

CRM-M-59181-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59181-2024
Reserved on: 04.02.2025
Pronounced on: 28.02.2025

Shri Bhagwan Pawar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. H.N. Sahu, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
378	29.05.2023	Azad Nagar, Hisar, Distt. Hisar (Haryana)	120-B, 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 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts of the case are being taken from the order dated 13.11.2024 passed by the Additional Sessions Judge, Hisar, which reads as follows:-

“Briefly stated, the instant case was registered on the basis of the complaint made by the complainant namely Kuldeep son of Sajjan Singh. The complainant alleged that the petitioner namely Shri Bhagwan had met him and his friend namely Kuldeep, resident of village Ludas at Sector-22, Chandigarh at the house of one of their known namely Pankaj Bugra. On 13.08.2020, petitioner Shri Bhagwan misrepresented to them that he was having high contacts and later the petitioner Shri Bhagwan started talking through his mobile numbers on whats app calls. Later, the complainant was again called by the petitioner Shri Bhagwan on 8.09.2020 at Chandigarh and offered an appointment for the recruitment

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examination of Group-D employees. The complainant and his friend as well as some other known of the complainant had allegedly given an amount of more than Rs.50 Lac to the petitioner Shri Bhagwan. Even nearly 15 transactions had taken place as on-line and the remaining amount had been given in cash. However, later it was revealed that the petitioner had played fraud upon the complainant and his friends and dishonestly received this amount of more than Rs.50 Lac for appointment in group-D category employees.”

4. The petitioner's counsel argued that he is innocent and has nothing to do with offences and has been falsely implicated. 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. Petitioner's counsel also refers to para 4 of the counter affidavit dated 07.01.2025 filed to the reply, which reads as follows:-

“4. That the complainant has alleged that he had transferred Rs.4,30,000/- by way of 14 receipts i.e. R-1 to R-15 for providing government job. It is submitted that a bare perusal of receipt R-1 shows that the amount of Rs.1,00,000/- was transferred in the account of petitioner by one Vikram on 30.09.2020 and the petitioner had returned the same amount of Rs.1,00,000/- to Vikram on 13.04.2021. To prove this fact, a copy of bank account statement is annexed as Annexure P-3 & P-4. So far as receipts of Rs.20,000/- i.e. Ex. R-2 and receipt of Rs.10000/- i.e. R-3 are concerned, it is submitted that the petitioner has already submitted in para no. 7 of the petition that the complainant was using the credit card of the petitioner and the complainant had deposited the amount of Rs.30,000/- in lieu of bill of credit card used by him and after receiving the payment of Rs.30,000/- from the complainant, the petitioner paid the credit card bill of Rs.13,720/- on 03.10.2020. A copy of Account Statement is annexed as Annexure P-5. So far as Annexure R-5 to R-7 are concerned, regarding that it is submitted that on 25.10.2020 the complainant used the credit card of the petitioner for purchasing some items of Rs.1,33,799/- from Reliance Digital and Anmol Watch Chandigarh. To prove this fact a copy of credit card statement is attached as Annexure P-6. To prove the fact that the petitioner had received the payment of Rs.1,00,000/- on 01.12.2020 vide three receipts i.e. R-5 to R-7 for the payment of credit card bill, the bank statement is annexed as Annexure P-7. After receiving the amount of Rs.1,00,000/- from the complainant the petitioner paid the bill of credit card amounting to Rs.47000/- on 02.12.2020 and Rs.50,000/-

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on 04.12.2020. A copy of account statement whereby the petitioner paid the credit card bill is annexed as Annexure P-8 and P-9. The complainant also used the credit card of the petitioner in the years of 2021 also and to prove this fact a copy of credit card bill is annexed as Annexure P-10 and the petitioner paid the bill of credit card amounting to Rs.1,14,000/- on 03.05.2021. To prove this fact a copy of account statement is annexed as Annexure P-11. From the facts narrated above, it is clear that the allegations leveled by the complainant in the FIR are totally false, fabricated and baseless and the complainant has made a concocted story just to implicate the petitioner in the present FIR, otherwise a bare look of the receipts attached with the reply shows that the he had made the payment of very small amount of Rs. 10,000/-, 20,000/-, 25,000/- and this kind of payment cannot be used for providing the government job.”

5. The State’s counsel opposes bail and refers to the reply dated 07.12.2024. She further submits that there is sufficient evidence in the shape of call details connecting the petitioner with alleged transfer of money and transactions (Annexure P-3).

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

“That as far as the role of the petitioner/accused, it is submitted that as per the allegations, the petitioner/accused had allured the complainant Kuldeep and his friend Krishan to procure an appointment in group-D employees for money. Earlier, the complainant and his friend had met the petitioner on dated 13.08.2020 at the house of his known situated in Sector-22, Chandigarh. Later, the petitioner/accused started sending text messages through whats app to the complainant and also made several Whatsapp calls. Even the screen shots of the whats app chats have also been obtained in police file and these screenshots shows in a prima facie manner that the petitioner/accused had received this amount of more than Rs 50 Lac from the complainant and his other family members to procure the job for them. Later, it was revealed that the petitioner had played fraud upon the complainant and he had nothing to do with the appointment of group-D employees. That custodial interrogation is necessary to recover the fraud amount from the petitioner/accused and to arrest the co-accused and to know the correct address of the co-accused. Copies of details transaction.”

REASONING:

7. Although the stand taken by the petitioner is not convincing but the allegations were made on 08.02.2020 i.e. 05 years period already elapsed. Strenuously in this case an

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analysis of the evidence reveals that neither the complainant has come with clean hands nor the petitioner. In such a situation it is difficult for the Court to give a finding at bail stage who is more credible. Thus, the doubt has created and its benefit must go to 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. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible.

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, 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.

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,

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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. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

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

19. 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.

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

(ANOOP CHITKARA)
JUDGE

28.02.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.