

2025:PHHC:040935



108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16712-2025
DECIDED ON: 26.03.2025

SANDEEP KUMAR @ TALLI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nikhil Vats, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

The jurisdiction of this Court under Section 482 BNSS, 2023 has been invoked seeking anticipatory bail to the present petitioner in FIR No. 20 dated 08.02.2025 under Sections 303(2) of BNS 2023 registered at P.S. Nathusari Chopta, Sirsa (Annexure P-1)

2. **Facts**

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

'To, The Police Station Officer In-Charge, Kagdana. Dear Sir it is submitted that, I, Gulshan Kumar, Son of Bahadur Chand, resident of village Kangn Pur, Sirsa, I am engaged in selling toys at fairs. I have owned a vehicle, an Ashok Leyland (Friend) with registration number HR55V3500, model year 2015, and colour white. On the day of the fair

in Kagdana, I was busy selling toys, and after finishing my sales in the evening, when I went to load my goods into my vehicle, I found that my vehicle was missing. Someone, whose identity and name are unknown, stole my vehicle from the location. I have no outstanding loan on the vehicle. I request you to take legal action against the unknown person and recover my stolen vehicle. SD Gulraj Kumar, Applicant Gulshan Kumar Son of Bahadur Chand, Village Kanganpur, Sirsa, Mobile: 9306817630 Police Proceeding On 8th February 2025, at the police station, SI Surrender (No. 703) received a written complaint from Gulshan Kumar, son of Bahadur Chand, resident of Kanganpur, Sirsa, regarding the theft. After reviewing the complaint, a report was prepared under Section 303(2) BNS, and the case was forwarded to SI Surrender (No. 703). A case has been registered, and the matter is being communicated through the FIR with a case number. I SI along with the complainant Gulshan Kumar will proceed to the scene of the incident. Police Station Kagdana, SD Hansraj, SI/1048 Date: 8th February 2025, 8:50 PM The written complaint has been registered at the police station and the necessary documentation has been sent to higher authorities and the Magistrate through post. '

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case solely on the basis of disclosure statement suffered by the co-accused. He further submits that the petitioner was not even present at the scene of the alleged incident and in fact lacks any knowledge regarding the occurrence of the incident. It is contended that the petitioner was not in the company of the co-accused at the time of the incident. Counsel for the petitioner undertakes that the petitioner is ready and willing to fully cooperate with the investigation and join the same.

Notice of motion.

On behalf of the respondent/State

Mr. B.S. Virk, DAG, Haryana, appearing on advance notice, accepts the same on behalf of respondent/State, who prays for dismissal of the present petition stating that the petitioner is involved in committing of theft of vehicle. He further submits that the car used in the commissioning of crime is yet to be recovered, therefore, his custodial interrogation is required at this stage.

4. Analysis

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

Adverting to the facts of the present case, it is evident that the accused/petitioner, along with his co-accused Rinku Ram @ Lal and Sukhjinder Singh @ Chui, committed the theft of an Ashok Leyland vehicle, bearing registration No. HR55V-3500, which belonged to the complainant, at the fair of village Kagdana on the specified date, time, and place. It is alleged that the accused arrived at the scene in a car provided by the petitioner. While the stolen vehicle has been recovered from the possession of the co-accused, Rinku and Sukhjinder Singh, the car used in the commission of the crime remains unaccounted for and has yet to be recovered from the petitioner. Furthermore, the petitioner has failed to offer any explanation in his application as to why the co-accused have implicated him as an accomplice in the commission of the offence.

The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an

element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

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. (Section 482 BNS, 2023 now), 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 ensconced 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.”

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petitions, hence, the same are hereby dismissed.

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.

(SANDEEP MOUDGIL)
JUDGE

26.03.2025

Sham

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*