

2025 PHHC 005706



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

**CRM-M-2129-2025
DECIDED ON: 16.01.2025**

SURINDER KUMAR SAINI**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ashish Nagar, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 482 of BNSS, 2023, has been invoked seeking anticipatory bail to the petitioner in case FIR No. 0054, dated 27.09.2024, under Section 420 of IPC, 1860, registered at Police Station Narot Jaimal Singh, Pathankot.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

“Application to S.S.P. Sahib, Pathankot, Subject:-Application Against Surinder Kumar Saini, Son of Gurbaksh Saini and Rajat Saini, Son of Surinder Kumar Saini, Resident of Village Gidderpur, Police Station Taragarh:Tehsil/District Pathankot. Regarding cheating of Rs. 6,00,000/- (Six lakh rupees) on the pretext of job. Sir, It is submitted that I am Harbans Lal, Son of Shri Chhajju Ram, Resident of Village Khoki Chak, P.S. Narot Jaimal Singh, Tehsil/District Pathankot. The above Surinder Kumar Saini and his son Rajat Saini had taken R\$. 6,00,000 (six lakh rupees) from me about 2 years ago in connection with getting my son Jatinder Kumar a job in Food Corporation of India. Despite a

long time, the above did not get my son a job. When I asked for return of money, he gave me three cheques No. 645331, 645332, and 645334 for the amount of Rs.2/- lakh each drawn in Punjab National Bank Dinanagar (Gurdaspur) by saying that I should withdraw money from the bank by encashment of these cheques but when I presented these cheques for encashment in the bank these cheques are bounced due to lack of money in his account. Now his phone is also getting switched off. I belong to a very poor family and I had given this money to him after getting it from my relatives and mortgaging my land. The above-mentioned persons have deliberately cheated me. Therefore, it is requested that strictest legal action be taken against the above-mentioned persons and my money be got returned to me. I will be thankful to you. Yours faithfully Harbans Lal son of Shri Chhajju Ram resident of village Khojki Chak, Police Station Narot Jaimal Singh Tehsil/District Pathankot Mobile 82844821163 Signature English Date 18.06.2024.137-R-DSP-R-PTK Dated 19.06.2024, 1143-Submission Dated: 18:06:2024 PGD 366561. To look into matter as per law & facts Sd/- Sr. Supdt of police Pathankot 18.06.2024.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is further submitted that the cheques were presented by the complainant with *mala fide* intention and his motive was to extract money from the petitioner. He undertakes before this Court that the petitioner is ready and willing to join the investigation. The attention of this Court has been drawn to an order dated 07.12.2024 vide which similarly placed co-accused namely Rajat Saini has already been granted the concession of bail.

On behalf of the State/complainant

The learned State counsel, appearing on advance notice, prays for the dismissal of the present petition on the grounds that the allegations against the petitioner are of a serious nature. He disputed the submission made by the learned counsel for the petitioner, asserting that the role of the co-accused differs from that of the petitioner. It is stated that the amount in question was transferred to the account of the petitioner, and the petitioner issued three cheques, each for Rs.

2,00,000/- towards the return of the amount, however, these cheques were dishonoured.

4. Analysis

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

This court cannot ignore that *prima facie* the offense against the petitioner can be made out as he has duped the complainant on the pretext of arranging a job for his son at FCI in exchange for Rs. 6,00,000/-. The amount was paid to the petitioner. Additionally, the petitioner issued three cheques of Rs. 2,00,000/- each towards the return of the amount, but these cheques were dishonoured. Therefore, the deceitful intention of the petitioner can be gathered from this fact. A sum of Rs. 1,00,000/- was also transferred earlier into the account of the petitioner. Further it was the petitioner who informed the complainant that his son was required to undergo training at Sasaram, Bihar, for 12 months. Consequently, the son of the complainant went there and stayed for approximately 1½ months. But thereafter also no job as provided to the son of the complainant. Hence, *prima-facie* offence under Section 420 is made out against the petitioner. Such an allegation certainly requires adequate and intense investigation to unearth the truth.

As far as the contention of the petitioner that the co-accused Rajat Saini has already been granted the concession of bail, is concerned, the role of the co-accused was limited to being present with his father at the time of collecting

the money, whereas the involvement of the petitioner in the matter is of a much more serious nature.

The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the

custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 482 BNSS, is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in “State vs. Anil Sharma”; (1997) 7 SCC 187, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the circumstances of instant case, the role attributed to the petitioner and bearing in mind the law enunciated as discussed hereinabove,

this Court is of the view that his custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion, this Court does not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

16.01.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>