

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5471-2025
Reserved on: 03.04.2025
Pronounced on: 22.04.2025

Kapil Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
168	18.12.2024	Division No.8, District Ludhiana	420/120-B IPC and 24 of Immigration Act

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. Per paragraph 8 of the bail application and 10 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	217	18.12.2024	420/120-B IPC and 24 of the Immigration Act	Salem Tabri, District Ludhiana

3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“2. That the brief facts of the case are that complainant Jaskaran Singh son of Sukhdev Singh resident of village Mithra, Tehsil Phillaur, District Jalandhar submitted applications to the Commissioner of Police Ludhiana against the petitioner and co-accused Vishal Kumar. These applications were marked PGD/complaint No. 382265/384275 dated 12-07-2024 and No. 382219/384265 dated 12-07-2024. The complainant stated that it was his plan as well as the plan of his brother Harpreet Singh to visit Portugal. He came to know that Vishal Kumar and Kapil Kumar are travel agent and they can help them for going to abroad. He and his brother contacted these persons and they met them at Ludhiana at their

office on 10-12-2021. Petitioner Kapil Kumar and Vishal Kumar told them that they will get sanctioned visa for Portugal of both the brothers. They told them that there will be total expenditure of Rs. 13 Lacs for this work. It will take time of one month for sanctioning visa.

3. That the complainant further stated that Vishal Kumar get passport of the complainant and his brother and asked them to bank account on 16-12-2021. Thereafter Vishal Kumar told them on 24-12-2021 that their visahas been sanctioned and now tickets are to be purchased so deposit amount of Rs. 1 Lac in his account. Therefore they deposited amount of Rs. 1 Lac in his bank account on 24-12-2021. On demand of Vishal Kumar, they again paid amount of Rs. 1 Lac in his bank account on 01-02-2022. On repeated demands of the accused they continued depositing amount in his bank account. In this way they deposited total amount of Rs.13 Lacs till month August, 2022. This amount was paid on the demand of Vishal Kumar and petitioner Kapil Kumar.

4. That the complainant further stated that the accused persons got airplane tickets up to Serbia and they have also returned their passports. But there was no entry regarding visas in their passports even for Serbia. The accused persons called them at New Delhi in a hotel. Both Vishal Kumar along with petitioner Kapil Kumar were present there. The accused took them to the clinic of their known doctor for Corona test. Their corona test along with 4 other persons were conducted by the doctor. His after their tickets again will be purchased. It was also told that out of group of 6 persons, no one can go abroad alone. Complainant suspected their action and demanded to return their amount. The accused asked them to go to houses, he will send them cheque. After some time they received 2 cheques amounting to Rs.3,50,000/- each by post. When complainant demanded the remaining amount, then the accused assured them that after one month they will again send cheques of the remaining amount.

5. That the complainant further stated that he and his brother presented those cheques in their banks but the cheques were returned by the bank issuing memo "Payment Stopped". As both the cheques were dishonored. Then complainant contacted accused on phone on which accused said that after reaching at Jalandhar, he will return the amount in cash. Thereafter he stopped attending their phones and later his phone was switched off.

6. That the complainant further stated that then they went to the house of co-accused Vishal Kumar. He was not present in the house. But his father Vijay Kumar met them who is an employee Vishal Kumar is not residing there and he has already disinherited Vishal Kumar. The complainants demanded the documents of declaring disinheriting Vishal Kumar but he refused to give the same. It shows that his father has conspiracy with Vishal Kumar. In this way the petitioner and accused have committed fraud with them. He requested the police officers to take action against the petitioner and co-accused. These applications were marked to Incharge, AHT Unit, Ludhiana City for enquiry."

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 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:

"11. That the exact role of the petitioner is as under:-

i) Petitioner is working as Driver with co-accused Vishal Kumar.

ii) Petitioner has collected money of Rs.50,000/-on three occasion from the complainant on the asking of co-accused Vishal Kumar.

iii) Petitioner, after receipt of Rs.3500/- each, complainant and Harpreet Singh, got conducted Covid-19 test of complainant on the asking of co-accused Vishal Kumar.

iv) Petitioner went to Delhi alongwith co-accused Vishal and he was present when the co-accused handed over Air ticket and production cards to the complainant.

v) Petitioner is part of criminal conspiracy and fraud committed by co-accused with the complainant."

REASONING:

7. Petitioner has already joined into investigation and admitted that on certain occasions, he had received an amount of Rs.3500/- and Rs.50,000/- on three separate occasions from the complainant and that must be on behalf of his employer. 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. 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.

9. 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.

10. 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)	

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

12. 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.

13. 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.

14. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

16. 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.

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

(ANOOP CHITKARA)
JUDGE

22.04.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.