2025:PHHC:061562

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM M-23856 of 2025
Date of Decision: 08.05.2025

Ginnu ...Petitioner

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Damini Aggargwal, Advocate, for the petitioner (through V.C.)

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 480(5) of B.N.S.S., 2023 with a prayer to set-aside the impugned order dated 13.01.2025 (Annexure P-2) passed by this Court, whereby, the benefit of anticipatory bail was granted to respondent No.2 in a case arising out of FIR No. 126 dated 09.08.2024 under Sections 406 and 420 of IPC, Section 13 of Punjab Travel Professional (Regulation) Act, 2014 and Section 24 of the Immigration Act, registered at Police Station Jalandhar Cantt. (Annexure P-1).

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2. The FIR in the present case was registered on the basis of the statement made by Ginnu, daughter of Robert Kalyan, petitioner and the copy of the initial complaint has been reproduced below:-

> *"Hon'ble Commissioner of Police, District Jalandhar. Subject: Application Barkhilaf Travel Agent Vinod Daniel son of Pramod Kumar Resident of House No. 530, New Defence Colony, Phase-1, Complaint letter from Jalandhar Cantt regarding committing fraud of 5 lakh rupees on the pretext of sending it to USA. Dear Sir, I am Ginnu, daughter of Robert Kalyan, resident of 17-C, Gali-3, Suman and Public School, Gulmarg Avenue, Ladhewali, Jalandhar. Vinod Daniel is a priest by profession and has known me and my family for a long time. Last year in April/May, the said Vinod Daniel came to our house and with the intention of misleading me and my father and incited me to attend a pastor's conference abroad in New Jersey (USA). In this regard, Vinod Daniel asked me for 5 lakh rupees. My father and I came in his talk and 1 was convinced by him, I agreed to go abroad. We transferred the said amount through the bank in three installments. In this regard the said Vinod Daniel also signed an agreement dated 24-05-2023 and he assured me that if He does not get my visa then he will return all the money. A copy of the contract is attached. As a security for the said money, he also issued me a cheque number 226173 dated 20-10-2023 for Rs.4.40 lakhs, Punjab National Bank, Branch Deep Nagar, Jalandhar. Despite the lapse of seven months till January 2024, when the said Vinod Daniel did not apply for the visa and neither did gave a*

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satisfactory answer, we pressured Vinod Daniel to return the said money, so he asked to deposit the said security check in the bank. But the said cheque also dishonoured due to reason insufficient balance in Vinod Daniel's account when it was presented in the bank. After the cheque dishonoured, we came to know about the said Vinod Daniel that he is a fraudulent man and he has cheated many people. Therefore, I request you to register a case against the said travel agent Vinod Daniel. Action should be taken and my 5 lakh rupees be returned. I will be thankful to you. Complainant SD/-Ginu daughter Robert Kalyan, Kalyan."

3. Learned counsel for the petitioner argues that respondent No. 2 had cheated the petitioner to the tune of Rs.5 lacs on the pretext of sending the petitioner to America for attending a meeting of Pastors & Leaders Conference. Even the said amount was transferred in the account of respondent No. 2 by way of cheques and other modes. The respondent No.2 undertook to sent her to USA and had even issued a post dated account payee cheque dated 20.10.2023 (Annexure P-4) in favour of the petitioner. However, the respondent No. 2 neither sent the petitioner to USA nor returned the amount.

4. The respondent No. 2 ultimately filed anticipatory bail before this Court vide CRM M-60266 of 2024, wherein, he admitted through his counsel that after deducting the reasonable expenses, the petitioner was ready to return the remaining amount to the complainant (present petitioner). After obtaining *interim* bail on

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admission of repayment of cheated amount, the respondent No. 2 cleverly transferred an amount of Rs.50,000/- in the account of the petitioner, instead of Rs. 5 lacs and the amount was deposited without informing the petitioner. Learned counsel further submits that till date, the respondent No. 2 has not returned the amount of Rs. 5 lacs to the petitioner and the order (Annexure P-2) was obtained by the respondent No.2 by misleading this Court. She further contends that the respondent No. 2 is neither paying the balance amount of Rs. 4.50 lacs to the petitioner nor attending calls of the petitioner. Thus, the order dated 13.01.2025 (Annexure P-2) passed by this Court, whereby, the concession of anticipatory bail was granted to the respondent No. 2, is liable to be recalled by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, the respondent No. 2 had submitted that the allegations levelled against him were highly improbable and unbelievable. Respondent No. 2 had completed the entire paper work for the purpose of sending the petitioner to U.S.A. However, due to some technical reasons, the petitioner could not be sent to USA and he had agreed to return the remaining amount to the petitioner, after deducting the reasonable expenses. Even, the respondent No. 2 had returned a sum of Rs. 50,000/- to the present petitioner. Apart from that, the respondent No. 2 appeared before the IO and had joined the

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investigation to the satisfaction of the IO. Consequently, on 13.01.2025, learned State counsel made a statement that the respondent No. 2 (petitioner in CRM M-60266 of 2024) had joined the investigation with the IO and was no longer required for further investigation. Thus, the concession of anticipatory bail was granted to respondent No. 2. It is apparent that this Court rightly allowed his petition filed by respondent No. 2 and the petitioner has failed to show to the Court that the respondent No. 2 had either made a wrong statement before this Court or had misused the concession of anticipatory bail in any manner.

7. Apart from that, the main argument canvassed by learned counsel for the petitioner before this Court is that the respondent No. 2 was required to return the money to the petitioner and his custodial interrogation would be required for the said purpose. However, the Hon'ble Supreme Court has held in the matter of ***Ramesh Kumar Vs. State of NCT of Delhi (2023) 7 SCC 461*** that it would be inappropriate to convert the bail proceedings into the recovery proceedings and the Hon'ble Apex Court observed as under:-

> *"23.* ***In Dilip Singh v. State of M.P. [Dilip Singh v. State of M.P., (2021) 2 SCC 779: (2021) 2 SCC (Cri) 106],*** *this Court sounded a note of caution in the following words : (SCC p. 780, paras 3- 4)*
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> *"3. By imposing the condition of deposit of Rs. 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code,*

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virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

8. Still further, the Hon'ble Supreme Court has held in the matter of ***Bimla Tiwari Vs. State of Bihar, (2023) 11 SCC 607: 2023 SCC Online SC 51)*** as under:-

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings

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but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasise that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

25. Law regarding the exercise of discretion while granting a prayer for bail under Section 438 CrPC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the

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complainants, the investigation is yet to result in a charge sheet being filed under Section 173(2) Cr.PC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438 CrPC does empower the High Court or the Court of Session to impose such conditions while making a direction under subsection (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of the grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, the inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for the grant of bail."

9. In view of the above discussion, this Court has no hesitation to hold that the present petitioner has failed to make out a case for recalling of the order dated 13.01.2025 (Annexure P-2) passed by this Court and the present petition deserves to be dismissed. Even otherwise, a complainant can never be permitted to recover the

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amount stated to have been misappropriated by the accused, by way of bail proceedings.

10. Dismissed.

08.05.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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

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