

CRM-M-40172-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40172-2024
Reserved on: 09.01.2025
Pronounced on: 29.01.2025

Harpinder Singh alias Harpinder Singh Kahlon ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kulwinder Bhargav, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

Mr. J.S. Sekhon, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0033	05.04.2024	Haryana, District Hoshiarpur	406, 420 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 27 of the bail petition, the accused declares that he 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 it is submitted that the complainant Dalbir Singh submitted an application No.8614-PD dated 23.09.2023 to SSP, Hoshiarpur against the petitioner regarding cheating the complainant for Rs.14,50,000/- by petitioner by issuing four credit cards and debit card in favour of complainant.

3. That it is submitted that the aforesaid application was marked for inquiry to DSP, Economic Offences and Cyber Crime, Hoshiarpur and he conducted inquiry into the matter and found that the petitioner was serving in HDFC Bank Baghpur, Police Station Haryana, District Hoshiarpur, where he opened the joint account No.50100044151692 of complainant Dalbir Singh and his wife Surjit Kaur and also opened their

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policies, etc. in the bank. By taking the benefit of innocence of complainant, the petitioner got issued credit and debit card qua the account of complainant and he himself had withdrawn the money and misused the money of complainant. Even the petitioner used the money himself given by complainant to accused for depositing the same in the policies, either in cash or through cheque. As per compromise/agreement effected between the parties, the petitioner had returned Rs.2,60,000/- and remaining amount of Rs.11,86,700/- is outstanding against the petitioner. It is also stated in the report that the bank is also helping the, petitioner and despite notice issued to bank, the bank record was not provided by the bank. The DSP Economic Offences and Cyber Crime District Hoshiarpur recommended to register a case U/s 406, 420 IPC against the petitioner at Police Station Haryana, District Hoshiarpur and sent the inquiry report to SSP, Hoshiarpur. Consequently the SSP, Hoshiarpur directed the SHO, Police Station. Haryana, District Hoshiarpur to register a case and to investigate the case, accordingly FIR No.33 dated 05.04.2024 U/s 406, 420 IPC was registered at Police Station Haryana, District Hoshiarpur.”

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. Counsel further made the following arguments:-

“A) The bank account of the complainant was opened much prior to the joining of the petitioner in the bank.

B) There are more than 50 employees working in a single branch and the bank account of a customer can only be accessed to some extent by a bank employee who is having his code in the said account. Whereas, the code of the petitioner is not registered with the complainant's account. Moreover, the deposit and withdrawal are not handled by the petitioner.

C) The complainant states that 4 credit cards have been issued by the petitioner, whereas it is well known that a bank does not issue more than one credit card to a person based on his credit score.

D) The mobile number, aadhar card, etc. were linked to the bank account of the complainant and the complainant himself states in the FIR that he received message with regard to withdrawal.

E) The transactions of withdrawal alleged by the complainant are stated to have happened from September, 2014 to November, 2021. However, no complaint has been given by the complainant in this long span of time and

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now after 10 years, the present FIR has been registered.”

5. The State’s counsel opposes bail and refers to the reply. Complainant’s counsel has also opposed the bail and filed a special reply. Complainant’s case is that it is a cyber crime and petitioner is involved and even the complicity of the senior officers is also there.

6. On the face of it, it is a case of cheating and thuggee and not of cyber crime.

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

“5. That it is submitted that the petitioner was serving in HDFC Bank Baghpur, Police Station Hariana, District Hoshiarpur, where he opened the joint account No.50100044151692 of complainant Dalbir Singh and his wife Surjit Kaur and also opened their policies, etc. in the bank. By taking the benefit of innocence of complainant, the petitioner got issued credit and debit card qua the account of complainant and he himself withdrawn the money and misused the money of complainant. Even the petitioner used the money himself given by complainant to accused for depositing the same in the policies, either in cash or through cheque. As per compromise/agreement effected between the parties, the petitioner had returned Rs.2,60,000/- and remaining amount of Rs.11,86,700/- is' outstanding against the petitioner. The police of Police Station. Hariana, District Hoshiarpur inquired from the complainant regarding compromise and he disclosed that the petitioner has returned only Rs.2,60,000/- to him and remaining amount of Rs.11,86,700/- is outstanding against the petitioner and the petitioner has not approached him regarding returning amount of Rs. 11,86,700/- after registration of the present FIR.”

8. The incident pertains to the year from 2014 to 2021 and there was ample time for the complainant to report the matter but he failed to do so. Consequently, given the nature of allegations, sentence provided and the incident being very old, it shall be unjust to deny anticipatory bail to the petitioner at this stage or to send him for pre-trial custody or make him suffer through custodial interrogation.

9. 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.

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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.

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 Ilaka 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. 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.

14. 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.

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

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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. 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 be at liberty to cancel this bail.

17. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

18. 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.

19. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.01.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.