

CRM-M-1636-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1636-2025
Reserved on: 17.03.2025
Pronounced on: 28.03.2025

Vivek Kumar @ Vivek Badhan ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.B. Gilhotra, Advocate
Mr. Akash Manocha, Advocate and
Mr. Vishavjeet Singh, Advocate
for the petitioner.

Mr. Gurpartap S. Bhullar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
202	17.10.2024	City Rupnagar, District Rupnagar	406, 420 IPC and 13 of Punjab Travel Professionals (Regulations) Act 2014

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 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from status report filed by State counsel, which reads as follows:

“2. That in compliance thereto, it is respectfully submitted that the factual matrix pertaining to present case is that complaint bearing No.508-P dated 28.06.2024, was moved by complainant-Kulwinder Singh son of Late Sita Ram, resident of H.No.435, Type-2, Power Colony, Rupnagar, Tehsil and District Rupnagar, to Senior Superintendent of Police, Rupnagar, stating therein;
(i) That, his son Davin Singh Chandharr was intending to go New Zealand on work permit and complainant-Kulwinder Singh had come to know about Balbir Chumber, his wife Sangeeta, his brother-in-law Vivek Kumar (present petitioner) and mother-in-law Prem Kumari, from his relatives, that they were sending people abroad permanently. It was further averred by the complainant-Kulwinder Singh in his complaint that he contacted aforementioned Balbir Chumber, his wife Sangeeta,

his brother-in-law Vivek Kumar (present petitioner) and mother-in-law Prem Kumari and they told the complainant-Kulwinder Singh that they would send his son Davin Singh Chandharr to New Zealand on work permit within three months and they would take Rs.14,00,000/- from him, for the same. It was further averred by the complainant-Kulwinder Singh in his complaint that on 20.04.2023, Balbir Chumber and his brother-in-law Vivek Kumar (present petitioner) came to his house at Rupnagar and they both took Rs.1,00,000/- cash, passport and other academic documents of his son from him. It was further averred by the complainant-Kulwinder Singh in his complaint that 24.04.2023 Balbir Chumber made phone call to him and asked for Rs.2,00,000/- and on his asking, complainant-Kulwinder Singh got transferred Rs.2,00,000/- in the account No.50200059219994 of Balbir Chumber, from the account of her wife namely Deepa. It was further averred by the complainant-Kulwinder Singh that on 14.07.2023, Balbir Chumber sent a visitor visa to him and on his asking, and on 19.07.2023, and 26.07.2023, complainant-Kulwinder Singh transferred Rs.8,00,000/- and Rs.3,00,000/-respectively, through RTGS in the account of Balbir Chumber.

(ii) That the complainant-Kulwinder Singh further averred in his complaint that thereafter he requested Balbir Chumber for the passport of his son-Davin Singh Chandharr and he kept on delaying the matter on one pretext or another and thereafter complainant-Kulwinder Singh got the visitor visa sent by Balbir Chumber to him, however, it was found fake. It is further averred by the complainant-Kulwinder Singh that he kept on calling Balbir Chumber, and he was also being contacted by complainant-Kulwinder Singh through his relatives, however, Balbir Chumber did not give any reply to the complainant and finally he started ignoring phone calls of the complainant-Kulwinder Singh and later on he sent passport of Davin Singh Chandharr through courier to the house of complainant and on checking of the same it was without any visa. That, the complainant-Kulwinder had come to know that Balbir Chumber has no permanent place of abode and he was residing at the house of his in-laws, and therefore, the complainant-Kulwinder Singh requested to take action against the Balbir Chumber, his wife Sangeeta, Vivek Kumar (present petitioner) and Prem Kumari in accordance with law.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail.

6. Counsel for the petitioner submits that the only allegation against the petitioner is that at the time of payment of Rs.1 lac to the main accused, he was present with the main accused, other than that he has no role in the present FIR and he has been falsely roped in. He further submits that he had only accompanied his brother-in-law who is the main accused and he did not receive any money and visiting one's jija is very normal given Indian social background.

7. Reference to the translated version of FIR Annexure P-1 clearly mentions that the complainant had a word with Balbir Chumber regarding sending his son to New Zealand on work permit who is brother-in-law of the petitioner. It was explicitly mentioned in FIR that he had got to know that Balbir used to do business of immigration. It means even as per the complainant, the petitioner was not doing the business of immigration but it is his brother-in-law who was doing the business of immigration. Further it has come in FIR that Balbir Chumber had demanded Rs.14 lacs and promised to send complainant's son to New Zealand. Thus, the petitioner is not the main accused and in India, when someone's brother-in-law ask them to accompany, usually people do not say no. Thus, the possibility of petitioner simply accompanying his brother-in-law cannot be ruled out.

8. 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.

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 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.

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.

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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. 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.

15. 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.

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

28.03.2025

Jyoti Sharma

Whether speaking/reasoned: Yes

Whether reportable: No.