

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

CRM-M-16925-2024
Reserved on: 13.01.2025
Pronounced on: 30.01.2025

...Petitioner

...Respondent

Mr. Arnav Ghai, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
785	08.11.2023	City Palwal, District Palwal	406, 420, 467, 468, 471 and 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 of Criminal Procedure Code, seeking anticipatory bail.
2. As per paragraph 10 of the reply, the accused has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That brief facts of the case are that a complaint bearing no. 2135-P dated 4.11.2023 after being enquired into by Economic Offences Wing, Palwal was received at Police Station through The Superintendent of Police, Palwal and a true translated English version of the same is appended below for kind perusal of the Hon'ble Court:-

"Subject: Complaint to take legal action against 1. Ankush Gupta and 2. Rashi Agrawal, resident of 171/A, Ramesh Dutta Street, Kolkata 700006 for the offences under sections 420/406/467/ 468/471/120B of IPC in connection with breach of trust, cheating and preparing false documents by forging and also about not paying amount of lease.

Respected Sir,

I, Surender Pal Singh son of Bharat Pal Singh, am a resident of 914, Sector 15A, Faridabad, Tehsil and District Faridabad. The accused no. 1, as a Director of his company namely M/s Rajveer Harsh Fashion Mart

Retails Private Limited (CIN U74900WB2), a company incorporated under the companies Act 1956 having PAN AAP and its registered office at 34/1, Bonebehi Bose Road, Hawrah 711101 took on rent an area of 6500 square ft. on 1st floor and 2nd floor of my UROPA Mall (bus stand Palwal) at the rate of Rs. 50/- per square ft on 28.1.2021. According to lease documents, after two years, the accused were required to pay rent at the rate of Rs. 70/- per square ft and for first two years, the accused were required to pay rent at the rate of Rs. 50/- per square ft. According to lease documents, the accused were required to pay rent amount to me through cheque prior to 7th of every month after deducting TDS amount. It was also settled that the accused would give me a certificate regarding deduction of TDS in a time bound manner. Now on checking my account details, I have come to know that the accused have given me rent from account of their company M/s Rajveer Harsh Fashion Mart Retails Private Limited only upto 21.12.2021. Despite deducting TDS amount, they have not deposited amount of TDS with the department concerned yet. In this regard, I am suffering losses because of Income Tax Department and because of acts of the accused persons, I am suffering from financial, mental and societal losses. The lease deed is in favor of M/s Rajveer Harsh Fashion Mart Retails Private Limited however, the accused have knowingly and by way of forgery obtained GST number in the name of some other firm with regard to my building. However doing so is illegal. The accused are not paying rent knowingly and with an intention to cheat, the Company Directors in connivance with each other have committed the above said forgery. Because of these acts of the accused, I am suffering unlawful loss and they are getting unlawful gains. Apart from this, the rent agreement is in favor of M/s Rajveer Harsh Company, however, I have come to know that they are issuing false fills from the said premise by the name of SK Gupta and Sons Retail Private Limited having a fake GST number. However, I have no concern with SK Gupta and Sons Retail Private Limited. In this way, the accused are causing losses not only to me but also to public at large and the Government and causing unlawful gain to themselves. From the above it is clear that the accused have obtained a false GST number in the name of M/s SK Gupta and Sons Retail Private Limited with regard to my premise and they are misusing my space illegally without paying my rent amount. In this way, the accused have committed crimes punishable under sections 420/406/467/468/471/120B IPC. Then a request to take action against the accused persons was made".

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further 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 reply.

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

"6 That during the course of investigation, documents related to M/s Rajbir Harsh Fashion Mart Retails Private Limited were obtained and taken on record as evidence. It was found that in the year 2021, Ankush Gupta (present petitioner) had transferred premise of the complainant to the firm of his father namely M/S SK Gupta and Sons Pvt Ltd, 138, Grand Foreshore Road Howrah

West Bengal, whereas the rent agreement was originally in favor of M/s Rajbir Harsh Fashion Mart Retails Private Limited.

7. *That during the course of investigation, the manager of the present petitioner had produced vouchers of receiving of rent amount from the complainant and the same were taken on record. But, the complainant has denied having signed on the same. Therefore, specimen signatures of the complainant were obtained through the Learned Area Magistrate, Palwal on 7.2.2024 for comparing with his alleged/disputed signatures on above said vouchers.*

8. *That record was obtained from the department of GST, in which a copy of consent letter "to whomsoever it may concern" regarding change of firm on the premise of the complainant was found available. The complainant has refused to having signed the said document.*

9. *That the present petitioner was joined in the investigation on 29.4.2024 in compliance of the order dated 8.4.2024 passed in the present petition. During investigation, he did not cooperate with the investigation and he did not provide original of the consent letter "to whomsoever it may concern" and he also did not properly disclose about the sequence of events involved in the crime. Since, the complainant has denied having signed receipts and consent letter, therefore, specimen signatures of the present petitioner were obtained through the Learned Court on 29.4.2024 for comparison. The specimen signatures of the complainant and the present petitioner are yet to be sent to FSL for comparison.*

It is submitted that the original of consent letter is vital evidence in the case and the same is required to be recovered from him. Therefore, his custodial interrogation is essential for just and fair investigation. Thus he may not be granted concession of anticipatory bail at this stage."

7. The nature of allegations, the amount involved and the fact that the petitioner is the first time offender, this Court does not think it appropriate to send the petitioner behind the bars in the given facts and circumstances. It is clarified that if the petitioner repeats the offence, then the concerned Court while considering and adjudicating the petitioner's bail in such case, might keep it in mind that earlier the Court had granted the discretion to the petitioner to mend his ways.

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. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it

was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.

10. 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.

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 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.

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 shall 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

30.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.