112 IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M-20037-2025
DECIDED ON: 09.04.2025

SHAMSHER SINGH

... PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

****

Present: Mr. B.K. Kaundal, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J

1. Relief Sought:-

The jurisdiction of this Court under Section 482 BNSS,2023 has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 21, dated 13.02.2025, under Section 420 IPC, 1860, registered at Police Station Sadar Nawanshahar, District SBS Nagar.

2. Facts

Prosecution story as per the FIR is narrated as under :-

"To Hon'ble S.S.P. Sahib District S.B.S. Nagar Subject: - Complaint against Shamsher Singh son of Malook Singh, resident of Baba Gola Park, Banga, Tehsil Banga, District Shaheed Bhagat Singh Nagar at present resident of Kharar Accharwal, Sub Tehsil Mahilpur (Phone No.8968-20189) for committing fraud with me for an amount of Rs.15,10, 000/- on the pretext of sending my two sons to abroad U.K. Sir, it is requested that I Sukhjinder Singh son

of Makhan Singh, am resident of village Bhagehra, Tehsil Nawanshahr District Shaheed Bhagat Singh Nagar and requested that I am resident of aforesaid address. I wanted to send my two sons namely Hardeep Singh and Gurdeep Singh to abroad. I come to know from the maternal son of my wife namely Resham Singh son of Ajit Singh resident of village Hakimpur, Tehsil Banga that accused Shamsher Singh son of Malook Singh, resident of Baba Gola Park, Banga, Tehsil Banga, District Shaheed Bhagat Singh Nagar at present resident of Kharar Accharwal, Sub Tehsil Mahilpur is working as an agent for sending persons abroad U.K. and as I am wishing to send my sons to abroad we contacted agent Shamsher Singh. After meeting the accused, he told us that he will do the work of sending his both of sons to abroad U.K. and for this he demanded Rs.15 Lacs 10 thousand from us. Due to which, in the presence of me, my children, wife and aforesaid Resham Singh the aforesaid accused agent has taken Rs.15 lacs 10 Thousand in the month of October, 2021. Thereafter, the aforesaid accused did not able to send my sons to abroad and thereafter we demanded our money back but after sometime aforesaid accused Shamsher Singh started lingering on the pretext that I will send your sons to some other country. Thereafter aforesaid Shamsher Singh has given his duly signed affidavit dated 27.01.2022 wherein it has been written that he will return my money by 30th March, 2022 and if he will not return the money within this agreed time then he will be bound to return my money with interest. We have also used to visit several times to his house but aforesaid accused Shamsher Singh is deceiving me till now. I raised demand to aforesaid accused to return all my money then initially he was agreed that he will return my money and after saying so sent us back but thereafter he is also lingering and deceiving me for returning the money and now he flatly refused to return my money. I have also called him telephonically several times but every time he used to give some excuse and also used to utter bad words and aforesaid person flatly refused that he would *not give any money do whatever you want to do neither you can do any harm to me nor police can do any harm to me. You go, the police will do whatever they want to do I did not give any money. I have arranged the money with hard efforts for sending my sons to abroad but aforesaid accused Shamsher Singh by telling a lie with us has committed fraud of Rs. 15,10,000/- on the pretext of sending my sons to abroad. Therefore, it is requested that strict legal action be taken against aforesaid accused and justice be done with me after getting my aforesaid money recovered from aforesaid accused. I will be highly thankful to you, Yours obediently. Sd/- Sukhjinder Singh son of Makhan Singh, resident of village Bhagehra, Tehsil Nawanshahr District Shaheed Bhagat"*

3. ***Submissions***

On behalf of the petitioner:

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the petitioner being the distant relative of complainant only helped the complainant to fulfil his sons desire for going abroad whereas his sons themselves did not stay abroad and even on second attempt the son of the complainant returned back from abroad for the reasons best known to them. The instant FIR is nothing but a sheer abuse and misuse of law. The petitioner is ready and willing to join the investigation and will co-operate with the investigating agency.

Notice of motion.

On behalf of respondent-State

At the asking of Court, Mr. Jastej Singh, DAG, Punjab appearing on advance notice, accepts the same on behalf of respondent-State. He submits 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 had duped the complainant to the tune of Rs.15,00,000/- approximately on the pretext of sending his sons abroad. Despite receiving the money, neither was the sons of the complainant sent abroad, nor was the amount refunded. On the contrary, the accused persons began avoiding the complainant and even extended threats to deter him from pursuing the matter.

Heard learned counsel for the respective parties.

4. ***<u>Analysis and conclusion:</u>***

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.

Prima facie, the allegations against the petitioner is serious and specific. He is not a mere bystander or an incidental link in the transaction, but a direct recipient of a large sum of money, which was allegedly collected under false pretenses. Crimes involving immigration fraud have reached alarming proportions in recent years. Unsuspecting individuals are often lured with promises of overseas employment or education, and are made to part with substantial life savings. These frauds are frequently orchestrated by agents and touts who operate outside the regulatory net. In many instances, victims are either left stranded, defrauded, or worse, find themselves in legal peril in foreign jurisdictions.

It is admitted that the petitioner collected a sum of Rs. 15,00,000/- and assured repayment. Furthermore, it has come to light that he is operating an immigration center, which may amount to an offence of human trafficking. Contrary to his assurances, he sent one complainant's son to Ukraine and another to Moscow. These actions establish a *prima facie* case against the petitioner and contradict the commitments he made

This Court is conscious of the growing prevalence of such rackets and the urgent need to adopt a stringent approach to deter such conduct. *Prima facie*, the petitioner, having actively participated in the financial transaction and being the initial custodian of the defrauded amount, cannot be permitted to evade investigation. His custodial interrogation is necessary to ascertain the full extent of the conspiracy and to trace the funds.

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."*

In light of the gravity of the offences, the *modus operand*i adopted, this Court does not deem it fit to extend the extraordinary concession of anticipatory bail to the petitioner. The instant petition stand dismissed accordingly.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case

(SANDEEP MOUDGIL)
JUDGE

09.04.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

SHAM SUNDER
2025.04.21 14:50
I attest to the accuracy and integrity of this document