IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42088-2024
Reserved on: 07.05.2025
Pronounced on: 19.05.2025

Rajnish Kumar ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

Mr. Anil Kumar Bhardwaj, Advocate and
Mr. Kuldeep Sharma, Advocate
for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
357	08.08.2024	Gohana City, Sonipat	420, 406, 506 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 15 of the bail petition, the petitioner declares that he has no criminal antecedents.

3. The facts and allegations are being taken from the translated copy of FIR (Annexure P-1), which reads as follows:

> *"Complainant prays as follows:*
>
> *1. That he is Satish son of Shri Ram Kishan resident of house no. 270, Mahamadpur Road, Ward No.5. Ram Nagar Colony, Gohana, Near R.K School, District Sonipat and am a law abiding justice loving person.*
>
> *2. That some time ago the above mentioned accused came in contact with me and one day in January 2024 I met him in Gohana and he told me that he runs a beauty parlor at the above mentioned address and also does the work of sending people abroad. The above accused assured that if I want to go abroad, he will send me abroad at low cost. At that time too, I was roaming around in search of work due to which I came under the*

> *influence of the accused and the accused took my documents like Aadhar card, passport etc. from me and said that he will send me to America in a few days. The culprit demanded Rs 15 lakh from me for this work. After the assurance given by the accused, I asked the accused for his account number, on which the accused said that he has to pay the money in cash, hence he needs the money in cash. On which I arranged for the money and gave the cash to the accused and at that time my friends Ramdas and Jasbir were present with me and in front of them also the accused assured to send me abroad to America within a month.*
>
> *3. That after the completion of the time limit. the accused did not give me any way and when I talked to the accused, he started evasive. I repeatedly talked to the accused but every time the accused kept avoiding me by making some excuse or the other. I even went to the convict's office several times and there too the convict did not give me any answer. After which he was forced to come back. In March 2024, the accused said that he could not get my work done and he gave me a check no. 000018 in his account. Gave him Rs 10 lakh and said to withdraw your money from this bank and I will pay the rest soon. But when I deposited the said check in my account, it bounced and when I talked to the accused about this, the accused threatened me that if I take any action or ask for money again, I will kill you because I did not take any of your money. I had to say no and after this the accused even stopped picking up my calls. The above mentioned culprit has defrauded me of Rs 15 lakh in the name of sending me abroad as part of a well-planned conspiracy and now there is no way to demand the money back or take action."*

4. Petitioner's counsel makes reference to para 5 of the bail petition, which reads as follows:-

> *"That it was, in fact, the complainant who defrauded the Petitioner by promising to provide a government job to the relative of the Petitioner. The complainant took 5 lakh cash and cheque worth Rs. 10 lakhs from the Petitioner as part of this fraudulent scheme. When the complainant failed to fulfil his promises, the Petitioner sought the return of the cheque. The complainant, instead of returning the cheque, has now filed a false and malicious complaint against the Petitioner. Copy of screenshots of WhatsApp chats between complaint and petitioner is annexed as ANNEXURE P-2 for kind perusal of this Hon'ble court."*

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the reply.

7. Complainant's counsel also opposes the bail and seeks dismissal on the following

grounds:-

> *"i) Relevant documents of the complainant are to be recovered from him.*
>
> *ii) An amount of Rs.15,00,000/- is to be recovered.*
>
> *iii) Cheque of Rs.10,00,000/- issued by the accused to the complainant itself shows that accused had received amount from the complainant."*

8. It would be appropriate to refer to the following portions of the reply dated 30.09.2024 which read as follows:

> *"5. That despite sending repeated notices, the petitioner is not joining the investigating deliberately. There are specific allegations against the petitioner which are serious in nature. From the statements of the witnesses and cheque given by the petitioner to the complainant clearly shows that the petitioner took money from the complainant. In the investigation conducted by the deponent the allegations of demand of bribe have been found true. The petitioner is not co-operating with the investigating agency. As such custodial interrogation of the petitioner is required in the present case to unearth the truth of the case and for just and fair investigation."*

REASONING:

9. An analysis of the above argument would lead to the following outcome.

10. In the present case, complainant has created story of taking money by sending abroad whereas case of the petitioner is that he had paid cheque because it was the complainant who had assured a job. Petitioner has also referred to photocopy of one cheque dated 19.03.2024 issued by the petitioner-Rajnish, whereas there was no reason to give this cheque. Complainant submits that because the petitioner did not send the complainant to America and petitioner handed over the cheque back to complainant, which bounced. However complainant's counsel did not annex any record for bouncing of the cheque. On the face of it, stand of the petitioner is not at all truthful and he appears to be changing stand, but the difficulty for this Court is that the complainant is not coming with clean hands. In fact it was the duty of the complainant to annex the copy of memo where by cheque reference as bounced and also the explanation and reason for issuance of cheque which was not done.

11. Needless to say that petitioner's conduct is highly doubtful, suspicion but the burden is not on him to prove innocence at this stage. Primary burden is on the prosecution and the complainant which they did not discharge property. Nothing had stopped the complainant to annex copy of the complaint filed for bouncing of the cheque. It was explicitly mentioned in para 7 of the reply filed by the complainant (Page 38), that

the cheque was dishonored. The copy of the legal notice and the complaint would have lend pleadings and corroborations to the complainant's version which was not done. Thus, doubt is created and its benefit must go to the petitioner.

12. 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.

13. Given the above, the penal provisions invoked coupled with the primafacie 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. 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.

14. 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 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.

15. 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)	

16. This order is subject to the petitioner's complying with the following terms.

17. ***<u>The petitioner is directed to join the investigation on 26th & 27th May 2025 and as and when called by the Investigator.</u>*** **<u>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 before the concerned Sessions Court, Sonipat, which shall be authorized to cancel the bail for not joining investigation. During the investigation,</u>**

<u>the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.</u>

18. 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.

19. 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.

20. 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.

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

22. 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.

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

(ANOOP CHITKARA)
JUDGE

19.05.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.