

2025:PHHC:025310



IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH

105

CRM-M-8305-2025  
DECIDED ON: 13.02.2025

ASHRAF

... PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. Vikram Singh Dhakla, Advocate and  
Mr. Virat Rana and Mr. Sanjiv Arya , Advocate  
for the petitioner.

Mr. Baljinder Singh Virk, Sr.DAG, Punjab.

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**SANDEEP MOUDGIL, J (oral)**

***1. Prayer***

The jurisdiction of this Court under Section 482 BNSS,2023 has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 425, dated 02.11.2024 under Sections 409 and 420 of IPC registered at Police Station Sadar Nuh, District Nuh.

***2. Prosecution story as per the FIR is narrated as under :-***

*‘To, S.P. District Nuh. Subject- Application for taking legal action the accused person namely Ashraf Hussain son of Allah Baksh Ex Sarpanch Gram Panchayat Ghasera P.S. Sadar Nuh District Nuh regarding having misappropriated the Panchayat funds. Sir, The applicant prayer as follows- 1. That the applicant is Gram Panchayat Ghasera and at present the Sarpanch is Imran and the*

*present application is being submitted by the Gram Panchayat for the registration of the case. 2. That the above mentioned accused person in an illegal manner have mis-appropriated the Panchayat funds at the time when he was the Sarpanch of the village and are in habit of committing the fraud. 3. That earlier also one case bearing FIR No. 83 dated 16.06.22 under Section 420/467/468/471/120B IPC is registered against the accused person at P.S. Sadar Nuh. 4. That the above mentioned accused person during his tenure on dated 20.09.2019 had given the pond in village Ghasera on lease for a period of 8 years in an illegal and wrongful manner given the pond on lease to Usman son of Illayas resident of village Ghasera and had also given one receipt by putting signatures over it of Rs. 9,50,000/- whereas the record of the said receipt is neither available in the Panchayat office or the BDPO Office Nuh and also the said amount was not deposited in the account of the Panchayat and thus by not depositing the said amount of Rs. 9,50,000/- into the Panchayat account, the said amount has been embezzled by the accused person. That in this manner the accused person in order to give benefit to himself and to cause loss to the Panchayat. 5. That the above person has filed one case bearing CS No. 858 of 2023 in Civil Court for getting the stay on the leasing of said Johar on the basis of the said receipt which is as such fake titled as Usman versus Gram Panchayat Ghasera in which Ld. Kartik Sharma Civil Judge Junior Division Nuh had dismissed the application for stay and against the same Usman had filed one CMA bearing No. 25 of 2024 titled as Usman versus Gram Panchayat Ghasera in which Ld. Sushil Kumar District and Sessions Judge Nuh vide order dated 07.08.2024 at page No. 6 has elaborated that Sarpanch had embezzled an amount of Rs. 9,50,000/- and the receipt is fake and has misappropriated the Panchayat funds and in case the said receipt is fake then the case can be got registered against the accused persons for the embezzlement of the Panchayat funds and for having committed forgery because the court had found that the*

*Sarpanch at that time had not got deposited the amount of Rs. 9,50,000/- and had wrongly leased the Panchayat land for a period of 8 years and also embezzled the entire amount of Panchayat funds. 6. That the above mentioned accused is a habitual person who is involved in grabbing the money and the amount of Rs. 9,50,000/- along with interest be got recovered from the accused person and also a case deserves to be got registered against the accused person, also the accused person deserves to be sent behind the bars, the applicant shall be thankful. Note- Copy of order is attached herewith. Sd/- Imran Sarpanch Gram Ghasera through Imran Sarpanch, Block Nuh, District Nuh. Mobile No. 9817356300.'*

3. **Submissions**

**On behalf of the petitioner:**

Learned counsel for the petitioner argued that no embezzlement took place on the petitioner's part as Sarpanch. Instead, the funds in question were properly utilized for the extraction of the Johar/Pond, a fact established during the inquiry conducted by the Learned Block Development and Panchayat Officer, as shown in Annexure P-1. Furthermore, the petitioner points out that the Haryana Panchayati Raj Act of 1994 is a comprehensive legal framework, under which Section 53 outlines the process for assessing and recovering any loss or liability caused by a Sarpanch during their tenure. However, no such assessment has been conducted, nor has any order been passed regarding this matter. He further submits that current proceedings are driven by political motives, specifically the alleged vendetta of the current Sarpanch against the petitioner, a former officeholder. Additionally, the petitioner emphasizes that the case hinges on documentary evidence, and as such, custodial interrogation is unnecessary.

**On behalf of respondent-State**

On the other hand, learned State Counsel that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is grave in nature as the petitioner has embezzled the money belonging to the gram panchayat.

Heard learned counsel for the respective parties.

**4. Analysis and conclusion:**

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.

Adverting to the merits of the present case wherein the petitioner has misappropriated the amount of the Gram Panchayat which was to be used for the development purposes of the Panchayat and also the petitioner did not deposit the record the Gram Panchayat in the office of the BDPO after completion of his tenure raises suspicion on his conduct. Further, this Court would note that the misuse of funds intended for village development is a significant concern, as it not only undermines local governance but also deprives communities of essential services and infrastructure improvements. The Panchayati Raj institutions are supposed to manage these funds transparently and effectively, yet cases of financial misappropriation continue to emerge, highlighting systemic issues within the management and oversight of these funds. The implications of such embezzlement are severe, as they constitute serious offenses against state interests, often leading to legal

ramifications including potential imprisonment for those found guilty. The legal framework surrounding these issues is evolving, with calls for stricter enforcement and clearer accountability measures to prevent future occurrences of such financial misconduct.

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, 2023, 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.”*

5. Decision

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed.

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.

13.02.2025  
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(SANDEEP MOUDGIL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No