



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

101+205

CRM-44556-2024 in/and

CRM-M-39187-2024

Date of decision: January 30<sup>th</sup>, 2025

Vivek Anand Ahuja

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. P.S. Ahluwalia, Advocate  
for the petitioner.

Mr. Navdeep Singh, Deputy Advocate General, Punjab.

Mr. Harish Mehla, Advocate  
for the applicant-complainant.

**MANJARI NEHRU KAUL, J.**

Petitioner is seeking the concession of anticipatory bail in FIR No.123 dated 22.07.2024 under Sections 303, 318, 336 and 338 of the BNS, registered at Police Station City Fazilka.

2. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case by the complainant, who is his real brother. It is contended that prior to the registration of the instant instant FIR, the petitioner had approached this Court seeking protection from harassment by the complainant and had prayed for the protection of his life and liberty. In support, attention of this Court has been drawn to Annexures P-9 and P-10, which include a writ petition filed by the petitioner and an order dated 18.07.2024 passed by a coordinate Bench of this Court.

3. It is further submitted by the learned counsel that the

instant FIR has been registered by the complainant purely as an act of vendetta to settle scores with the petitioner. Additionally, it is argued that the registration of the FIR under the provisions of the IPC was violative of Article 20 (1) of the Constitution of India, as on the date of lodging the FIR, the Bharatiya Nyaya Sanhita had already come into force, thereby rendering the IPC inoperative.

4. In addition, the learned counsel for the petitioner also submits that the FIR in question is nothing but an attempt to arm-twist the petitioner, as he had previously initiated proceedings under Section 138 of The Negotiable Instruments Act (hereinafter referred to as 'N.I. Act'), against the complainant. It is pointed out that multiple litigations, including civil disputes, are pending between the parties. The allegations in the FIR pertain to the misuse of a cheque admittedly signed by the complainant, wherein the petitioner allegedly filled in the amount and date before presenting it for encashment. The complainant, as per the learned counsel, has never disputed his signatures on the cheque, and at best, the allegations in the FIR constitute a defence in the proceedings under Section 138 of the N.I. Act rather than a substantive criminal offence.

5. Learned counsel for the petitioner has placed reliance on ***Oriental Bank of Commerce Versus Prabodh Kumar Tewari 2022 (7) S.C.R. 72***, wherein it has been held that once the drawer of a cheque admits his signatures, the mere act of the holder filling in the details does not absolve the drawer of his liability. It is further submitted that the complainant does not even allege that the cheque was stolen by the petitioner; rather, it is admitted that the cheque was in the possession of the petitioner. The FIR, therefore, is merely an attempt by the

complainant to use the police as a tool to gather evidence in the complaint case pending between the parties under Section 138 of the N.I. Act.

6. It has still further been argued that the complainant, despite being called by the trial Court to present his defence in the complaint case under Section 138 of the N.I. Act, chose instead to lodge the present FIR, thereby abusing the process of law. Notice of accusation has already been served upon the complainant in the cheque dishonor case.

7. With respect to the application i.e. CRM No.44556 of 2024 under Section 528 of the BNSS read with Sections 379 and 215 of the BNSS filed by the complainant, it is argued by the learned counsel that the allegations of perjury are baseless, as the affidavit in question was executed and signed by the petitioner himself. The petitioner's affidavit annexed as Annexure P-7, records that he relinquished his share in a property situated in Sector 9-A, Chandigarh in favor of the complainant without deriving any benefit from the transaction. It has been emphasized by the learned counsel that the complainant has not alleged that the petitioner forged anyone else's signature or impersonated some other person. The only assertion is that the Public Notary, who purportedly notarized the affidavit, has denied being a practicing notary at the relevant time. It is submitted that such a statement by the notary cannot give rise to an offence under Section 379 or 215 of the BNSS. Rather, learned counsel asserts that these proceedings appear to be a smokescreen, designed to mislead the Court and interfere with the case of the petitioner under Section 138 of the N.I. Act, by allowing the police to scrutinize documents relied upon in that case.

8. It has lastly been contended by the learned counsel for the petitioner that in compliance of order dated 12.08.2024 passed by this Court, the petitioner has joined investigation and fully cooperated with investigating agency. As the case of the prosecution is primarily based on documentary evidence, the custodial interrogation of the petitioner would neither be warranted nor necessary.

9. *Per contra*, learned State counsel, on instructions, has not disputed that in compliance of order dated 12.08.2024 passed by this Court, the petitioner has joined investigation. It has also not been disputed that the case of the prosecution hinges on documentary evidence and furthermore, the petitioner is not required for custodial interrogation.

10. However, learned counsel appearing for the complainant has opposed the prayer and submissions made by the counsel for the petitioner. It has been argued that the petitioner has not only misused the cheque of the complainant to falsely implicate him in a case under Section 138 of the N.I. Act. but has also filed a fabricated affidavit before this Court. It is contended that the affidavit sought to impose liabilities on the complainant that were never agreed upon. In support, the complainant has drawn the attention of this Court on an affidavit executed by the father of the parties, denying the oral settlement mentioned in Annexure P-7. Additionally, the learned counsel for the complainant has also referred to the statement of the Public Notary, who has denied notarizing the affidavit. It has been submitted that in the circumstances, it is evident that the petitioner is involved in the forgery of a document.

11. I have heard learned counsel for the parties and perused the

relevant material on record.

12. *Prima facie*, the primary allegation against the petitioner pertains to the alleged misuse of a signed cheque belonging to the complainant. The cheque in question is already the subject matter of a complaint under Section 138 of the N.I. Act, which is pending adjudication before the trial Court. The core issue of whether the cheque was misused by the petitioner is, therefore, a matter to be determined in those proceedings.

13. Furthermore, the case of the prosecution is based on documentary evidence, and it is not disputed by the State counsel, on instructions, that the petitioner has joined the investigation. Given these circumstances, the necessity of custodial interrogation of the petitioner does not arise.

14. Consequently, in the given facts and circumstances, the petition is allowed and interim order dated 12.08.2024, is made absolute subject to the conditions laid down in Section 438(2) Cr.P.C./482(2) BNSS.

15. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

**CRM No.44556 of 2024**

Learned counsel for the petitioner prays for an adjournment to file reply.

On his request, adjourned to 28.03.2025.

**January 30<sup>th</sup>, 2025**

*Puneet*

**(MANJARI NEHRU KAUL)**

**JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No