2025:PHHC:075898

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106

CRM-M-26037-2025
DATE OF DECISION: 13.05.2025

SHADAB

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nitin Bhanwala, Advocate and
Mr. Nirmal Singh, Advocate for the petitioner(s).

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SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

This petition has been filed under Section 482 of BNSS for grant of anticipatory bail in FIR No. 93 dated 25.10.2024 U/S 318(4) and 319 of BNS, 2023 registered at P.S. Cyber District Jind.

2. Prosecution story, set up in the present case as per the version in the FIR reads as under :-

'To, Managing Officer, Police Station Cyber Crime Jind. Sir, I roquest that I am Harjesh son of Shri Rampratap Basi Prem Nagar Narwana District Jind resident. I am a private retired teacher. I saw an advertisement on Youtube regarding trading in which it was told about earning huge profits by trading. As soon as I clicked on it, it opened directly on WhatsApp in which there was a mobile number 7319660401 and a message came as a suggestion which I sent to the same number. On which I was given information about share trading by that number. And many tempting schernes were told. Gradually while talking to them 1 agreed to do share trading. They sent me a link on which when I clicked, an app

named Nuvama Primary Account Enrollment Form opened on Google. I filled in all my details on it. After which another app got downloaded in my phone. I sent a message on mobile number 7319660401 and asked, he told me that this is our trading app, you can easily trade from it. There was an option named Customer Service inside the same app. When I contacted him, I was told about trading in it. I liked the plans mentioned in it and started working as per his instructions. On 04.09.2024, Customer Service gave me an IDFC BANK account number 10082134592 IFSC CODE IDFB0042472 and told me to deposit Rs 4 lakh in it because it was inside that app itself, so I believed him and entered my SBI BANK account number. I transferred this amount from account no. 55088466540. After that this amount was shown in the wallet in the Nuvama app. Then they told me to buy different shares which I bought as per their instructions. Then on 05.09.2024 the customer service told me to deposit 6 lakh rupees in IDFC BANK account no. 10082134592 IFSC CODE IDFB0042472 which I transferred from my SBI BANK account no. 55088466540 and did the trading as per their instructions. On 06.09.2024, he transferred Rs 5 lakh to my wife Sonia Sharma's SBI BANK account number 30365679298 and ICICI BANK account number 358901500683 and Rs 50 thousand to IDFC BANK account number 10082134592 IFSC CODE IDFB0042472. On 09.09.2024, I transferred Rs 10 lakh from my SBI BANK account number 55088466540 to the ICICI BANK account number 626705500437 IFSC CODE ICIC0006267 as told by him. On 11.09.2024, 1 transferred Rs 5 lakh from my SB1 BANK account number 30365679298 and Rs 9 lakh from ICICI BANK account number 358901500683 to the IDFC BANK account number 10188363329 IFSC CODE IDFB0021184 mentioned by him. Then on 16.09.2024, 1 transferred Rs 4 lakh 50 thousand from my wife Sonia's SBI BANK account number 30365679298 to the UCO BANK account number 22810210003701 IFSC CODE UCBA002281 given by him. On 17.09.2024, Rs 2 lakh 51 thousand was transferred from my SBI BANK account number 10365679298 to my SBI BANK account number 10188363329 IFSC CODE IDFB0021184 mentioned by *him. 1 transferred Rs 35088466540 from UCO BANK account number 22810210003701 IFSC CODE UCBA002281. On 18.09.2024, 1 gave the YES BANK account number 122963400000870 IFSC CODE YESB0000001 in which 1 transferred Rs 3 lakh 30 thousand from ICICI BANK account number 358901500683. Then on 19.09.2024, I transferred Rs 70 thousand to YES BANK account number 122963400000870 IFSC CODE YESB0000001 from ICICI BANK account number 358901500683. On 20.09.2024, I transferred Rs 8 lakh 40 thousand from ICICI BANK account number 358901500683 to the ICICI BANK account number 161405000785 IFSC CODE ICIC0001614 given by him and Rs 1 lakh 70 thousand from my SBI BANK account number 55088466540. Then on 27.09.2024, 1 transferred Rs 4 lakh from my SBI BANK account number 55088466540 to the Saraswat Cooperative Hank account number 610000000043364 IFSC CODE SRCB0000291 given by him. Then on 12.10.2024, 1 transferred Rs 5 lakh from my ICICI BANK account number 55088466540 to ICICI BANK account number 630705031251 IFSC CODE ICIC0006307 from my ICICI BANK account number 358901500683. On 16.10.2024, 1 transferred Rs 5 lakh from my wife Sonia Sharma's SBI BANK account number 30365679298 to ICICI BANK account number 090205028272 IFSC CODE ICIC0000902, Rs 50 thousand from my ICICI BANK account number 358901500683 and Rs 50 thousand from my BI BANK account number 358901500683, 401000/- rupees were transferred from 55088466540. During this time, my money was shown in the wallet of the above NUVAMA app. When I tried to withdraw money from the above wallet, no money was withdrawn. When I talked to them, they told me that I will have to pay 13 lakh rupees more. Apart from this, I talked to a mobile number 9798168869 but there was no solution. Sir, unknown persons have cheated me of a total of Rs 84,12,000/-by luring me to earn more profit in the share market. You are requested to take strict legal action against the unknown person above. Applicant-sd-Harjesh Sharma Harjesh son of Shri Rampratap resident Prem Nagar Narwana district Jind Mobile No. 9315833066 Date 25.10.2024*

Today On receipt of the above typewritten application dated 25.10.2024 at the police station, after studying the complaint and investigating the complaint received, it was found that the crime under sections 318 (4), 319 BNS is committed, so on the recommendation of higher officials, FIR No. 93 dated 25.10.2024 under sections 318 (4), 319 BNS was registered at Police Station Cyber Crime Jind and computer copy FIR was prepared. Which will be sent to the service of Bajaria Post Officer Bala. The copy will be handed over to Mishal Police along with original application for investigation on arrival of ASI Jagdeep Singh 930/Jind.'

3. <u>Contentions</u>

<u>On behalf of the petitioner</u>

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present without any substantive evidence linking him directly to the alleged offence. As per the version of the FIR, the complainant came across a YouTube video related to trading and was subsequently redirected to a WhatsApp chat through a mobile number. It is further stated that the complainant downloaded the 'Nuvama' App, which is a well-known and reputed platform for investment in mutual funds and other financial instruments. The petitioner is merely an employee who provided general guidance to the complainant regarding investment procedures.

It is submitted that the complainant voluntarily invested a total sum of ₹84,12,000/- and suffered losses due to market fluctuations, which are inherent in trading activities. In an effort to recover his losses, the petitioner had advised the complainant to consider an additional investment of ₹13 lakhs. However, rather than pursuing that route, the complainant chose to lodge the present complaint. He undertakes on behalf of the petitioner that he is ready and willing to join the investigation.

Notice of motion.

On behalf of the respondent/State

On the asking of Court, Mr. Chetan Sharma, DAG Haryana, accepts the same on behalf of the respondent/State and prays for dismissal of the present petition stating that the petitioner operates three shops purportedly engaged in the sale of chillies. However, under the guise of legitimate business, he has established a firm in the name of his servant, Tushar. Through this firm, the petitioner allegedly facilitated the transfer of a substantial amount of ₹3,16,00,000/- within a span of just nine days from 11.09.2024 to 19.09.2024 into a 'mule account' opened with UCO Bank. These transfers originated from as many as 26 different States, raising strong suspicion of pan-India fraudulent activity.

The learned State counsel contends that these transactions were made through deceitful and fraudulent means, and that the custodial interrogation of the petitioner is essential to unearth the wider conspiracy, trace the money trail, and identify the network involved.

4. Analysis

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a *prima facie* opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and baseless possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in light of the self-imposed restrictions and the broader legal parameters outlined.

Upon consideration of the submissions and examination of the record, it is evident that the allegations against the petitioner are serious in nature and involve a sophisticated modus operandi using digital platforms to mislead and defraud innocent individuals. The total amount involved is significant, and the crime is not only economic in nature but also indicative of a larger nexus operating online.

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 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 view of the aforesaid fact, this Court is of the opinion that granting anticipatory bail at this stage would adversely affect the ongoing investigation and may hinder efforts to trace other beneficiaries of the fraud or recover the defrauded amount. The custodial interrogation of the petitioner appears necessary for a fair and effective investigation. Hence, the same is dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

13.05.2025
Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

SHAM SUNDER
2025.06.20 19:03
I attest to the accuracy and
integrity of this document