

2025.PHHC.003750



212 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-62368-2024
DECIDED ON: 13.01.2025**

ARUN KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Balvinder Sangwan, Advocate
 for the petitioner.

 Mr. Chetan Sharma, DAG, Haryana.

 Mr. Aditya Prakash Arora, Advocate
 for the complainant.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 482 of BNSS, 2023, has been invoked seeking anticipatory bail to the petitioner in case FIR No. 474, dated 03.08.2024, under Sections 406, 408, 420 and 120-B of Indian Penal Code, 1860, registered at Police Station Mujesar, District Faridabad.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

*“TO COMMISSIONER OF POLICE, SECTOR-21, FARIDABAD.
SUBJECT: COMPLAINT AGAINST ARUN KUMAR S/O. SHRI PAL
R/O. HOUSE NO-3756/6, NEAR NEW LIGHT PUBLIC SCHOOL,
JAWAHAR COLONY, FARIDABAD, HARYANA MOB-9999409380.*

Respected Sir, 1. That the complainant is Private Limited company

and registered under companies act and GST act. That the complainant company is in the business of Manufacturing of Automotive Parts and having its registered office address at plot no.252, sector-24, Faridabad, Haryana. That Sh. Vishnu Kumar Aggarwal is the authorized person of the company, authorized by the meeting of the board of director vide board resolution dated. 10/04/2024. Further sh. Vishnu Kumar Aggarwal is the competent person to file the present complaint against above noted accused. copy of resolution is Annexure-A. 2. That Mr. Arun kumar was appointed by the complainant's company on dated. 01.05.2022 in HR Department and worked upto January 2024. Further the work and scope of Arun Kumar is to checked the list of employee who working in the company on behalf of contractors and in permanent post of the company. Further to enrolled employees and maintained list of employees also handle by Arun kumar. It is Further submitted that Arun Kumar was also authorized person to checked and verify actual work force on the company roll as well as the contractor muster roll. That the duties of Arun Kumar is to mark the attendance, to mark the overtime period, to maintained ESIC Contribution of both share employer and employee, PF Contribution of both side employee and employer, GST Payment with the concerned department 3. That Arun Induces with the management that Arun kumar have experience and competent to maintained all record of all employee including contractor like attendance register, Salary register, ESIC, PF, Welfare Register etc and the management faith on the version of the Arun Kumar and authorized Mr. Arun Kumar him to verify, to maintained attendance, wages, ESIC and PF Contribution of both side and welfare of company and as well as the contractors. 4. That the complainant company have three contractors who providing employees to the complainant company on their supervision. Further some employee was also hired by the third party placement service by the company. List of placement agency and contractor is given below-

SERIAL NAME NO. 1. M/S. IR MANAGEMENT SERVICES 2. M/S. AR ENTERPRISES 3. M/S. AM EMPLOYEMENT SERVICES PVT.

LTD. 5. That Arun Kumar send list of employee attendance to the contractor who worked in the company as per Arun Kumar and after receiving the list of employee from Arun Kumar the contractors raised invoices to the complainant company as per the list of employee submitted by Arun Kumar. Further after receiving the Invoices along with list of employee from the contractor for the particular months salary, Arun Kumar with the collusion of above noted three contractors manipulated the list of employee and by doing forgery and cheating. Arun Kumar prepared forge attendance sheet and send to the contractors on the receipt of the forge attendance sheet, contractor prepared forge salary sheet with add his personal name or his known person name and bank accounts. Further the forge bill was prepared by the contractor with the collusion of the Arun Kumar and same was submitted in the company with the approval and verify by Arun Kumar for account section. Accounts section on the basis of verified bills of Arun Kumar release the payment to the concerned contractors details passed the forge bill and to the accounts section for transfer of funds to the contractors accounts details given below That in the month of January 2024 he started absenting from his duties without lawfull permission and authorization then the management authorized to audit the contractor record as well as the company record and authorize sh. Vishnu Kumar Complainant. That Vishnu Kumar after verify the record like attendance, payment, ESIC, PF, GST, Welfare record etc and found following forgery done by Arun Kumar with the collusion of the contractor of the company as well as the contractor. 7. That Arun Kumar manipulated the list of employee submitted by the contractors or placement agency and add his personal and subordinate bank accounts number by manipulated the list of employee submitted by the contractors after receiving the false list from Arun Kumar. List of bank accounts of Arun kumar as given below

BANK	ACCOUNT	DETAILS	NAME-BANK
1	ZENPAY	SOLUTIONS PVT LTD	RBL BANK
2	CATHOLIC SYRIAN BANK	LTD.	3 INDUSIND BANK
4	PUNJAB AND SIND BANK	BRANCH	JANAKPURI DELHI NIT FARIDABAD LAJPAT NAGAR DELHI NIT

FARIDABAD ACCOUNT NO 000125681500235810
030003368264190001 100179171904 04711000061522 IFSC CODE
RATNO000113 CSBK0000300 INDB0001908 PS180000471 8. That
an amount of Rs.1,62,200/- was transferred by Arun Kumar from list
of permanent employee of complainant company which was managed
by Arun Kumar Itself. 9. That an amount of Rs.8,10,465/-
(Rs.7,31,909/-Rs.78,556/-) from M/s. I R Management (PERIOD
JANUARY 2023 TO DECEMBER 2023), Rs.2,78,549/- from M/s. AR
Enterprises and Rs.4,60, 413/- (PERIOD MARCH-2023 TO
DECEMBER 2023) from M/s. AM Employment Services Pvt. Ltd
(PERIOD JANUARY 2023 TO AUGUST 2023) transferred by Arun
Kumar by mentioning wrong employee name in the list of employee
worked through above noted contractors. Further Arun Kumar
manipulated the contractor list and mention his known person name
in which the salary was transferred by Arun Kumar intentionally just
to cheat the complainant company. Further the above noted person
did not deposited the workers welfare, ESIC PF Contribution and
grab the money of government due. Copy of relevant documents is
Annexure-B to Annexure-E 10. That the accused do the act of cheat
and forgery in employee list with the intention to cheat. 11. That the
complainant found that some of our record is missing after the above
said misconduct done by Arun Kumar i.e Leave Register, Bonus
Register, Monthly Wages record, Contractor agreement File and ESI
Welfare record related to worker personal file. Therefore I requested
you to take legal action/lodge FIR against the above noted person.
Sd: VISHNU KUMAR AGGARWAL ENG STAMP IMP M/s. EL-Chico
Clutch Pvt. Ltd, Plot No-252, Sector-24, Faridabad, Haryana.
Through its Authorized Person Sh. Vishnu Kumar Aggarwal Mob-
9868623863. Today Police Station: - As per complaint no. 2324/CC/P
dated 16.04.2024, the verification of the office of Complaint Branch
CP Office Faridabad was implemented by EOW NIT Faridabad and
after the order, the case was found to be of crime 408, 420, 406, 120B
IPC, case no. 474 dated 03.08.2024 under sections 408, 420, 406,
120B IPC was registered at Police Station Mujesar Faridabad and

copies of FIR are being prepared by computer as per rules and sent to the service of concerned area officer. After the order, for further investigation ASI Anil Kumar 1768/FBD EOW NIT Faridabad, Mobile No. 9582200461 has been appointed as Investigation Officer.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that as per the allegations outlined in the FIR, the petitioner was appointed to the HR department of M/s. El-Chico Clutch Pvt. Ltd. On 01.05.2022 and the company had engaged three contractors to provide workers on a contract basis. It is alleged that the petitioner, in collusion with these contractors, manipulated the employee list and created fraudulent attendance and salary sheets, thereby embezzling a total sum of Rs. 10,60,820/- from the complainant company.

Learned counsel for the petitioner argues that the petitioner has been falsely implicated in the present case, as he was merely serving in the HR department of the company. The responsibility for the disbursement of salaries into the accounts of employees lies with the accounts department of the company, as well as the three private contractors supplying the contract workers. Therefore, it is asserted that the petitioner is being scapegoated in this matter. Additionally, the petitioner claims that the company itself engaged in illegal practices, including the creation of false bank accounts in order to evade income tax obligations. The company has also failed to make the required contributions to Employee State Insurance (ESI) and Provident Fund (PF) departments, indicating a pattern of business irregularities. Furthermore, there has been a significant delay of nearly one year in the lodging of the FIR.

In light of these circumstances, it is contended on behalf of the petitioner that his custodial interrogation is not required, as his role in the alleged offence is limited and does not warrant further detention.

On behalf of the respondent/State/complainant

Reply filed by way of an affidavit of Narender Kumar, HPS, Assistant Commissioner of Police, EOW Faridabad on behalf of respondent/State as well as short reply filed by complainant are taken on record. Copy thereof has been supplied.

Learned State counsel assisted by the counsel for the complainant has vehemently opposed the prayer made in the present petition contending that petitioner has actively participated in perpetration of the offence. Specially it was alleged the petitioner had misappropriated the hard earned money of complainant firm, which was meant for the payment of salaries and expenses for company workers.

It is further argued that the petitioner had employed deceitful tactics to transfer funds into the bank accounts of his wife and acquaintances, falsely purporting them to be employees of the company. The counsel emphasized that the petitioner was the primary accused and his custodial interrogation is necessary for the recovery of misappropriated amount and a comprehensive investigation of the case.

In the light of the gravity of the offence, prayer of dismissal of the present petition has been made.

4. Analysis

From the perusal of the FIR as well as the replies filed by the respondent/State as well as complainant, it is abundantly clear that the petitioner,

in his role as the HR Head of the complainant company, unlawfully added fictitious names of individuals who were not employed by the company. The corresponding salary amounts for these non-existent employees were then deposited into the personal account of the petitioner as well as into the account of his wife. Specifically, an amount of approximately Rs. 9,45,595/- was transferred to the account of the petitioner, and an amount of Rs. 1,15,225/- was transferred into the account of his wife namely Sushma, totaling Rs. 10,60,820/- through fraudulent activities, including cheating and forgery, which constitutes an offence under Sections 406 & 420 of IPC. The petitioner/accused is directly implicated in the case and is named in the FIR. As such custodial interrogation of the petitioner is essential in order to recover the embezzled funds and to determine whether any other individuals were involved in the fraudulent scheme. Therefore, this Court is of the considered view that the petitioner is not entitled for grant of anticipatory bail.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded 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 material 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. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs 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.”

Keeping in view the role attributed to the petitioner, this Court is of the view that his custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion, this Court does not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

13.01.2025

Sham

(SANDEEP MOUDGIL)
JUDGE

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