on the statement of Gurwinder Singh that he is engaged in the business of manufacturing Japanese door frames at Village Dappar. On 16.06.2022, while he was working at his shop, Ajay Kumar (petitioner) and Pawan Kumar arrived at his shop in their Swift Dzire car bearing registration number HR-26-BX-7686. They told him that they wanted to work at his shop again, as they had previously worked with him as welders for a period of 5-7 days. Trusting them due to their prior work relationship, he believed their request. They further requested to sleep in the shop at night and asked him to hand over the shop's keys. Relying on them, Gurwinder Singh provided the keys of the shop to them. The next day, on 17.06.2022 at approximately 11:00 AM, when he arrived at his shop, he found the shop's shutter

open. Upon entering, he noticed that a welding set, four coils (rulae), one drill machine and a grinder were missing from the shop. Subsequently, he attempted to locate Pawan Kumar and Ajay Kumar (petitioner) as well as their Swift Dzire car bearing registration number HR-26-BX-7686 but was unable to find them. He then contacted them on their respective mobile phone numbers and inquired about the missing items. Initially, they denied any knowledge or involvement, however, when Gurwinder Singh checked the CCTV footage and raised the issue of the stolen items, they admitted to taking the articles and assured him that they would return them, requesting him not to file a police complaint. Despite this assurance, they have not returned the stolen articles to date. Accordingly, appropriate legal action was sought against the aforesaid persons. Since, the perusal of the aforesaid statement prima facie revealed the commission of offences under Sections 457, 380 IPC, therefore, case/FIR No. 119 (supra) was registered and the investigation commenced.”

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.

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

“Role of the petitioner

8. *That the role attributed to the petitioner in the present case/FIR No. 119 (supra) is that the petitioner along with his co-accused took undue advantage of the complainant's trust, breached that trust and stole articles including a welding set, four coils (rulae), one drill machine and a grinder from the complainant's shop.*

Evidence against the petitioner

9. *That the evidence against the petitioner includes that the petitioner is specifically named in the present case/FIR No. 119 (supra). The complainant entrusted only the petitioner and his co-accused with the keys to his shop, relying on them and subsequently, they committed theft. Moreover, in the CCTV footage provided by the complainant in the form of a pen drive, the petitioner and his co-accused are visible committing theft from the complainant's shop.”*

7. 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.

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

9. 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.

10. 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.

11. 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)	

12. This order is subject to the petitioner's complying with the following terms.

13. 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.

14. 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.

15. 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.

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

26.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.