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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41202-2025
DECIDED ON: 31.07.2025

AJAY MAINI

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Nitin Kant,
Mr. Sahil Sabharwal,
Mr. Ankit Sibal,
Ms. Devanshi Sharma, Advocates
for the petitioner.

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SANDEEP MOUDGIL, J

1. Prayer:

The jurisdiction of this court has been invoked under Section 482 of BNSS, 2023 seeking the grant of anticipatory bail to the petitioner in respect of FIR No. 155 dated 06.05.2025 under Section 406, 420, 467, 471 and, 120B of IPC registered at P.S. Dabua, Distt. Faridabad, Haryana.

The contents of the FIR are as below

2. Brief facts of the case read as under:-

"Brief Facts: 1. The complainant is a law abiding citizen who operates the S.P. Chemicals Proprietorship firm whose office is

situated at Pali Village, Qila No. 15/2/3, M.N. 114/42/45, Faridabad. He is also the authorized representative of this firm and looks after its day to day operations. And he is well aware of the facts of the present complaint. 2. In the year 2017, Ajay Maini and Vanshaj Maini, Directors of M/s. Maini Construction Equipment Private Limited and Maini Scaffold Systems approached the complainant's firm M/s. S.P. Chemicals for supply of material for supply of material for the operations of the company. After negotiations, the complainant agreed to fulfil the orders of the accused company. The supply relationship started in 2017 and continued till 2022, the entire business operations were being carried out by accused Ajay Maini. Requests and invoices for each delivery were also being issued by accused Ajay Maini. Despite repeated requests, the accused company failed to pay the dues. 3. When the terms of trade were being negotiated, it was agreed between the complainant and accused Ajay Maini that the payment would be made within 30 days of each delivery. On the terms and conditions stipulated by and between the complainant and the accused, the complainant started supplying the material on credit of trust. However, after receiving the goods, the accused company started delaying the payment by making various excuses. In spite of these assurances, the complainant continued to supply the material trusting the accused When the complainant was informed by accused Ajay Maini that a suit was pending against the Company before the National Company Law Tribunal (NCLT) since 2016 and the IRP was appointed in 2017 vide order dated 01.06.2017 the Tribunal has appointed accused Debashish Nanda as the resolution professional. However, accused Ajay Maini concealed this information from the complainant and continued to portray himself as the person authorized to manage the affairs of the company. Further, accused Vanshaj Maini, in collusion with *accused Ajay Maini, continued to portray himself as the authorised signatory of the company and continued to issue fake and fabricated purchase orders as the aithorised signatory of the company. Copy of the order dated 01.06.2017 and the purchase orders are enclosed herewith. 5. It is pertinent to mention here that as per section 17 of the IBC. 2016 whenever an RP is appointed, the Board of Directors stands dissolved and all powers are transferred to the RP. Further, all management of the affairs is done under the supervision of the RP after obtaining all permissions and consents from RP. However, accused Ajay Mani and Vanshaj Maini kept on deceiving the complainant by issuing fake purchase orders in his name without informing him about the appointment of Resolution Professional. 6. The complainant after extracting the information of accused Debashish Nanda instead of taking action against the accused persons threatened the complainant that he will have to face legal consequences if he disclosed the matter to anyone and also indicated that the complainant will never get the due payment. 7. The applicant after realising the conspiracy being done by all the accused persons gave a complaint No. 2054/CC/P dated 10.03.2022 regarding breach of trust, cheating and fraud committed by the accused persons, which was marked to Economic Crime Branch NIT, FBD. The complainant has detailed all the relevant facts regarding the fraud committed by the accused persons. 8. It is also notable that during the investigation, the accused produced a Power of Attorney (S.P.A) executed by accused Debashish Nanda in favour of accused Ajay Maini, which was attested by accused Ajay Pal, Notary, District Court Gurugram. During the investigation, the very document was used by the accused to influence the entire case. Further, the S.P.A it was revealed that the stamp paper was purchased by Ajay Maini from Gurugram, where accused Ajay Maini resides, and the SPA was made in*

New Delhi, whereas its notarization was done in Gurugram. It is relevant to point out that the register of the notary officer accused Ajay Pal was obtained. A review of the entries made in the register revealed that the register contains suspicious entries, where all the entries appear to have been made on the same day with the same pen and there is absence of signatures of accused Debashish Nanda and witnesses. Further, the signature of accused Ajay Maini is also forged. A mere perusal of the SPA, stamp papers and register records of the notary officer clearly establishes that the accused have colluded with each other and prepared forged documents to save accused Ajay Maini and Vanshaj Maini. Copies of the SPA, stamp papers and notary records are enclosed. 9. It is also important to note that another forgery was committed during the investigation of the previous complaint. When the Investigation Officer asked the Resolution Professional (accused Debashish Nanda) to join the investigation, the RP was specifically asked whether he had informed the Bank about his appointment as per the NCLT order. A letter dated 06.12.2017 was produced by accused Debashish Nanda in which he has informed SBI Bank about the NCLT proceedings and his appointment. However, this letter is also fake document as it was created at the time of investigation itself. This can be established from the reply of SBI Bank has denied having any knowledge about the NCLT proceedings. Therefore, it is clear that both the documents were created to build a defence in the previous complaint and to show their previous forgery as a genuine business transaction. To prove this, the accused person in collusion with each other created these fake documents to derail the investigation. Copies of the letter dated 06.12.2017 and the reply received from SBI are enclosed. 10. Though, all the investigations clearly established that the accused persons had entered into a clear conspiracy to commit the acts of fraud, *yet the accused did not evade the investigation presented a fake document to influence the SPA and pretended that as per the SPA all rights were assigned to Ajay Maini. However, the SPA clearly shows the element of a fake document which was created in connivance with Ajay Pal, the notary officer of Gurugram.11. Since the facts and circumstances of the present complaint filed against the accused persons are not in connivance with the accused persons. However, the present case has arisen as a separate incident at a different stage and time. During the investigation, the accused persons prepared and submitted forged documents as part of a pre-planned criminal conspiracy. If the accused persons conspired with others to alter and influence the investigation by using forged documents, particularly targeting the interrogation of the investigating officer, then the allegations of forgery become highly relevant. Due to these strategies of the accused, the complaint was closed against the accused. This is why a separate offence of forgery, cheating and protecting the accused from the offences was made out during the investigation of the previous complaint. Prima facie, the complaint discloses the commission of a cognizable offence. You are therefore requested to conduct a thorough investigation into the present complaint. I shall be grateful to you for the same. SD/- SATISH TUTEJA*"

3. Contentions:

On behalf of petitioner

Learned Counsel for the petitioner contends that he has been falsely implicated in the present FIR. It is further submitted that the claim made by the respondent no. 3 alleging no knowledge of the insolvency proceedings initiated against the petitioner's company M/s. Maini Construction Equipment Pvt. Ltd., is a total sham, as Mr. Debasish Nanda who was appointed as Interim Resolution Professional (inshort as IRP), had issued public notices inviting claims online on 24.07.2017, including one published in *Business Standard* on 25.07.2017.

Senior Advocate would further vehemently argue that the present matter is essentially a civil dispute that has been deliberately given a criminal color by Respondent No. 3.

It is submitted that the appointed Resolution Professional had duly executed a Special Power of Attorney (SPA) in the favour of the petitioner seeking his assistance and cooperation in management of the affairs as envisaged under Section 19, Insolvency and Bankruptcy Code of 2016 (hereinafter referred as IBC). In view of the said SPA the actions of the petitioner do not amount to any criminal offence. Aditionally the respondent no. 3 has filed other complaints to the police on the similar allegations as well wherein the petitioner has already joined investigation.

Furthermore the counsel undertakes on behalf of the petitioner that he is ready and willing to join investigation and cooperate with the Investigation Officer concerned.

Notice of motion.

<u>On behalf of the State/complainant</u>

On the asking of Court, Mr. Sushil Bhardwaj, Addl. AG. Haryana, accepts notice on behalf of respondent-State, whereas Mr. Vaibhav Narang, Advocate has put in appearance on behalf of the complainant/respondent No.2 and filed his Memorandum of Appearance.

Learned State counsel assisted by learned counsel for the complainant vehemently opposes the present prayer for anticipatory bail, contending that the allegations against the petitioner are serious and substantial. It is submitted that the petitioner deliberately kept the complainant in the dark about the liquidation of his company and appointment of IRP, while simultaneously continuing to engage in business transactions in the capacity of an "authorised signatory", thereby concealing material facts that would have influenced the complainant's decision to enter into or continue the transaction. It is further asserted that the petitioner with a clear intent to deceive made false representations and gave misleading excuses regarding payment timelines, solely to delay payment, thereby causing financial harm to the complainant.

Furthermore, the SPA which purportedly granted authority to the petitioner has been forged in connivance with the other co-accused persons to obtain favourable orders from legal authorities thereby constituting an offence of serious economic and legal consequence. Therefore, the concession of anticipatory bail ought not to be extended to the petitioner.

4. Analysis

After hearing the contentions raised by both counsels, it is pertinent for the court to consider the scope of Section 482, BNSS qua grant of Anticipatory bail. It is a settled proposition of law that while considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be generally avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered while dealing with an application of Anticipatory Bail. Elaborate analysis or exhaustive exploration of the merits is not required.

In this regard reliance can be placed on the Supreme Court judgement of ***Kalyan Chandra Sarkar v. Rajesh Ranjan and another (2004) 7 SCC 528***, where it was held as under:-

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."*

Further in ***P. Chidambaram vs Directorate Of Enforcement AIR 2019 SUPREME COURT 4198*** the Apex Court unequivocally laid down that:

> *"76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail."*

This court cannot ignore the fact that such offences not only corrode individual trust but also undermine the integrity of commercial transactions and the broader financial system as economic offences constitute a "class apart" and thus granting anticipatory bail is certainly not the rule.

Thus, the discretionary jurisdiction under Section 482, BNSS is to be invoked judiciously and sparingly; each case must be weighed against the seriousness of the allegations, role and conduct of the accused, the need for custodial interrogation, and the larger public interest.

In the instant case, the petitioner stands implicated under Sections 406, 420, 467, 471 and, 120B of the Indian Penal Code. Prior to examining the factual matrix of these implications, it is apposite to discuss the statutory ingredients of the offences alleged, particularly with regard to Section 420 IPC.

> *Section 420 IPC pertains to the offence of cheating and dishonestly inducing delivery of property. For an offence under Section 420 IPC to be made out, the prosecution must prima facie establish three fundamental components:*
> *(i) Deception of any person;*
>
> *(ii) Fraudulent or dishonest inducement, resulting in delivery or retention of any property; and*
> *(iii) Existence of mens rea, that is, a fraudulent or dishonest intention on the part of the accused at the very inception of the transaction.*

It is trite law that mens rea must exist ab initio. Therefore, the element of mens rea assumes a pivotal role in determining whether the transaction, though appearing civil in nature, crosses over into the realm of criminality under Section 420 IPC. In light of the above legal position, it is encumbent on the Court to evaluate the allegations and material on record as to whether the essential element of fraudulent inducement coupled with dishonest intention at the inception can be prima facie inferred against the petitioner.

Adverting to the facts qua the petitioner in the case at hand, he admittedly continued business transactions presenting himself as the "authorised signatory" for the company's affairs, including issuance of cheques, from 2017-2022 with the respondent no. 3, despite the commencement of CIRP against the petitioner's company and the imposition of moratorium under Section 14 IBC vide order dated 01.06.2017 passed by the NCLT, New Delhi. Even though upon admission in CIRP, the erstwhile management stood superseded and the control vested with the IRP.

Thus the petitioner's act of withholding the existence of CIRP proceedings against his company from Respondent No. 3, thereby inducing him to believe that the business was going on well, while the petitioner's company had been declared bankrupt, resulting in continued business relations and substantial financial prejudice upon Respondent No. 3. This conduct of the petitioner tantamounts to flagrant violation of the statutory moratorium and the commission of offences punishable under section 420 and 406 of IPC.

As regards the other offences, the petitioner stands implicated under Sections 467, 471, and 120-B IPC dealing with forgery of valuable security, will, or authority to make or transfer any valuable security, the use of such forged documents as genuine and, criminal conspiracy, respectively. As per the FIR and the material placed on record it is alleged that the petitioner, engaged in conspiracy with the co-accused namely the appointed Interim Resolution Professional (IRP), Mr. Debashish Nanda, and the

Notary Officer, Mr. Ajay Pal, acting with a criminal intent, sought to fabricate and utilize a forged Special Power of Attorney to procure favourable orders and unlawfully secure control over the Corporate Debtor.

The forged SPA purportedly vested sweeping powers in the petitioner, granting him control over the affairs of the Corporate Debtor and placing him in a position of fiduciary responsibility, which was capable of being misused to breach the trust of Respondent No. 2 and inflict financial loss upon him.

As far as another contention of the petitioner is concerned as to have acted *bona fide* and within the scope of the SPA dated 07.12.2018 granted by the IRP in favour of the petitioner merits legal scrutiny. Even assuming the said SPA to be genuine, the Court notes that its contents reflect that the SPA is inconsequential as it overrides the statutory imperatives enshrined under Section 19 of IBC as eproduced below:

> *Section 19: Personnel to extend cooperation to interim resolution professional.*
> *19. (1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.*

This provision mandates only for cooperation, not de facto control. As can be borne out from the facts of the case in hand the petitioner continued to act as the "authorised signatory" for the company even after the initiation of CIRP, and claimed that these acts were permitted or required under Section 19, IBC. This conduct of the petitioner exceeded the bounds of "cooperation" as provided under Section 19, IBC and thus is neither sanctioned nor protected under this provision. There is no ambiguity in law on the point that Section 19, IBC cannot be invoked as a cloak to justify overreach, illegality, or fraudulent conduct and thus, reliance placed by the petitioner on Section 19, IBC as a justification is legally untenable. Moreover, under Section 28(1)(h) of IBC, the IRP is prohibited from delegating it's authority to the suspended management without prior approval of the Committee of Creditors (CoC), as the provision provides as follows:

> *28. Approval of committee of creditors for certain actions. –*
> *(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -*
> *(h) delegate its authority to any other person;*

Therefore, it is evident that the purported Special Power of Attorney was not shown to be backed by COC's prior sanction and was executed in contravention of the applicable statutory provisions. Consequently, the petitioner had no lawful authority, rendering the actions taken pursuant thereto legally unsustainable. Furthermore, the FIR impugns the SPA as a forged document, thereby further clouding its evidentiary and legal worth.

From a bare perusal it is evident from the facts of the case that it prima facie appears that the offence attributed to the accused is not only made out but also a serious offence in the eyes of law. In such cases it may not be appropriate to adopt a passive or negative role and remain a bystander of violation of rights by taking shelter of procedural technicalities. Such technicalities ought not to stand in the way of enforcement of rights of an individual and the smooth functioning of the wheel of criminal justice.

5. <u>Relief</u>

In view of the aforesaid observations, this Court finds itself unable to exercise discretion in favour of the petitioner by granting anticipatory bail. The petitioner stands implicated in an offence of economic nature, which is detrimental to the interests of society at large. It is well-settled that offences of this character call for a more stringent approach, and the grant of anticipatory bail in such cases would be against the public interest and the principles of justice. Accordingly, the concession of anticipatory bail is declined.

The petition stands dismissed being devoid of merits.

It is made clear that the observations made hereinabove shall not be construed as an opinion on merits of the case and shall not be borne in mind while adjudicating the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

31.07.2025
Meenu

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