

CRM-M-62888-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62888-2024
Reserved on: 15.01.2025
Pronounced on: 24.01.2025

Poonam and another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sarvesh Malik, Advocate
for the petitioners.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
206	10.08.2024	Civil Lines, Rohtak	420, 406, 370 IPC and 24 of Emigration Act

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. In paragraph 14 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:

“7. That the allegations against the petitioners are that they are running "7 Star Immigration" company, which is in violation of section 24 of Emigration Act and they are advertising the name of their company through online mode and on seeing the advertisement, the innocent persons have been defrauded by the wrong and illegal act and conduct of the petitioners. The petitioners have no licence to send any person to abroad. If the petitioners released on anticipatory bail, there is apprehension that they may indulge in such activities in future also. The custodial interrogation of petitioners is very much required for recovery of the amount and to recover the record/documents used for sending the brother of complainant and some others persons to abroad.”

4. On 30.12.2024, petitioners' counsel argued and this court observed as under:-

"Counsel for the petitioners submits that although the petitioners neither made any wrong assurance nor committed any fraud and cheating. However, still they are voluntarily willing to return the balance amount which is Rs. 2 lakhs. The petitioners would return the balance amount by demand draft made in favour of the complainant, namely, Sandeep son of Krishan Kumar.

Given such statement, arrest of the petitioners shall remain stayed till the next date of hearing and the petitioners shall hand over the demand draft to the investigating officer by 21.12.2024."

5. Thereafter, on 15.01.2025, counsel for the petitioners informed that they have complied with the terms and conditions of the order dated 30.12.2024. The petitioners' counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.

6. The State's counsel opposes bail and refers to the reply.

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

"8. That the specific role of the petitioner is that she alongwith co-accused Naina had received the amount of Rs.2,40,000/- from the complainant on the pretext of sending his brother Ankit to Dubai on job visa, but they in fraudulent manner played fraud with the brother of complainant and sent him on visitor Visa and grabbed his lawful amount.

9. That is sufficient evidence against there petitioners occurrence. regarding During her involvement the course of in the the investigation agreement duly signed by Ankit and petitioners, Dubai hotel booking, flight ticket, return tickets, payment slips made to agency of petitioners, copy of visitor visa were taken into possession, which clearly proves the allegations of complainant against the petitioners."

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 prima facie

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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 petitioners make a case for bail.

10. Given above, provided the petitioners are not required in any other case, the petitioners 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.

11. While furnishing a personal bond, the petitioners 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. The petitioners are directed to join the investigation as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioners 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 petitioners shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. The petitioners shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioners 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.

14. 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 petitioners notice of a minimum of seven

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days, providing an opportunity to avail the remedies available in law.

15. This bail is conditional, and the foundational condition is that if the petitioners 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.

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

17. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioners 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.

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

(ANOOP CHITKARA)
JUDGE

24.01.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.