



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

1. CRM-M-33118-2025 (O&M)

HIMANSHU YADAVPETITIONER

VERSUS

STATE OF HARYANARESPONDENT

2. CRM-M-34338-2025 (O&M)

HIMANSHU YADAVPETITIONER

VERSUS

STATE OF HARYANA AND OTHERSRESPONDENTS

1.	Date when Order / Judgment was reserved	02.12.2025
2.	Date of Decision / pronouncement of Order / Judgment	16.12.2025
3.	Date of uploading Order / Judgment	16.12.2025
4.	Whether operative part or full Order / Judgment is pronounced	FULL
5.	Delay, if any, in pronouncing of full Order / Judgment, and reasons thereof	NOT APPLICABLE
6.	Whether Speaking/Reasoned	YES/NO
7.	Whether Reportable	YES/NO

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. R.S. Malik, Advocate,
for the petitioner(s) (in both the cases).

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Ankit Chahal, Advocate,
for the complainant.

**SANJAY VASHISTH, J (ORAL)**

1. By this common order, both the aforementioned petitions, i.e. CRM-M-33118-2025 and CRM-M-34338-2025, are being disposed of, as they have arisen out of the same FIR, i.e. FIR No.48 dated 10.02.2025, registered under Sections 318(2), 340, 336(3) and 3(5) of BNS, (Sections 338 and 61(2) of the BNS, 2023 added later on), at Police Station Rajendra Park, District Gurugram.

2. **CRM-M-33118-2025** has been filed by the petitioner, Himanshu Yadav, aged 32 years, under Section 482 of the BNSS, seeking the concession of pre-arrest bail, on the ground that although, regular bail was granted to the petitioner on 09.05.2025, additional offences under Sections 338 and 61(2) of the BNS, 2023 were subsequently added. However, the prayer for anticipatory bail in respect of the newly added offences was disposed of, on 10.06.2025, by the Court of learned Additional Sessions Judge-cum-Vacation Judge, Gurugram, while observing as under:-

“Therefore, keeping in view aforesaid facts and circumstances, application in hand is disposed of with directions that if application for cancellation of bail of applicant is allowed by the learned trial Court then applicant shall not be immediately sent to custody or arrested by the police and he shall be given at least seven days notice by the investigating officer, providing opportunity to applicant to avail remedy under the law. Hence, the application stands disposed of.”

3. On the same day, i.e. 10.06.2025, an application for cancellation of bail, moved by the complainant on account of addition of new offences, i.e. Sections 338 and 61(2) of BNS, 2023, was taken up



and allowed by the Court of learned Judicial Magistrate First Class, Gurugram.

4. From the order dated 10.06.2025, it further transpires that another application had also been moved by the petitioner, Himanshu Yadav, seeking exemption from personal appearance. The said application was dismissed earlier in the day, with the Court insisting that the petitioner's counsel appear through a proxy counsel representing the petitioner before the learned Magistrate. Directions were also issued to the accused to share his 'live location'. Even the request for adjournment made by the proxy counsel, on the ground that petitioner's anticipatory bail application was already pending adjudication and stood reserved for orders at 4:00 p.m., was declined.

In the latter half of the day, at about 16:06 hours, the file was again taken up, whereupon a copy of the order dated 10.06.2025 passed by the Court of Shri Amit Gautam, learned Additional Sessions Judge, Gurugram, was produced by the Munshi of arguing counsel for the petitioner.

Despite the same, the application for cancellation of bail was allowed in its entirety, overlooking the fact that regular bail had already been granted to the petitioner in respect of the originally registered offences, i.e. Sections 340, 336(3), 318(2) and 3(5) of the BNS, 2023.

5. Consequently, while advancing arguments in the present petition, learned counsel for the petitioner submits that, having been left with no other efficacious remedy, instant petition, i.e. CRM-M-33118-



2025 for anticipatory bail, has been filed *qua* all the offences, before this Court.

6. Counsel for the petitioner also argued that upon addition of new offences, it was not open to the complainant to seek cancellation of bail. Rather, it was incumbent upon the investigating officer to approach the Court and seek permission to arrest the accused by assigning cogent reasons justifying such necessity. In this regard, reliance has been placed upon the judgment of Hon'ble Supreme Court in the case of *Pradeep Ram vs. State of Jharkhand and another*, 2019(3) RCR (Criminal) 538 : Law Finder Doc ID #1526592.

It is further contended that there was no occasion to cancel the bail already granted to the petitioner.

7. As per counsel for the petitioner, addition of offences would only afford an opportunity to the accused, including the petitioner herein, to avail appropriate legal remedies and seek protection from arrest in respect of the newly added offences.

Consequently, placing reliance on the aforesaid judgment of the Hon'ble Apex Court in *Pradeep Ram's case (supra)*, learned counsel prays for allowing the present petition.

8. **2nd petition, i.e. CRM-M-34338-2025**, has also been filed by the petitioner, Himanshu Yadav, seeking quashing of the order dated 10.06.2025 (Annexure P-13), whereby bail granted to the petitioner was cancelled by allowing the application moved by the complainant on account of the addition of further offences, i.e. Sections 338 and 61(2) of the BNS, 2023.



9. Sequence of events has already been noticed here above while recording the contentions in CRM-M-33118-2025, wherein it has been elaborately explained that subsequent to the grant of regular bail, upon introduction of the additional offences under Sections 338 and 61(2) of BNS, 2023, the anticipatory bail petition filed by the petitioner was disposed of, with a direction to the investigating officer to issue notice, and yet, on the very same day, i.e. 10.06.2025, application for cancellation of bail filed by the complainant, Ashwani Kumar (respondent No.2), was allowed.

Consequently, in the present petition, petitioner challenges the order cancelling bail passed by learned Judicial Magistrate First Class, Gurugram, asserting the same to be illegal and *non est* in the eyes of law, on the ground that an order granting regular bail could not have been rendered ineffective, unless an application under Section 439 of the Cr.P.C., supported by substantive grounds, had been filed.

10. It is in this background that both the present petitions have been instituted by the petitioner-accused, Himanshu Yadav, before this Court.

11. On the other hand, learned State counsel, along with learned counsel appearing for respondent No.2, Ashwani Kumar, jointly submit that petitioner does not deserve the concession of anticipatory bail.

It is contended that petitioner was required to join the investigation, in compliance with the notice dated 14.06.2025 issued by the Investigating Officer, vide notice serial No. 457-5A (Annexure P-11 in CRM-M-33118-2025).



It is further submitted that the said notice was issued by the Investigating Officer pursuant to the directions dated 10.06.2025 passed by learned Additional Sessions Judge, Gurugram, in the anticipatory bail petition filed by the petitioner.

12. It is further argued that once the regular bail granted to the petitioner has been cancelled, the petition for anticipatory bail is not maintainable, and petitioner is required to surrender before the Court and seek regular bail, particularly in view of the fact that his request for exemption from personal appearance has already been declined.

13. It is additionally contended that present petitions deserve dismissal, as the judgment passed by Hon'ble the Apex Court in *Pradeep Ram's case (supra)* relied upon by learned counsel for the petitioner, is not applicable to the facts and circumstances of the present case.

Accordingly, learned State counsel as well as counsel for respondent No.2 pray for dismissal of both the present petitions.

14. This Court has heard the submissions advanced by learned counsel for the respective parties at length, and has also perused the record available before it. The judgment in the case of *Pradeep Ram's case (supra)* has also been carefully examined with the able assistance of learned counsel for the petitioner.

15. Factual matrix leading to the registration of the criminal case against the petitioner is that an agreement to sell dated 09.10.2024 was executed in respect of a plot, ad-measuring 605 square yards (1 kanal) for a total sale consideration of Rs.20 lacs. The target date for execution and registration of the sale deed was fixed as 09.11.2024. At the time of



execution of the agreement, the buyers/accused persons, namely, Tanuj Kumar Singh and Himanshu Yadav (**petitioner herein**), paid a sum of Rs.7,10,000/- as earnest money. As the transaction did not fructify, disputes arose between the parties, whereupon the petitioner issued a legal notice dated 18.12.2024 calling upon the complainant to execute the sale deed. The said legal notice was replied on 04.01.2025, and eventually the dispute culminated in filing of a civil suit for possession and for decree of specific performance on 22.01.2025 before the Courts at Gurugram, which is stated to be pending, till date.

Subsequent to the institution of civil suit, respondent No.2, Ashwani Kumar, lodged the FIR in question against the buyers of the plot. Initially, FIR was registered for offences under Sections 318(2), 340, 336(3) and 3(5) of BNS, 2023.

16. Vide order dated 09.05.2025, Court of learned Judicial Magistrate First Class, Gurugram, had already granted regular bail to the accused/petitioner, Himanshu Yadav. The relevant portion of the said order reads as under:—

“Present: Ms. Dimple Ld., APP for the State assisted by Sh. Ritesh Dhir, Advocate for complainant.

Accused Tanuj produced in custody represented by Sh. Rao Bhagat, Adv

Accused Himanshu produced in custody represented by Sh. R.K. Yadav, Advocate.

I.O has come present. At this stage, an application for seeking 14 days judicial remand of accused Himanshu moved.

Reply to bail application of accused Himanshu filed. At this stage, it is stated by I.O that application



for judicial remand of accused Himanshu be read as reply to bail application.

Augments on the bail application heard. During the two days police remand of the accused, the investigating authorities did not recover any evidence, including the allegedly executed forged agreement to sell. It is stated by the I.O that no further assistance of accused is required in the investigation and an application seeking 14 days judicial remand of accused Himanshu has already been moved. It further appears that the investigating authorities have not verified the complainant's signatures, even though the complainant is said to have signed the purportedly forged agreement.

For the reasons detailed herein and the fact that trial of the case will take long time and no fruitful purpose would be served by keeping the accused in custody, accused is admitted to bail on his furnishing bail bonds in the sum of Rs.60,000/- with one surety in the like amount. Requisite bonds furnished which are accepted and attested. Accused Himanshu be released forthwith, if not required in any other case.

At this stage, an application seeking 3 days police remand of accused Tanuj filed. The same is partly allowed vide separate detailed order of even date, with direction that he be produced on 11.05.2025.

At this stage, an application for bail has been filed on behalf of accused Tanuj. Reply to the said application be also filed on 11.05.2025.

At this stage, an application for taking specimen signature filed on behalf of accused Himanshu. Accused Himanshu has stated that his no objection to give specimen signature, vide separately recorded statement. In view of the facts mentioned in the application and no objection by the accused, the same is allowed. Specimen signatures taken which are accepted and attested by the undersigned and handed over I.O for further investigation.

Now to come up on 11.05.2025, the date already fixed for producing accused Tanuj from police remand as granted today.

Date of Order:09.05.2025

(Rupam)
Judicial Magistrate - 1st Class Gurugram
UID NO. HR0557"



17. From perusal of the bail order, it is evident that upon an application moved by the petitioner himself for furnishing specimen signatures, and in absence of any objection on his part, the said application was allowed. The “specimen signatures” were obtained in Court, duly attested by learned Judicial Magistrate First Class, and thereafter, handed over to the Investigating Officer for the purposes of further investigation.

Immediately thereafter, on 14.05.2025, complainant moved an application under Section 439(2) of the Code of Criminal Procedure, 1973, seeking cancellation of bail on the ground that Section 338 of the BNS, 2023 had not been added by the Investigating Officer.

On the very next day, i.e. 15.05.2025, the Investigating Officer added Sections 338 and 61(2) of BNS, 2023. It is, therefore, manifest that the additional offences were incorporated subsequent to the filing of application for cancellation of bail. Consequently, a peculiar situation arose for the petitioner, and before any adjudication on the application seeking cancellation of regular bail, petitioner approached the Court on 09.06.2025 by filing an application for anticipatory bail.

In all likelihood, this was the appropriate legal remedy available to the petitioner, as an alternative course would have been to await a notice or moving of an application by the Investigating Officer to the Area Magistrate for seeking custody in respect of the newly added offences.

18. While dealing with the anticipatory bail application, and noticing the fact that petitioner was already on regular bail, vide order



dated 09.05.2025, neither application for re-arrest had been moved by the police, nor the order cancelling bail had been passed, learned Additional Sessions Judge-cum-Vacation Judge observed that, technically, an application for anticipatory bail would not be maintainable.

However, visualising a hypothetical situation wherein the application for cancellation of bail might be allowed and petitioner could be remanded to custody or arrested immediately, thereby frustrating his right to seek appropriate legal remedy, learned Additional Sessions Judge issued a direction to the Investigating Officer not to arrest the petitioner unless he was served with at least seven days' prior notice, so as to afford him an opportunity to avail remedies available under law.

19. Upon going through the order dated 10.06.2025, this Court is constrained to observe with surprise that no emergent circumstances have been discerned which would have necessitated learned Magistrate to take up and decide the application for cancellation of bail on the very same day, particularly after being apprised that the order in the anticipatory bail application had been reserved after hearing arguments.

It is further noticed that in the latter part of the day, at about 16:06 hours, learned Magistrate, Ms. Rupam, JMIC, Gurugram, again took up the application for cancellation of bail, despite producing of the order dated 10.06.2025 passed by learned Additional Sessions Judge, Gurugram, whereby directions had been issued to the Investigating Officer to serve a seven days' notice upon the petitioner before effecting arrest, and cancelled the bail same very day, i.e., 10.06.2025.



Even thereafter also, learned Magistrate insisted for personal appearance of the petitioner, despite being aware of that by that time, no protection had been granted by any Court in respect of the newly added offences, and consequently, declined the application seeking exemption from personal appearance.

During the proceedings on the application for cancellation of bail, petitioner was never made aware that his right to seek anticipatory bail in respect of the newly added offences would remain protected, unless he was afforded an opportunity to avail such remedy.

20. In the considered view of this Court, petitioner was, thus, placed in an anomalous and precarious situation, on account of which he could not have reasonably joined the investigation in respect of the newly added offences, pursuant to the notice dated 14.06.2025 issued by the Investigating Officer of Police Station Rajendra Park, Gurugram.

It also needs to be noticed that application seeking cancellation of bail was filed on 14.05.2025, whereas notice to join the investigation was issued on 14.06.2025, even though the additional offences had, in fact, been added on 15.05.2025.

21. Sequence of events as detailed in the petition has not even been controverted by learned State counsel in the status report dated 06.08.2025 filed in CRM-M-34338-2025.

22. Coming to the judgment of Hon'ble Apex Court in the case of *Pradeep Ram (supra)*, which has been relied upon by counsel for the petitioner, it is apposite to read paragraph Nos.27 and 29 of the said judgment, and the same are reproduced here under : -



27. *Relying on the above said order, learned counsel for the appellant submits that respondent State ought to get first the order dated 10.03.2016 granting bail to appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the Court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the Court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The power under Sections 437(5) and 439(2) are wide powers granted to the court by the Legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the Court after cancelling the earlier bail.*

29. *In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-*

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail.



The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

23. From the reading of the observations made by Hon'ble the Apex Court in the case of ***Pradeep Ram (supra)*** it is clear that in case of addition of additional offences, the accused can surrender and apply for bail in the newly added cognizable/non-cognizable offences, and in the event of decline of bail, he can be arrested.

Further, in a case where an accused has already been granted bail, the investigating authority upon addition of an offence/offences may not proceed to arrest the accused, but before arresting the accused in the added offence(s), would first be required to obtain an order of arrest from the Court which had granted the bail to the accused in the offences recorded at the time of lodging of the crime. For this purpose, the investigating agency may approach the concerned Court, under Section 437(5) [Section 480 of BNSS] or Section 439(2) Cr.P.C. [Section 483 of BNSS], for arrest of the accused and his custody.

24. In view of the above discussion, this Court is not satisfied with the order dated 10.06.2025 passed by learned Magistrate, cancelling the bail already granted to the petitioner.



25. Additionally, it is imperative to note that in absence of any violation of the conditions of bail in respect of the offences for which the petitioner had already been granted regular bail, vide order dated 09.05.2025, the said order of regular bail could not have been reversed by the same Court.

Moreover, learned Magistrate failed to adhere to the observations recorded in the concluding part of the order dated 09.05.2025, wherein it was specifically noticed that the specimen signatures of the petitioner had already been obtained and duly attested by the Court itself, before being handed over to the Investigating Officer.

Therefore, apart from lacking jurisdiction to revisit and cancel its own order granting bail, learned Magistrate was also required to independently examine the necessity of custodial interrogation of the petitioner, particularly in the light of findings already recorded in the bail order dated 09.05.2025.

26. In view of the aforesaid discussion, **order dated 10.06.2025 passed by learned Judicial Magistrate First Class, Gurugram, cancelling the bail granted to the petitioner, is hereby set-aside**, being wholly unsustainable in law and having been passed on conjectures and surmises.

Consequently, application moved by respondent No.2 seeking cancellation of bail shall also stands **dismissed**.

27. **Hence, petition, i.e. CRM-M-34338-2025, is allowed.**

28. **Relying upon the observations made in paragraph Nos.27 and 29 of the judgment in *Pradeep Ram's case* (supra), passed by**



Hon'ble the Apex Court, petition, i.e. CRM-M-33118-2025 is also allowed.

Consequently, on joining investigation, petitioner – Himanshu Yadav, be released on bail in respect of the additional offences also, i.e. Sections 338 and 61(2) of BNS, 2023, upon furnishing bail bonds to the satisfaction of the Investigating Officer or the concerned Area Magistrate.

Needless to mention here that once the order dated 10.06.2025 cancelling the bail of the petitioner is set-aside, bail bonds already furnished by the petitioner shall stand automatically revived.

Consequently, petitioner shall not be required to furnish any fresh bail bonds, in view of the restoration of the original bail order dated 09.05.2025, by which, petitioner had already been granted the concession of regular bail for the offences under Sections 318(2), 340, 336(3) and 3(5) of BNS, provided the same have not already been forfeited to the State. Otherwise, petitioner would furnish the fresh bail bonds on the same terms.

29. With the reasons recorded here above, both the present petitions stand disposed of.

30. A photocopy of this order be placed on the file of other connected case.

(SANJAY VASHISTH)
JUDGE

16.12.2025
Lavisha