IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38399-2025

Date of decision: 21.07.2025

Sunny @ Sandeep Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gagandeep Singh Simble, Advocate for the petitioner.

Mr. Gurpartap S. Bhullar, AAG Punjab.

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SUMEET GOEL, J.

1. Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'the BNSS') seeking grant of anticipatory bail to the petitioner in case bearing FIR No.11 dated 10.03.2024, registered for the offences punishable under Sections 420, 120-B of IPC at Police Station Ghuman Kalan, District Gurdaspur.

2. The gravamen of the FIR in question pertains to defrauding the complainant namely Vikas Bhandari, son of Jaspal, resident of Village Suchania, Tehsil and District Gurdaspur, who alleged that he was approached by the accused Sunny (petitioner herein) regarding the possibility of sending his son namely Lovepreet Bhandari, abroad to Portugal on a work permit visa. It was alleged that the petitioner claimed to be associated with Mani Kapoor, son of Ashok Kumar and Ashok Kumar himself, who posed themselves as travel agents. After further discussions, the complainant alongwith Iqbal Singh son of Lakha Singh of Suchetagarh, were asked to submit the passports of their sons alongwith Rs.3.8 lacs each initially, with the assurance that the total costs of Rs.12.00 lacs would be

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paid in installments, the balance was to be paid once the boys reached Portugal. On 28.11.2021, the son of the complainant was sent to Dubai, then to Serbia and subsequently moved illegally to Greece. During this period, an additional amount of Rs.8.00 lacs was demanded over the phone by the accused whereafter, the complainant transferred Rs.12.00 lacs from his ICICI Bank account to the account of accused Mani Kapoor in Allahabad Bank, Amritsar. Thereafter, the complainant and Iqbal Singh were instructed to deliver the remaining Rs.7.5 lacs in cash at the residence of Jawahar Lal which they did on 04.01.2022, in the presence of his family. The same was videographed by the complainant. Despite repeated assurances, the accused neither facilitated the promised relocating the son of the complainant to Portugal nor returned the passports. It was further alleged that the son of the complainant was later detained by Greek authorities and after payment of certain amount, the son of the complainant was released and later the complainant arranged the return of his son on 15.05.2022 at his own expense. Notwithstanding repeated assurances from the accused to return the amount, no refund was ever made. On the basis of the aforesaid complaint, instant FIR has been registered against the petitioner alongwith other accused and investigation ensued.

3. Learned counsel for the petitioner has iterated that the petitioner is innocent and has been falsely implicated in the present case. Learned counsel asserts that the allegations levelled against the petitioner in the impugned FIR are entirely baseless and devoid of any credible or cogent material. Furthermore, the petitioner has no connection whatsoever with the alleged offence. It has been further iterated that the primary allegation against the petitioner is that he acted as a mediator between the complainant

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and co-accused in connection with the arrangement for sending the son of the complainant abroad. It has been further iterated that the petitioner and co-accused are closely related to the petitioner and being personally acquainted with both the parties, the petitioner merely facilitated their introduction. According to learned counsel, the petitioner is neither a travel agent nor engaged in any business of facilitating overseas employment and hence the allegations levelled against him are entirely false, vague and baseless. It has been further submitted by the learned counsel that the petitioner has been falsely implicated in the present case and the complaint appears to be a result of a concocted narrative, possibly motivated by personal enmity to settled personal scores. Moreover, the petitioner has never acted with any criminal intent nor committed any offence as alleged. Lastly, it has been further argued that there is no need for custodial interrogation of the petitioner, as nothing incriminating remains to be recovered from him. Moreover, there is no likelihood of the petitioner absconding from the process of justice or tampering with the prosecution evidence in case he is enlarged on pre-arrest bail. On strength of these submissions, the grant of anticipatory bail is entreated for.

4. Conversely, learned State counsel (on the strength of advance notice) has opposed the grant of anticipatory bail to the petitioner by arguing that the offence committed by the petitioner is serious in nature. According to learned State counsel, allegations levelled against the petitioner are of a grave and serious nature, involving a well orchestrated fraud amounting to more than Rs.28.00 lacs wherein the complainant and his son were deceived under the false pretext of securing legal migration to the Portugal. It was further contended that the magnitude of the offence reflects not only a

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blatant abuse of trust but also a calculated exploitation of the vulnerability and aspirations of the complainant. According to learned State counsel, the offence committed by the petitioner caused substantial financial and emotional distress to the complainant and his family. Considering the seriousness of the allegations, the custodial interrogation of the petitioner may be necessary to unearth the broader conspiracy and recover the ill-gotten money. Granting bail at this stage may set a wrong precedent in cases involving human trafficking and immigration fraud. Furthermore, in case the petitioner is granted the concession of pre-arrest bail, at this stage, it may impede the ongoing investigation and obstruct the recovery and potentially lead to tampering with evidence or influencing of witnesses. Accordingly, a prayer has been made for the dismissal of the instant petition in order to facilitate effective investigation into the alleged offence.

5. I have heard the learned counsel for the rival parties and have gone through the available record of the case.

6. As per the case put forth in the FIR in question, indubitably, serious allegations have been levelled against the petitioner. The FIR *ibid* was lodged on the basis of a complaint filed by the complainant – Vikas Bhandari, who alleged that he was approached by the petitioner (herein) regarding the possibility of sending his son to Portugal on a work permit visa. It was further alleged that the petitioner claimed to be involved in the business of facilitating overseas employment and introduced his associates namely Mani Kapoor and his father Ashok Kumar, who, according to the petitioner, were also engaged in the travel agency business. Thereafter, the complainant was asked to submit the passport of his son with some initial payment (i.e. Rs.38,000/-). The complainant was informed that the

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remaining amount would be collected once the son of the petitioner reached Portugal, with the total expenditure estimated at around Rs.20.00 lacs. Pursuant to said arrangement, the son of the complainant was first sent to Dubai and then to Serbia. While in Serbia, the complainant was allegedly contacted again and was asked to pay an additional amount of Rs.8.00 lacs. Thereafter, the son of the complainant was reportedly sent to Greece via illegal means (Dunki route) and the accused demanded the remaining balance. Thereafter, a sum of Rs.12.00 lacs were transferred by the complainant to the bank account of co-accused Mani Kapoor. Subsequently, the complainant was asked to deliver the remaining Rs.7.5 lacs at the residence of co-accused Jawahar Lal, who was also videographed. However, the son of the complainant was never sent to Portugal. The passport of son of the complainant was reportedly confiscated and he was later detained by the Greek authorities and the complainant claimed to have paid certain amount to secure the release of his son. Later, the son of the complainant was eventually returned to India. The complainant alleged that he was defrauded by the petitioner and co-accused under the false pretext of arranging legal travel to Portugal.

6.1. The offence in question does not merely involve financial deceit but strikes at the very fabric of social trust, involving elements of human trafficking and cross-border immigration fraud, which are not only grave in nature but also have far-reaching consequences on public order. Cases of this nature, where vulnerable individuals are lured with false promises of lawful migration and are subsequently subjected to exploitation, fall within the ambit of organized human trafficking and merit strict judicial scrutiny and deterrence. Human trafficking under the garb of immigration

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consultancy is a growing menace which preys upon the desperation and dreams of unsuspecting citizens. The Courts must remain vigilant and ensure that such rackets are not emboldened by leniency at the pre-trial stage. The fraudulent inducement for illegal migration, followed by subjecting individuals to inhumane and life-threatening conditions abroad, not only reflects criminal intent but also constitutes a serious affront to human dignity and national interest. The Court cannot overlook the broader public interest involved in cases of immigration fraud, especially when they border on transnational human trafficking. Such offences necessitates a strong and principled judicial response to prevent their recurrence.

6.2. A perusal of the FIR reveals that the allegations against the petitioner are grave and serious in nature who defrauded the complainant of a substantial amount under the false pretext of facilitating the legal migration of his son to the Portugal through agents. Such offences strike at the core of public trust and reflect a disturbing trend prevalent in this region, where unscrupulous individuals posing as travel facilitators exploit the aspirations of innocent citizens seeking opportunities abroad. These fraudulent activities not only cause severe financial and emotional distress but also undermine the integrity of lawful immigration systems. Therefore, individuals involved in such organized deceit must be dealt with firmly and in accordance with the law, leaving no room for leniency.

7. Furthermore, the investigating agency has sought the custodial interrogation of the petitioner for effective recovery, verification of facts, and to establish the broader conspiracy, if any, behind the occurrence. No cause *nay* plausible cause has been shown, at this stage, from which it can be deciphered that the petitioner has been falsely implicated into the present

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FIR. It goes without saying that in the instant case, the complainant has categorically stated that the petitioner along with co-accused had defrauded the complainant of a substantial amount under the false pretext of facilitating the legal migration of his son to the Portugal through agents which caused severe financial and emotional distress.

8. It is befitting to mention here that while considering a plea for grant of anticipatory bail, the Court has to equilibrate between safeguarding individual rights and protecting societal interests). The Court ought to reckon with the magnitude and nature of the offence; the role attributed to the accused; the need for fair and free investigation as also the deeper and wide impact of such alleged iniquities on the society. It is imperative that every person in the Society can expect an atmosphere free from foreboding & fear of any transgression. At this stage, there is no material on record to hold that prima facie case is not made out against the petitioner. The material which has come on record and preliminary investigation, appear to be established a reasonable basis for the accusations. Thus, it is not appropriate to grant anticipatory bail to the petitioner, as it would necessarily cause impediment in effective investigation. In ***State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039***, the Hon'ble Supreme Court held as under : (SCC p. 189, para 6)

> *"6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced 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 materials 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.*

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> *The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need 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."*

9. There is yet another *nay* seminal aspect of the matter which craves attention of this Court.

9.1. This Court finds it incumbent to address a facet of profound jurisprudential significance concerning applications for anticipatory bail under Section 482 of BNSS (erstwhile Section 438 of Cr.P.C., 1973). Anticipatory bail, fundamentally an extraordinary discretionary remedy, stands as a Constitutional safeguard of personal liberty, principally designed to shield a law-abiding individual from the ignominy of pre-trial arrest. It is a beneficial provision — intended to preserve freedom from genuine apprehension of unwarranted restraint — not to offer sanctuary to those who demonstrate a cavalier disregard for the investigative process or judicial fiat. While the legislative framework remains silent on a rigid timeline for invoking the extraordinary discretionary jurisdiction—an inordinate and inexplicated delay in invoking the same—inevitably invites meticulous scrutiny. Such a *hiatus,* bereft of compelling justification, frequently transmutes into an implied acknowledgment of accused-applicant's deliberate evasion of the law's embrace, bordering on an act of abscondence. To extend the protective umbrella of this equitable relief to an accused who, by his own volition, has elected to protract his submission to legal machinery, would not only pervert the salutary object of Section 482 of the BNSS but would also, in essence, condone and tacitly legitimate a brazen

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defiance of the process of law. Such inexplicable tardiness, shrouded in ambiguity, will inevitably compel the Court to exercise its discretion judiciously and, in all likelihood, decline to extend the extraordinary indulgence of Anticipatory Bail to an individual whose conduct reflects a discernible want of diligence or strategic recalcitrance in facing the investigative process. The portals of justice are open to all, but they are not a refuge for those who seek to manipulate its timelines for ulterior motives. As the venerable legal maxim goes ***Jus Ex Injuria Non Oritur***—a right or the protection of law cannot arise from a wrong.

9.2. While this Court remains cognizant of peculiar circumstances, where, for instance, an individual's implication might surface belatedly or due to an innocent oversight, thereby occasioning a *bona fide* delay in seeking judicial reprieve, such instances constitute the exception, not the norm. However, in cases where an accused-applicant has consciously subjected himself to the Sessions Court jurisdiction, and thereafter exhibits a protracted and un-elucidated delay in approaching this Court, after the refusal of relief by the Sessions Court, the evidential burden axiomatically shifts towards the accused-applicant to furnish a lucid, credible and compelling explanation for such tardiness — failing which may disentitles such an accused-applicant for the relief.

9.3. The factual milieu of the case in hand reflects that the FIR in question was registered on 10.03.2024, the petitioner (herein) had filed the anticipatory bail plea before the Sessions Court in October, 2024 which came to be dismissed by the said Sessions Court on 16.10.2024. The petition in hand has been filed before this Court on or around 18.07.2025. There is no explanation much less cogent and convincing explanation put

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forth by the petitioner regarding this hiatus of about 07 months. *Ergo*; the petition in hand deserves to be dismissed on this score as well, apart from merits thereof.

10. In view of the gravity of the allegations, the specific role attributed to the petitioner and the necessity of custodial interrogation for a fair and thorough investigation, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail in the factual matrix of the case in hand. Moreover, custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.

11. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.

12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

July 21, 2025
Ajay

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

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