208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM-M-9861-2025

Rakesh ..... Petitioner

Versus

State of Haryana and another ......Respondents

(2) CRM-M-10734-2025

Amit ..... Petitioner

Versus

State of Haryana ......Respondent

Decided on: 02.05.2025

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Navmohit Singh, Advocate for the petitioner in CRM-M-9861-2025.
Mr. Sanjeev Majra, Advocate, for the petitioner in CRM-M-10734-2025

Mr. Sumit Jain, Addl.AG, Haryana.

Mr. Keshav Pratap Singh, Advocate for the complainant.

Rajesh Bhardwaj, J.

1. This order will dispose of the above-mentioned two petitions as both the petitions have arisen of the same FIR.

2. Prayer in the present petition is for grant of anticipatory bail to the petitioners in a case FIR No. 71 dated 30.01.2025, registered under Section 3(5), 316(4) of BNS, 2023, at Police Station Kundli, Sonipat.

3. Succinctly facts of the case are that the FIR in the present case was lodged on the statement of the complainant, namely, Ankush Jain. It was alleged that he owned a Company – ADSUN TELECOM PRIVATE LTD., Phase V, Sector 56, Plot No.118-C, Kundli, Sonipat. In their Company, Rakesh son of Gajendra Singh (petitioner in CRM-M-9861-

2025) was employed as Senior HR and Amit son of Shyam Singh (petitioner in CRM-M-10734-2025) was employed as a Cashier. On 30.12.2024, when their Company got the account audit done, it was revealed from the audit that both of them had committee embezzlement by siphoning of money in a clandestine manner. He alleged that Rakesh committed embezzlement along with Amit Cashier. The company tried to contract Amit, but he switched off his phone. They found that embezzlement of Rs.26,20,000/- was committed within a span of four months. When they further inquired in the Company, then a boy, namely, Manoj told that Rakesh deposited Rs.2,00,000/- in parts in his account and in the account of his wife on 29.10.2024. Rakesh gave this amount to Manoj to deposit the amount in his account. Request was made to take legal action against Amit, who was working as a Cashier since 01.06.2019, and Rakesh, Senior HR, who was working in the Company since 01.10.2018. On the registration of FIR, investigation commenced. Apprehending arrest, the petitioners approached the Court of learned Additional Sessions Judge, Sonipat, for grant of anticipatory bail. Learned Court after hearing both the sides, finding no merit, dismissed the petition filed by Rakesh vide order dated 07.02.2025, and also dismissed the petition filed by Amit on 15.02.2025. Hence, aggrieved by the same, the petitioners are before this Court by way of filing the present petitions.

3. At the preliminary stage, the Court found possibility of amicable settlement between the parties, as the petitioner in CRM-M-9861-2025 was ready to pay Rs.13 lacs and an interim protection to the effect of not taking any coercive action was granted to the petitioners. However, the

parties could not reach at the settlement and thus, the case is being heard on merit.

4. Learned counsel for the petitioners have vehemently contended that the petitioners have been falsely and frivolously implicated in the present case on the basis of presumptions and assumptions. It is submitted that petitioner-Amit was a Junior Accountant and he had no authority to sign any document for withdrawal of any amount from the Company's account. It is submitted that the offence is triable by the Magistrate. It is further submitted that petitioner -Rakesh was also implicated simply on the basis of suspicion. It is submitted that there is a delay in lodging the FIR, as the alleged occurrence is much prior to the date of registration of the FIR. Thus, they have submitted that the petitioners have not committed any criminal offence and keeping in view the law settled by Hon'ble the Supreme Court in **Arnesh Kumar v. State of Bihar, 2014(8) SCC 273**, the petitioners deserve to be granted anticipatory bail.

5. Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioners. He submits that both the petitioners were duly employed in the Company owned by the complainant. Petitioner-Rakesh was a Senior HR, whereas petitioner-Amit was a Cashier. He submits that a comprehensive internal audit was conducted by the Company, wherein fake entries were found to have been made and, thus, it came to the light that an amount of Rs.1,24,20,898/- has been embezzled from the account of the Company for the year 2023-2024, which is evident from the internal audit report. He submits that both the petitioners hatched a conspiracy and, thus, both of them adopted *modus*

operandi to prepare two sets of salary sheets. The first set made was mere an eyewash and it was used to be presented before the Directors of the Company for obtaining their signatures. They used to prepare fake attendance entries of the employees, who were not part of the Company, and, thus, used to draw their salary in cash and later on used to deposit the same in different accounts including the account of petitioner-Rakesh as well as his wife Lalita. In the second set of documents, the net pay of the same employees used to be projected "Zero". He has drawn the attention of this Court to the reply filed and has submitted that there are some entries showing the discrepancies in the Salary Register for the month of November, 2024, which are as under:

Name and Department	**1st Set (Net Pay)**	**2nd Set (Net Pay)**
Sonam Packing Helper	Rs.1,20,000/-	0
Khusiram Tray filing Helper	Rs.70,000/-	0
Sujeet Gupta Curve Operator	Rs.1,20,000/-	0
Anurag CNC Design Operator	Rs.1,20,000/-	0

6. Learned counsel for the complainant has further submitted that both the petitioners used to siphon off the funds of the Company into their own accounts and have caused a huge financial loss to the Company. He, thus, submitted that no case for the grant of anticipatory bail to the petitioners is made out.

7. Learned State counsel has also vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that the investigation is at threshold, and a *prima facie* case is made out against the petitioners. He submits that granting anticipatory bail to the petitioners would scuttle the ongoing investigation.

8. After hearing learned counsel for the parties and perusing the record, it is inferred that both the petitioners were employees of the Company owned by the complainant. From the audit conducted, infirmities in the accounts surfaced and on enquiring, the same had been alleged to be for an amount of Rs.1,24,20,898/-. As submitted by learned counsel for the complainant, there are allegations of transferring the amount in the accounts of petitioner-Rakesh and his wife. Petitioner-Amit was a Cashier, who has been alleged to be the part of the conspiracy. The fake attendance entries of the employees are alleged to have been made and, thus, a huge amount has been alleged to be siphoned off from the account of the Company. Needless to say that the investigation is at threshold. The allegations against both the petitioners are specific. For unraveling the mystery, a free and fair investigation is essential in the case. Thus, granting anticipatory bail to the petitioners would scuttle the ongoing investigation.

9. For the consideration of anticipatory bail, the statutory parameters are given under Section 482 (1) & (2) of BNSS which reads as under:-

482"Direction for grant of bail to person apprehending arrest:

1. *When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
2. *When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section."

10. Hon'ble Supreme Court in **State represented by CBI Vs. Anil Sharma,** (1997) 7 SCC 187 has held as under:-

> "6. 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 favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he 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 need 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 task of disintering offences would not conduct themselves as offenders."

11. Hon'ble Apex Court in plethora of judicial precedents

including **<u>Gurbaksh Singh Sibbia Vs. State of Punjab</u>**, AIR 1980 SC 1632, has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of his fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which should be exercised in the extraordinary circumstances.

12. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioners has been *prima facie* established. The investigation is at its threshold. Thus, granting anticipatory bail to the petitioners at this stage would scuttle the ongoing investigation.

13. In view of the facts and circumstances of the present case, this Court is of the opinion that the petitioners do not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petitions being devoid of any merit are hereby dismissed.

14. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

02.05.2025
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No