

CRM-M-59580-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59580-2024
Reserved on: 13.01.2025
Pronounced on: 30.01.2025

Amit Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
10	07.01.2024	Matlauda, Panipat, District Panipat	370, 406, 420. 506 r/w 34 IPC and Section 24 of Immigration Act

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 12 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	268	05.07.2022	420, 468, 471 IPC and Section 12 of Passport Act	I.G.I. Airport, Delhi

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“ 2. That the prosecution case for the kind perusal of this Hon'ble Court in the nutshell is as under:
That the present FIR No. 10 dated 07.01.2024 under sections 370, 406, 420, 506, 34 of IPC and Section 24 of Immigration Act was registered after preliminary enquiry conducted by DSP, CAW, Panipat on the complaint of Harvinder Singh S/o Sh. Balkar Singh Rio Village Urlana Kalan, District Panipat. The contents of the complaint are reproduced below for the ready reference of the Hon'ble Court as under:-

"Statement of Harvinder Singh S/o Sh. Balkar Singh R/o Village Urlana Kallan, District Panipat (mobile no. 97295xxxxx). Stated that I am resident of the above address. I do farming. My son Manmohan Singh and his friend Gurmel Singh son of Malk Singh resident Uralana Khurd Panipat both were unemployed and being unemployed, they met Dhillu Malik S/o Chandra Singh R/o Village Sink, Panipat whose Aadhar card is 3765013xxxxx to go abroad. Dhillu Malik gave us assurance and said that I work in sending unemployed boys abroad and send them abroad as per the law. Regarding sending them abroad, Dhillu Malik took the passports of my son Manmohan Singh and the above Gurmel Singh and took Rs. 21,50,000 in cash from both of us to send them to America. To give this amount, I asked my other son Kulwant Singh to complete the amount of Dhillu Malik. Dhillu Malik told me to get the money deposited in my mother's account from abroad. My son Kulwant deposited Rs 1,00,024.96 from America on 15.03.2022 in the account of Dhillu Malik's mother Anita, after which my son again deposited Rs 2,00,191.74 on 18.03.22 through Moneygram, the record of both the transactions is with Anita and me. Along with Dhillu Malik, Amit son of Balwan Singh, mobile no. 99912xxxxx. 83980xxxxx and Raj son of Bhim, mobile no. 80534xxxxx, resident of Kurana District Panipat also extort money from people in pigeon racing. Dhillu Malik's mobile number is 830762xxxxx. Dhillu Malik secretly took my sons Manmohan Singh and Gurmel Singh on a trip to Pinzania, Cambodia, Vietnam, Indonesia from Delhi Airport via Bombay on 16.03.2022. Finally, when my sons Manmohan Singh and Gurmel Singh could not reach America, he brought them back to India via Kolkata Airport. After returning to the Kolkatta, Dhillu did not return our money despite our repeated requests. When my son calls to the accused, he used to call from new phone numbers and threatened to kill my sons. Whose video recording, we do not have now and will give it later on. The accused Dillu, Raj and Amit Kumar all together by pigeon playing (Kabutar Baji) and also take money from many boys and do not return money even after asking for money. Dhillu Malik, has confessed to have received Rs. 21,50,000/- from Manmohan and Gurmel Singh and their family members, due to the pressure of my family members. In relation to Dhillu Malik, he also gave affidavit on the stamp paper of Rs 101/- and on the affidavit Ramkishan Nambardar village Dariyapur has signed with his stamp and on the same day 26.10.2023, Dhillu Malik made his signature as on the same very date on the affidavit as deponent. Gurcharan Singh son of Tasvir Singh village Urlana Khurd, Panipat also put his signature

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on the affidavit. and Gurcharan Singh, Dhillu Malik and Ramkishan Nambardar also affixed their photo on first page of the affidavit. Under the photo signatures of Gurcharan Singh, Dhillu Malik and Ramkishan are there. Dhillu Malik wrote in this affidavit that I have received from Malak Singh son of Mohan Singh and Harvinder Singh son of Balakar Singh residents of Urlana that they had received Rs. 21,50,000/- about six months ago for sending Gurmali Singh son of Malak Singh and Manmohan Singh son Harvindra Singli to abroad. Out of that, Rs. 9,00,000 were returned as cash on 02.06.2022 and the remaining amount of Rs. 12,50,000 were undertaken by them to be returned on 15.05.2023. If the above amount was not paid on the given time, I will be able to take action against me. Affidavit of Dhillu Malik is attached with my complaint. My son Manmohan Singh and Gurmali Singh wrote his complaint on 04.10.2023 and 18.07.2023 in the police station on which no action has been taken. After that date 25.07.2023 many complaints were given on the CM window and to the higher officers. After that, the accused gave Rs.6,25,000/- to my son's friend Gurmail Singh and Gurmail Singh in connivance with the accused gave a false statement in the police station that I had taken back the money which was given as loan. Gurmail Singh had given cash money together to go abroad, but now the Gurmali Singh is paying attention to Dhillu Malik to save him. Now my boy Manmohan Singh is in America. He has sent me the documents out of which I have presented you 17 pages photo copies on which I have put my thumb impression. Apart from this, I do not have any proof regarding giving money to Dhillu Malik and sending my son abroad. I have got my statement recorded through my lawyer Rajneesh Kumar Trehan, I have heard it and it is correct." True Copy of FIR is already annexed by the petitioner as Vernacular at page no. 25 to 33.

(ii) That after the registration of FIR, the investigation of the case was initiated by ASI Om Parkash, 143, Police Post Urlana Kalan, Panipat. Complainant was joined in the investigation of the case and the relevant documents produced by him were taken into police possession as evidence. Statement of Complainant and witnesses were recorded in due course of law.

(iii) That thereafter, the investigation of the case was carried out by ASI Naresh, 1501, Police Post Urlana Kalan, Panipat.

(iv) That on 15.10.2024, Notice under section 91 of Cr.P.C was given to Bank Manager, ICICI Bank and statement of account no. 2827010xxxxx, KYC documents and Certificate under section 65-B of Indian Evidence Act was sought. The Bank Manager of ICICI Bank, produced relevant bank

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account statement, KYC Documents and his certificate under section 65-B of Indian Evidence Act in due course of law. The perusal of which shows that the said account belonged to Anita W/o Hukam Chand (mother of main accused Dhilu Malik S/o Chandra Singh) and it had received Rs. 1,00,024,96 on 15.03.2022 and Rs. 2,00,191/- on 19.03.2022. True Copy of relevant account statement is annexed herewith as Annexure R-1.

(v) That during the course of investigation on 06.11.2024, the co- accused Dhilu Malik was joined in the investigation of the case. During investigation, he confessed to his role in crime that he had taken Rs. 21.5 lacs from the complainant, Malak Singh and their family members under the pretext of sending son of complainant namely Manmohan Singh and his friend Gurmeh Singh to America. He also disclosed that Amit and Balraj @ Raj were also involved with him in the commission of crime and they were handling documentation and fingerprint work. He also got recovered Rs. 10,000/- as per his disclosure statement. True Copy of disclosure statement of co-accused Dhilu Malik is annexed herewith as Annexure R-2.

(vi) That the petitioner Amit and co-accused Raj @ Balraj have not joined the investigation of the case till date and the investigation qua them is still pending.

(vii) That thereafter, finding incriminating evidence against the co-accused Dhilu Malik and after completion of investigation in proper, fair, thorough, deep and impartial manner from all angles, challan under section 173 of Cr.P.C was prepared against him on 19.12.2024 and the same is under checking process.

(viii) That supplementary Challan will be presented against Amit (Petitioner) and Balraj @ Raj after completion of investigation qua them.”

4. The petitioner's counsel 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.

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

“ 3. That the role of the petitioner is that he is specifically named in the FIR. The petitioner along with main accused Dhilu Malik and co- accused Raj @ Balraj had taken huge amount of Rs. 21.5 lacs illegally from the

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complainant under the pretext of sending his son Manmohan Singh and his friend Gurmel Singh S/o Malak Singh to America for work purpose. It is pertinent to mention here that the petitioner Amit, main accused Dhilu Malik and co-accused Balraj @ Raj were not having any licence or permit to do such work. They also failed to send them to America as promised. Thereafter, main accused Dhilu Malik executed a written affidavit on stamp paper admitting that he had received Rs. 21.5 lacs under the pretext of sending son complainant to foreign country. Admittedly, main accused Dhilu Malik had returned Rs. 15.25 lacs to the complainant. However, he failed to return remaining 6.25 lacs.”

7. Perusal of Para 4 of the reply reveals that petitioner did not join the investigation and because of this, investigation is pending. It has further come in evidence that petitioner claims to have returned the entire amount which was taken from the complainant, as mentioned in para 3 of the reply. Given above, this Court is granting bail subject to the condition that petitioner shall join investigation by **15.02.2025**.

8. Petitioner claims to have returned the entire money although return of money will not absolve the petitioner on the question of offence but it is one of the factor while considering or refusing bail.

9. 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.

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 Ilqa 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.

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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 by 15.02.2025 and thereafter 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, 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

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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

30.01.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.