



213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-57988-2024 (O&M)

Date of Decision: 12.05.2025

MD AKHALAQUZZAMA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rishab Garg, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Lokesh Garg, Advocate
for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. The instant petition has been filed under Section 482 of Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of anticipatory bail to the petitioner in FIR No. 171 dated 16.06.2024 registered under Sections 406 and 420 of Indian Penal Code at Police Station Sector 14, Gurugram District Gurugram.
2. Vide order dated 25.11.2024, interim protection was granted to the petitioner and he was directed to join the investigation by a Co-ordinate Bench of this Court.
3. Thereafter on 30.04.2025, following order was passed:

“1. On 25.11.2024 following order was passed:

“The petitioner seeks grant of anticipatory bail in respect of a case registered against him vide FIR No. 171, dated 16.6.2024, Police Station Sector 14, Gurugram, District Gurugram, under Sections 406 and 420 IPC.

The allegations, in nutshell, are to the effect that the petitioner had represented that he could send the complainant's brother-in-law to Dubai and that an amount of approximately Rs.2.73 lakhs was taken by the accused out of which Rs.1.38 lakhs was by way of bank transfer. It is alleged that although the petitioner was sent abroad, but he was not got employed although it had been clearly represented to the



complainant that they would be get the visitor visa converted into a work visa.

Learned counsel submitted that admittedly the complainant had been sent abroad, but it was on account of the fact that he could not adjust in Dubai that he had to come back. Learned counsel has also referred to an employment letter (Annexure P-8) issued in favour of Mahammad Ashraf Khan.

Notice of motion for 19.03.2025.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

At this stage, Mr. Kushagra Mahajan, Advocate has put in appearance on behalf of the complainant and has filed memo of appearance. The same is taken on record. Power of attorney be filed on or before the next date of hearing.

At this stage, learned counsel for the petitioner submitted that having regard to the nature of allegations, the petitioner is also willing to amicably resolve the matter for a reasonable amount. Learned counsel submitted that he shall suggest his client to compromise the matter for a lumpsum amount of Rs.50,000/-."

2. *In compliance of aforesaid order, the petitioner has joined the investigation. However, a reply dated 15.03.2025 has been filed by way of affidavit of Sanjay Kumar, HPS, Assistant Commissioner of Police, Old Gurugram, on behalf of respondent-State of Haryana. In para No. 10 of the said affidavit, it has been submitted that petitioner is the prime accused in the present case and that he has allured and induced the complainant and her brother-in-law to part them with their hard-earned money, on the pretext of providing the latter with a job abroad. The complicity of the petitioner has also been duly proved on the basis of the documents recovered at his instance. However, it has further been stated that the petitioner is not co-operating with the investigating agency as he has*



not caused recovery of the amount embezzled by him. As such, his custodial interrogation has been stated to be necessary.

3. *This Court has observed a curious trend where the jurisdictional police authorities deem the bail applicant to be uncooperative merely because he would not confess to his guilt. Article 20(3) of the Constitution of India categorically provides protection against self incrimination, which reads as follows:*

Article 20- Protection in respect of conviction for offences

(3) No person accused of any offence shall be compelled to be a witness against himself.

A Constitution Bench, consisting of eleven Judges, of the Hon'ble Supreme Court in The State of Bombay vs. Kathi Kalu Oghad, 1961 AIR Surpeme Court 1808, clarified the scope of Article 20(3) of the Constitution and speaking through Justice B.P. Sinha, opined as follows:

"10. To be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification. "Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution makers for the simple reason that-though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English Law on the subjectthey could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice...

11. *...Evidence has been classified by text writers into three categories, namely, (1) oral testimony; (2) evidence furnished by documents; and (3) material evidence. We have already indicated that we are in agreement with the Full Court decision in Sharma's case, that the prohibition in clause (3) of Article 20 covers not only oral testimony given by a person accused of an offence but also his written statements which may have a bearing on the controversy with*



reference to the charge against him. The accused may have documentary evidence in his possession which may throw light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of Section 139 of the Evidence Act, which, in terms, provides that a person may be summoned to produce a document in his possession or power and that he does not become a witness by the mere fact that he has produced it; and therefore, he cannot be cross-examined. Of course, he can be cross-examined if he is called as a witness who has made statements conveying his personal knowledge by reference to the contents of the document or if he has given his statements in Court otherwise than by reference to the contents of the documents. In our opinion, therefore; the observation of this court in Sharma's case, that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well-founded in law. It is well established that clause (3) of Article 20 is directed against self-incrimination by an accused person. Selfincrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. For example, the accused person may be in possession of a document which is in his writing or which contains his signature or his thumb impression. The production of such a document, with a view to comparison of the writing or the signature or the impression, is not the statement of an accused person, which can be said to be of the nature of a personal testimony. When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony.' The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation, cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it



may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness.

4. *Further, a Constitution Bench of the Hon'ble Supreme Court in Selvi vs. State of Karnataka (2010) 7 SCC 263 and a Division Bench of this Court in Dewan Singh @ Ram Singh vs. State of Haryana 2023(4) R.C.R. (Criminal) 17, have categorically held that there is a distinction between the physical evidence and testimonial evidence. While there is no bar in directing the accused to give any physical evidence such as his fingerprints, blood sample, signatures specimen etc, expecting him to confess to his guilt or produce evidence, would amount to testimonial compulsion.*

5. *It appears that the investigating agency is relying on the accused to present them with all the evidence against himself on a silver platter, instead of performing its statutory duty to investigate the case. It is unbecoming of the investigating agency to oppose the release of the accused on bail, solely because he refuses to testify against himself. This Court cannot, in good conscience, allow such a draconian practice of holding the accused hostage, to continue unchecked.*

6. *In the peculiar facts and circumstances of the case at hand, the Commissioner of Police, Gurugram is directed to file his affidavit deliberating therein as to whether the proceedings for anticipatory bail can be converted to recovery proceedings and whether an accused can be compelled to effect recovery, in terms of the judgements rendered by the Hon'ble Supreme Court in Dilip Singh vs. State of Madhya Pradesh and others 2021(2) SCC(Cri) 106 and Lalit Chaturvedi and others vs. State of Uttar Pradesh and others 2024(2) R.C.R.(Criminal) 73.*

7. *Needful be done within a period of two weeks from today. Failure to comply with the same would require the Commissioner of Police, Gurugram to be present in the Court in person.*

8. *Adjourned to 12.05.2025.*

9. *Meanwhile, interim order to continue."*

4. In compliance of aforesaid order status report by way of affidavit of Vikas Arora, IPS, Commissioner of Police, Gurugram. Same is taken on record. Be tagged at the appropriate page.

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5. Learned counsel for the petitioner refers to Annexure R-1 and submits that necessary instructions have been issued by the Commissioner of Police, Gurugram to take into consideration the constitutional provisions while embarking upon investigations.

6. Further, learned State counsel on instructions from ACP Sanjay Kumar submits that in compliance of order dated 25.11.2024, petitioner has already joined the investigation and he is not required for further custodial interrogation.

7. Keeping in view the statement made by learned State Counsel the order dated 25.11.2024, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 482(2) of BNSS, 2023.

8. The petition is accordingly disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.05.2025
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>