



CRM-M-3342-2025 (O&M)

-1-

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3342-2025 (O&M)

Date of decision: 26.03.2025

Rohtash

... Petitioner

versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Nitin Sachdeva, Advocate for the petitioner.

Mr. Vikas Bharadwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 482 of the Bharatiya Nagarik Surakksha Sanhita, 2023 (hereinafter 'BNSS') seeking grant of anticipatory bail in the case stemming from FIR No.400 dated 31.12.2024 registered under Sections 316(2) and 318(4) of the Bharatiya Nyay Sanhita, 2023(hereinafter 'BNS') at Police Station Urban Estate, Hisar.

2. Briefly, the facts are that the petitioner transferred his gold loan of Rs. 15,04,715/- from Fed Bank to the company- Capri Global Capital Ltd., Hisar. The company transferred the said amount to the petitioner's account. However, the petitioner got his gold released from Fed Bank but failed to deposit it with the complainant's company. The petitioner has neither returned the loan amount disbursed to him, nor did he deposit the gold with them.

3. On 22.01.2025, the following order was passed:

“ xxx xxx xxx

Keeping in view the ratio of law enunciated by the Hon'ble Supreme Court in Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2010



SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR (Criminal) 833, the petitioner is directed to appear before Investigating Officer within a period of two weeks from today and thereafter, as directed by the Investigating Officer. In the event of arrest, the petitioner will be admitted to interim anticipatory bail on furnishing bail/surety bonds to the satisfaction of Investigating/Arresting Officer. The petitioner shall cooperate with the investigation/Arresting Officer and abide by the conditions as provided under Section 482(2) of BNSS (erstwhile Section 438(2) of Cr.P.C.).

If the Arresting Officer does not permit the petitioner to join the investigation, he would appear before learned Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in the investigation, in terms of the order of this Court.

xxx

xxx

xxx”

4. However, on 20.02.2025, it was stated by the learned State counsel that the petitioner has not been cooperating with the investigation. As such, the following order was passed:

“ Learned Senior counsel for the petitioner submits that the petitioner has already joined the investigation and cooperated throughout.

Learned State counsel, on instructions from SI Mal Singh, submits that although in compliance of the order passed by this Court, the petitioner has joined the investigation, however, he has not cooperated in the investigation.

Learned counsel for the complainant vehemently opposes the prayer made by the petitioner, on the ground that intention to cheat the complainant from the very inception is writ large and the petitioner, without pledging the gold, has obtained the loan and he has shown the release of gold from the bank, however, the same was not deposited and as such, the petitioner’s complicity is duly proved on record.

In view of the above, the Investigating Officer is directed to file his affidavit indicating the manner in which the petitioner has not cooperated in the investigation.

Adjourned to 26.03.2025.

Interim order to continue.”

5. The relevant part of the status report dated 13.03.2025 is reproduced below:



“9. That the petitioner/accused joined in investigation of case on 02.02.2025 and during investigation the petitioner/accused recorded his disclosure statement regarding the aforesaid fraud, however, he **recovered nothing in furtherance of his disclosure statement.** Copy of disclosure statement of petitioner/accused is appended herewith as Annexure R-4.

10. That the fraud committed by the petitioner/accused is apparently clear from the aforesaid documents, however, **the petitioner/accused haven't recovered the amount of Rs.15,04,715/- which he fraudulently obtained from the Capri Global Capital Limited.**”

(emphasis added)

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the concerned Investigating Officer namely S.I. Mal Singh, has opposed the grant of anticipatory bail to the petitioner on the ground that he is yet to get the amount allegedly obtained through fraud recovered.

7. It is trite law that bail cannot be withheld solely for the reason of effecting recovery. The parameters of granting bail cannot entail ensuring recovery of the amount, the complainant was allegedly cheated of, especially in absence of proof of guilt of the accused. A two Judge bench for the Hon'ble Supreme Court in ***Dilip Singh vs. State of Madhya Pradesh and others*** 2021(2) SCC(Cri) 106, has held as follows:

“5. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;



CRM-M-3342-2025 (O&M)

-4-

character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.” (emphasis added)

A two Judge bench of the Hon’ble Supreme Court in ***Lalit Chaturvedi and others vs. State of Uttar Pradesh and others 2024(2) R.C.R. (Criminal) 73***, has opined as follows:

“9. We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.” (emphasis added)

8. In view of the discussion above, order dated 22.01.2025, is hereby made absolute. The petitioner shall abide by the terms and conditions envisaged under Section 482(2) of BNSS (*erstwhile Section 438(2) of the Code of Criminal Procedure, 1973*).

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

26.03.2025
Ajay Goswami

Whether reasoning given
Whether reportable

(HARPREET SINGH BRAR)
JUDGE

Yes/No
Yes/No