



CRM-M-24587-2025

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

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Date of Decision: 15.05.2025

Gurmukh Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sant Pal Singh Sidhu, Advocate
for the petitioners.

Mr. Akshay Kumar, A.A.G, Punjab.

ANOOP CHITKARA, J.

| FIR No. | Dated | Police Station | Sections |
|---------|------------|---------------------------|----------------|
| 70 | 05.05.2023 | Makhu, District Ferozepur | 406, 120-B IPC |

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. As per paragraph 18 of the bail petition and as per paragraph 9-E of the reply, the petitioner- Jorawar Singh has clean antecedents and petitioner-Gurmukh Singh has the following criminal antecedents:

| Sr. No. | FIR No. | Dated | Offenses | Police Station |
|---------|---------|------------|----------|------------------------------|
| 1. | 39 | 27.05.2017 | 306 IPC | Mallanwala, Distt. Ferozepur |

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

“3. That brief facts of the case are that complainant moved an application before the SSP, Moga with the allegations that he alongwith Mela Singh had purchased the land measuring 26 Kanals 16 Marlas bearing khewat no.94 situated in the area of village Khadoor, Tehsil Zira in equal share. In said land complainant and Mela Singh had established a brick kiln under the name and style of M/s Rajinderpal BKO Khdoor. In said brick kiln. Complainant was partner to the extent of 35%, Mela Singh was partner to the extent of 35% share, Sohan Lal was having 15% share and 15% share. After death of Mela Singh, his sons Jorawar Singh,



Gursewak Singh and Gurmukh Singh had taken the forcible possession of said brick kiln and they are not allowing the complainant to entered into the brick kiln nor they are providing the accounts detail to the complainant. In connivance of each other, accused had also fabricated one partnership deed in the year of 2016-17 and in the Income tax return they had shown the share of complainant 50% and share of Jorawar Singh 50% and they have also shown Sohan Lal and Nishan Chand as retired. In the year of 2018-19 accused had shown the partners of firm as, complainant 35% share, Jorawar Singh 35% share, Gurmukh Singh and Gursewak Singh 15% each. Whereas complainant had not signed any such document. Complainant further mentioned that accused had also taken the forcible possession of 3 tractors i.e. PB05W-7961, PB47D-8336, PB05P-8463 and one JCB No. PB05Q9571. Accused are threatening the complainant.

4. That on the basis of said application, enquiry was conducted by the then DSP, Zira and during enquiry, it is found that accused in connivance with each other with malafide intention to play fraud with the complainant had committed the embezzlement of joint material lying in the brick kiln as well as vehicles of the complainant. After completion of enquiry, enquiry officer recommended to register the case u/s 406/120-B IPC and also observed that allegations regarding filing of income tax returns on fake documents should be verified during the investigation.

5. That after completion of enquiry, the enquiry officer had submitted his report before the Senior Superintendent of Police, Ferozepur. However, on said enquiry report, the SSP, Ferozepur called the comments from the SP (Inv), Ferozepur.

6. That after considering the enquiry report and facts on the file, the SP (Inv), Ferozepur, agreed with the enquiry report of the then DSP, Zira, and submitted his report before the SSP, Ferozepur. On said report as well as comments, the SSP, Ferozepur called the comments from SP (Operation), Ferozepur. After considering the enquiry report and facts on the file, the SP (Operation), Ferozepur, agreed with the enquiry report and thereafter the instant case has been registered.”

4. Counsel for the petitioners submits that there is one JCB which was although registered in the name of the complainant but they had paid the installments and they would have no objection if police take steps to recover the same. The petitioners' counsel prays for bail by imposing any stringent conditions and contends that pre-trial



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incarceration would cause an irreversible injustice to the petitioners 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:

"9.B. The Evidence against petitioner: There is sufficient oral and documentary evidence against the petitioners. The malafide intention of petitioners is proved from the fact that they have furnished the income tax returns by changing the share of the complainant.

C. Role of petitioners: During investigation/enquiry number of witnesses joined and it is found that petitioners have embezzled the material and machinery lying on said brick kiln."

REASONING:

7. Dispute is between the partners and now qua the property of partnership firm. Given the undertaking by counsel for the petitioners that they would have no objection to return the JCB, as such, they are entitled to bail.

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 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.



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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. This order is subject to the petitioners' complying with the following terms.

13. The petitioners are directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and 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.

14. 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.

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 petitioners 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 petitioners indulge 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



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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 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.

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

(ANOOP CHITKARA)
JUDGE

15.05.2025

Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.