IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11425-2025
Reserved on: 18.03.2025
Pronounced on: 25.03.2025

Gyanender Kumar ...Petitioner

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Khullar, Advocate,
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
373	24.08.2024	Zirakpur, Distt. Mohali	318(4), 61(2) of BNS, 2023

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 11 of the bail petition, the accused declares that he has no criminal antecedents.

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

> *"2. That with regard to the subject matter of the present petition, it is submitted that case/FIR No.373 dated 24.08.2024 u/s 318 (4), 61 (2) BNSS was registered at PS Zirakpur, District SAS Nagar against Paragi Lal, Nagender Kumar @ Suraj and Gyanender Kumar (petitioner) on the statement of Suresh Dalal that he was working as J.E. in M.D. University, Rohtak and he was going to retire on 31.08.2024. After retirement, he was planning to open a shop. Due to which, he got in touch with property dealer named Lalit Nagpal who called him on 10.08.2024 at Zirakpur and showed him a shop in Maya Garden, City Nagla Road, Zirakpur. The said Shop No. 19 was measuring 12'X23' and he liked the shop and the said dealer introduced him to the owners namely Nagender Kumar @ Suraj and Gyanender Kumar (petitioner) sons of Paragi Lal. The said owners disclosed that the shop belonged to their father Paragi Lal, and they also*

showed a Power of Attorney issued by Paragi Lal in the name of Nagender Kumar. The deal was settled for Rs.28,31,000/-. The sellers insisted for early execution of sale deed and on 20.08.2024, the complainant paid a sum of Rs. 15 lacs by way of RGTS into the account of Paragi. On 21.08.2024, the complainant transferred another sum of Rs.5,31,000/- from his account into the account of Devinder Kumar (brother of Nagender Kumar) and on 21.08.2024, the complainant transferred another sum of Rs. 5 lacs into the account of Vijay Kumar (father of dealer Lalit Nagpal). On 22.08.2024, the complainant transferred a sum of Rs.3 lacs into the account of Devinder Kumar (brother of Nagender Kumar). Thereafter, Lalit Nagpal sent a Pre-Registration Docket on his WhatsApp and also sent e-Registration fee receipt on his WhatsApp. The date for the execution of the sale deed was fixed as 23.08.2024. The complainant wanted to get the sale deed registered in the name of his wife Sudesh Bala. Accordingly, he along with his wife reached Zirakpur on 23.08.2024 and kept waiting for vendors till 2:00 PM but the accused sellers did not turn up. Upon which, the complainant called the dealer Lalit Nagpal, who called the complainant to his office where the said dealer disclosed that Nagender Kumar and Gyanender (petitioner) were not answering his calls. Then they went back to the Tehsil office, Zirakpur and got their presence marked with the Notary Public. Lalit Nagpal told him that Nagender Kumar and Gyanender Kumar (petitioner) have cheated them and have fled along with their money. Their father Paragi in whose account Rs. 15 lacs were transferred has also cheated them. Hence, Nagender Kumar, Gyanender Kumar (petitioner) and Paragi cheated complainant to the tune of Rs.28,31,000/- on the pretext of selling the aforesaid Shop No.19. He further came to know that on 12.08.2024, the aforementioned sellers/accused had previously agreed to sell the shop in question to one Manpreet Singh. They had received a sum of ₹15,00,000 from Manpreet Singh and subsequently defrauded him of his money. Accordingly, appropriate legal action was sought against the aforesaid persons. xxxx"

4. The petitioner's counsel submits that the present case is a case of civil dispute amongst the family members of the petitioner and the complainant. He further submits that neither the petitioner is beneficiary nor has committed any offence inasmuch as the petitioner has not even participated in any kind of transaction in the present dispute, which itself is civil in nature. He further submits that the petitioner has been embroiled in the present case only being the family member of the co-accused persons. 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 his family.

5. The State's counsel opposes bail and refers to the status report. He further submits that if this Court is inclined to grant bail to petitioner, this order shall not be a precedent for other accused.

6. It would be appropriate to refer to the following portions of the status report, which read as follows:

> ***"ROLE OF THE PETITIONER***
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> *10. That the role attributed to the petitioner in the present case/FIR No. 373 (supra) is that the petitioner along with his other co-accused cheated and duped the complainant to the tune of Rs.28,31,000/-on the pretext of selling shop No. 19, located at Maya Garden, Zirakpur however, neither possession of the shop was delivered to the complainant, nor was the amount refunded. The petitioner along with his co-accused Paragi (his father) and Nagender Kumar (his son) is habitual of defrauding innocent persons of their hard-earned money and apart from the complainant Suresh Dalal in the present case/FIR, they have also cheated Manpreet Singh of Rs.20,50,000/- and Sanjay Kumar on the pretext of selling the same shop.*
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> ***EVIDENCE AGAINST THE PETITONER***
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> *11. That the evidence available against the petitioner consists of the examination of bank account statements, which revealed that the complainant had transferred Rs.15 lakhs through RTGS into Paragi's (petitioner's father) account on 20.08.2024. Apart from this, the statements of witnesses recorded u/s 180 BNSS duly corroborates/ establishes the involvement of the petitioner in the commission of offences of the present case/FIR by the petitioner and his co-accused. Furthermore, Manpreet Singh in his statement has specifically stated that the aforementioned accused including the petitioner had also cheated him to the tune of ₹20,50,000/- under the pretext of selling the same Shop No. 19, Maya Garden, Zirakpur. He also stated that he had given a cheque for ₹5,00,000/-(Cheque No. 181274 of SBI Bank, Branch Sadar Ambala) from his father's account to the accused Nagender Kumar and ₹15,50,000/-in cash to the accused Gyanender Kumar (petitioner)."*

REASONING:

7. In the present FIR, there are oral allegations against the petitioner, amount which was alleged to paid i.e. paid in the account of his brother and father. As concerned for the statement of Manpreet Singh i.e. relates to other matter not to this FIR.

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 primafacie 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.

10. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

11. 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 Ilaqa 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.

12. 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)	

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

14. *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.

15. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

16. 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.

17. 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.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

25.03.2025
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.