

CRM-M-33069-2024
Reserved on: 15.01.2025
Pronounced on: 30.01.2025

...Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munfaid Khan, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	11.03.2020	DLF PH-3 rd , District Gurugram	380, 454, 511 and 34 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. Per paragraph 8 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	36	2021	174-A IPC	City Sohna, Gurugram
2.	262	17.07.2024	20-B/61/85 of NPDS Act	Sadar, Nuh
3.	430	2019	120-B IPC and Section 42 of Prisons Act	Bhondsi, Gurugram

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

“3. That the brief facts of the case are that on 11.03.2020, ASI Sandeep Kumar received information from Control Room, Gurugram that a person has been apprehended while committing theft in an ATM. ASI Sandeep Kumar along with fellow officials reached on the spot where the complainant Ved Parkash met him. He moved complaint and also produced the accused Shakir son of Deen Mohammad to him. In the complaint, he submitted that an ATM of Hitachi ATM company is installed in his house on contract basis. He is taking care of the ATM. On 11.03.2020 around 02:00 PM, two persons entered into the ATM cabin. One of them tried to take out the money after opening the ATM. The same was captured

in the CCTV footage of his (complainant's) shop. His helper Ram Singh caught hold of Shakir and the other person, fled away. In the process, Shakir received minor injury. Prayer was made for taking legal action. Thereupon, the above mentioned FIR No. 99 dated 11.03.2020 u/s 454, 380, 511 IPC (Later on added Section 34 IPC) was registered at P.S. DLF Phase-III, Gurugram."

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:

"4. That the investigation of the present FIR was conducted by ASI Sandeep Kumar. During the course of investigation, the site plan of the place of occurrence was prepared. Accused Shakir was arrested on 11.03.2020. His disclosure statement was recorded wherein he named the present petitioner Aslam Khan (also known as Ayub). He got recovered the key used by him for opening the ATM machine. The complainant produced the pen drive containing the CCTV footage of ATM, which was taken into police possession. Accused Shakir was produced in the Ld. Court on 12.03.2020. He is on bail. Section 34 IPC was added in the present case. The disclosure statement of co-accused Shakir is attached herewith as Annexure R- 1 for kind perusal of this Hon'ble Court.

5. That the challan against accused Shakir was submitted in the Ld. Court on 07.09.2020. Now, the trial is pending in the Court of Ld. JMIC, Gurugram and is fixed for 05.11.2024 for arguments on charge. None of the PWs has been examined as the charges are yet to be framed.

6. That the petitioner Aslam Khan joined the investigation of the present case on 21.08.2024 in pursuance of the directions issued by this Hon'ble Court vide order dated 15.07.2024. His disclosure statement was recorded. He got demarcated the place of occurrence.

7. That the role of the petitioner Aslam Khan in the present case is that he was standing at the gate of the ATM and he was keeping an eye on the people going from there, while co-accused

Shakir was attempting to open the door of the ATM machine. When Shakir was apprehended, the petitioner had run away from there. The evidence against the petitioner Aslam Khan is that he is visible in the CCTV footage of the ATM produced by the complainant. Further, he has been named by co-accused Shakir in his disclosure statement.

8. *That as per available record, the petitioner Aslam Khan has been found to be involved in the following other cases:-*

(i) FIR No.36 of 2021 under Section 174-A IPC, PS City Sohna, Gurugram. The trial of the said case is going on.

(ii) FIR No.262 dated 17.07.2024, u/s 20-B/61/85 NDPS Act, PS Sadar, Nuh. The investigation of the said case is going on.

(iii) FIR No.430 of 2019, u/s 120-B IPC and 42 Prisons Act, PS Bhondsi, Gurugram. The trial of the said case is going on.”

7. Although the petitioner has concealed the criminal history but this Court not in an adverse inference given the nature of allegations. Although there was evidence against the petitioner in the shape of the disclosure statement and his role is that he was doing recce. Cumulative effect of the facts and circumstances mentioned above this Court wants to give petitioner one chance to live like a decent person and make the society more civilized instead of doing criminal activities. Thus for these reasons this Court is inclined to grant bail.

8. 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.

9. 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, subject to the compliance of terms and conditions mentioned in this order.

10. 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 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. 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.

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. 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.

16. It is clarified that if the petitioner violates any bail condition, the State and/or the victim may file an application for bail cancellation before the trial court, which shall be competent to cancel the bail or add more conditions. Furthermore, if the petitioner moves for deletion or dilution of any bail conditions, the trial court is empowered to do so.

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 have the 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.