

(2025) 12 SC CK 0007

Supreme Court

Case No: Criminal Appeal No. 5313 Of 2025 (Arising Out Of Special Leave Petition
(Criminal) No. 7275 Of 2025)

Salil Mahajan

APPELLANT

Vs

Avinash Kumar & Anr

RESPONDENT

Date of Decision: Dec. 8, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023- Section 482
- Bharatiya Nyaya Sanhita, 2023- Section 61(2), 316(4), 344

Hon'ble Judges: Sanjay Karol, J; Prashant Kumar Mishra, J

Bench: Division Bench

Advocate: Lalitaksh Joshi, Sameer Kumar, Abha Sharma

Final Decision: Allowed

Judgement

Sanjay Karol, J

1. Leave granted.

2. The present appeal arises from the final judgment and order dated 2nd April 2025 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M-13103-2025 whereby Respondent No. 1, accused-Avinash Kumar 'the accused', came to be enlarged on bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with the subject FIR No. 187 registered at P.S. Cantonment, Amritsar under Sections 316(4), 344, 61 (2) of the Bharatiya Nyaya Sanhita, 2023.

3. The undisputed facts giving rise to the present appeal are that the Appellant 'the complainant' lodged an FIR dated 25th November 2024 against the accused and his family members for allegedly misappropriating more than Rs. 3,00,00,000/-. As per the FIR, the complainant was the registered Chartered Accountant for Amandeep Healthcare Private Limited, while the accused was working as a Senior Accountant at Amandeep Hospital, GT Road. It has been stated therein that the accused was responsible for

transferring amounts from the various Units of Amandeep Hospital, with due permission of the higher management. During the course of work, the management discovered irregularities in the accounts of Amandeep Nursing College. An explanation was called for from the accused; however, he did not report to work. After an internal investigation, it was discovered that the accused had embezzled over Rs. 3 crores from various accounts, to accounts belonging to him and his family members. The complainant made specific allegations as to the transfer of money from the various units of Amandeep Healthcare to the accused.

4. On 22nd January 2025, the accused sought anticipatory bail before the Sessions Court. This application came to be rejected vide order dated 21st February 2025 in Case No. BA/470/2025. Aggrieved thereof, the accused moved an application for the same relief before the High Court of Punjab and Haryana at Chandigarh as CRM-M-13103/2025. It is also a matter of record that chargesheet came to be filed against the accused persons on 22nd May 2025.

5. We have heard the parties at length and perused the written submissions filed.

6. The learned counsel appearing for the complainant has submitted that the High Court has erroneously granted bail to the accused. The significant grounds of challenge taken are that the order suffers from non-application of mind and that the Court below did not take into consideration the need for custodial interrogation of the accused. The learned counsel appearing for the State has lent support to the case of the complainant and has submitted that custodial interrogation of the accused is necessary, in the attending facts. On the other hand, the learned counsel appearing for the accused has contended that since the investigation has been completed, his custodial interrogation is no longer warranted.

7. At the outset, it is well settled by this Court that an appeal against the grant of bail and an application seeking cancellation of bail are on different footing. The grounds for testing the legality of an order granting bail are well settled. Recently, in *Ashok Dhankad v. State (NCT of Delhi)* 2025 SCC Online SC 1690, this Court had summarized the position of law as follows:

“19. The principles which emerge as a result of the above discussion are as follows:

(i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;

(ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;

(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: *Y v. State of Rajasthan* (Supra); *Jaibunisha v. Meherban and Bhagwan Singh v. Dilip Kumar @ Deepu*]

(iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;

- (v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and
- (vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.”

(emphasis supplied)

8. We deem it appropriate to advert to the exposition of law, in *Vipan Kumar Dhir v. State of Punjab* (2021) 15 SCC 518, where while setting aside the grant of anticipatory bail this Court observed:

“11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.”

(emphasis supplied)

9. Applying the above expositions to the facts at hand, in the considered view of this Court, the impugned judgment warrants interference. The High Court observed that “*there would be no justifiability for custodial interrogation or pre-trial incarceration at this stage*”. It was also observed, “*there is a return of half of the embezzled amount and petitioner is willing to declare all his assets and bank details, as such, he is entitled to bail.*”

10. The reasoning adopted by the High Court completely disregards the status report of the investigation against the accused, where it had been categorically stated that:

“The present petitioner Avinash Kumar has embezzled more than Rs. 2.7 crores from the accounts of Amandeep Hospital and he is on a run. The custodial interrogation of the petitioner is utmost required for fair and proper investigation of the case as well as to recover the embezzled amount and in order to identify other persons who are involved with him in commission of the crime.”

(emphasis supplied)

11. The impugned order, while explicitly recording the contents of this report, makes no reference to the contents thereof in its reasoning. Pertinently, there is no reference as to why his alleged conduct of being on the run ought to be ignored. In our view, the Court erred by not taking this relevant status report into consideration. Such failure cannot be sustained. Moreover, the Court vide the impugned order appears to have taken a mechanical route in releasing the accused under the extraordinary relief of anticipatory bail. No consideration was made to the merits of the allegations against him or his

conduct, as alleged by the investigating agencies.

12. Even if the contention of the accused is accepted that, due to the filing of the charge sheet, his custodial interrogation is no longer required, we have no doubt that the judgment of the High Court is vitiated by non-consideration of essential facts.

13. In that view of the matter, the present appeal is allowed. The impugned order dated 2nd April 2025 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M-13103-2025, is set aside.

14. We clarify that the above observations are only for the purpose of examining the order granting anticipatory bail and should not be construed as remarks on the merits of the main matter before the Trial Court.

15. The accused is directed to surrender before the Trial Court within two weeks of the date of this judgment. It shall be open for the accused to apply for regular bail before the appropriate court, which shall be considered on its own merits, uninfluenced by the observations made hereinabove.

Pending applications, if any, are disposed of.