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

**CRM-M-15155-2025 (O&M)
Date of Decision : 02-05-2025**

Suryakant

.....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rajesh Gupta, Advocate and
Ms. Manjula Gupta, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J. (Oral)

FIR No.	Dated	Police Station	Sections
364	17.4.2023	Civil Line, Sirsa, District Sirsa	420 IPC (later on added Section 406 IPC).

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 13 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:

“3. That briefly stated facts of the case are that in the present case the FIR No.364 dated 17.04.2023 under sections 420 of the IPC was registered on the basis of complaint of complainant namely Subhash Kumar son of Sh. Gurmukh Singh, resident of Dhani Thoba, Tehsil & District Fatehabad. It is submitted by the complainant that, I have to sent my son Vicky from Armenia to Australia through Manoj Phutela, Proprietor of Success Emigration, Old Court Road, Sirsa, but the above named Manoj Phutela had sent my son on tourist visa instead of work visa and thus cheated me. Due to act of accused my son had to stay in Armenia where he got tensed and lost his mental balance and he was not provided with any work. Above Manoj Phutela got transferred from me a sum of Rs.2,50,000/- in Bank account No.10104729828 of (Madhav Foundation) and a sum of Rs.2,50,000/- in Bank Account No.10051677794 of (Maturaj Lamni) in this way total amount of Rs.5,00,000/- was paid to him. Now when the complainant talked with Manoj Phutela in this regard, he had not given any satisfactory answer and stated that

whatever you want to do, you can do. He further stated NER Australia from Armenia on work visa or brought back him India and that I had sent your son abroad. On this I stated to him that my son is facing difficulty and is tensed. I requested to kindly send my son appropriate legal be taken against Manoj Phutela for committing cheating and justice be done to my son.”

4. The petitioner's counsel prays for bail and has no objection to imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family. He further undertakes that during the period of bail, he shall not commit any offence and in case he commits any offence in which the sentence provided is more than seven years, the State shall be at liberty file an application for cancellation of bail, to which they will not raise any objection. Petitioner's counsel further submits that the petitioner had joined the investigation and has handed over a sum of Rs.2,50,000/- to the investigator as per the seizure memo.

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. That during investigation on 27.12.2023 the accused Manoj Phutela was arrested in the present case and his disclosure statement was recorded wherein the accused Manoj Phutela disclosed that by taking the complainant in his words he got transferred an amount of Rs.2,50,000/- in his friend i.e. petitioner/accused bank account No.10104729828 and an amount of Rs.2,50,000/- in bank account No.10051677794 of his friend Mutturaj Lamni. Copy of disclosure statement of the accused Manoj Phutela is appended herewith as Annexure R-2. Section 406 of IPC was added in the present case.”

REASONING:

7. 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.

8. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible.

9. Considering the conduct of the petitioner in which he has duly cooperated in the investigation and 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, subject to the compliance of terms and conditions mentioned in this order. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into

force from the time it is uploaded on this Court's official webpage.

10. Given above, provided the petitioner is not required in any other case, the petitioner 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 Ilaqa 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 petitioner 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 petitioner's complying with the following terms.

13. The petitioner is 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 petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner 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 petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

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

17. Any observation made hereinabove is neither an expression of opinion on the 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 Petitioner 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.

02-05-2025
AK

(ANOOP CHITKARA)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO