IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53122-2024
Reserved on: 18.03.2025
Pronounced on: 25.03.2025

Nilesh Sharma ...Petitioner

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Naveen S. Bhardwaj, Advocate and
Mr. Rajneesh Sharma, Advocate
for the petitioner.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Bhupender Ghai, Advocate
for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0090	16.08.2024	Dehlon, District Ludhiana, Police Commissionerate Punjab	420, 406, 120B 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 32 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:

> *"3. That the brief facts pertaining to the present case are that, the FIR in the present was registered on the basis of the statement of the complainant namely Baljinder Singh resident of Delta City Homes, Rania Malerkotla Road, Ludhiana, wherein he stated that Complainant's firm is engaged in the business of trading of Iron goods. The Complainant firm for the period 01.08.2023 to 04.01.2024 supplied the iron pipes valued for Rs.6,27,94,312.54/- to the petitioner/accused. There sale transactions took*

place through 43 different bills. The petitioner/accused had paid a sum of Rs.3,31,11,721/- out of the total purchased amount of Rs.6,27,94,312.54/- to the complainant. copies of bank statements showing payment made by the petitioner is annexed here to as Annexure R-1. A balance sum of Rs.2,96,82,592.54 is left to be paid. In order to pay the amount due, the petitioner/accused had issued different cheques for the balance amount of Rs.2,96,82,595.54 to the complainant. These cheques have been dishonored. copies of the dishonoured cheques are annexed here to as Annexure R-2. The Complainant has also instituted Nine Criminal Complaints u/s 138 of NI Act on account of dishonouring of these cheques against the petitioner/accused. It has been stated that these cheques have been dishonoured as the petitioner/accused has directed his banker to stop the payment. It shows malafide intention on the party of applicant-accused and same is reason for lodging of the present FIR."

4. The petitioner's counsel submits that petitioner's wife has already been granted bail by the Sessions Court vide order dated 10.10.2024. He further 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. Complainant's counsel vehemently opposes the bail and submits that petitioner has cheated the complainant along with his wife and further he has also availed the massive amount as GST, therefore he is not entitled to bail.

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

"4. Role of the petitioner

That the present petitioner was dealing with complainant firm and has purchased the iron pipes valued for Rs.6,27,94,312.54/-. The complainant firm has sold iron pipes for Rs 6,27,94,312.54/- to petitioner/accused. These transactions took place through different bills. That the amount of Rs 3,31,11,721/- stands paid over a period of time by the petitioner/accused to complainant firm. But a balance sum of Rs.2,96,82,592.54 is left to be paid. The petitioner/accused in order to cheat complainant firm made purchases over different period of time vide different bills and purchased iron pipes valued for Rs.6,27,94,312.54/-. Initially payments were made to induce complainant firm to continue to supply iron pipes valued for crores of rupees. It is when a sum of near Rs. Three Crores was left as a balance amount to be paid by the petitioner/accused to the complainant firm. Then said amount has been withheld by the petitioner/accused. The petitioner/accused has intention to cheat complainant from the very beginning of transaction, in case the petitioner/accused would not have partly paid back price of iron pipes

> *supplied at initial stages, then Complainant would not have been induced to supply iron pipes valued for more than Rs.6,25,00,000/-. Thus in order to cheat complainant for amount of Rs.2,96,82,592.54, he directed his banker to stop the payment of cheques given to the complainant."*

REASONING:

7. Allegations against the petitioner are that he has cheated the complainant for a massive amount, but considering the fact that he has complied with the order passed by this Court and declared his assets which shows his bonafide and honesty. Moreover the dispute appears between the parties of business transaction which was not honoured by the petitioner.

8. 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.

9. 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. 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.

10. 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.

11. 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)	

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

13. *<u>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</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. 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 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

25.03.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.