

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

**Crl. Misc. No. M-14397 of 2014(O&M)
Date of decision : 21.04.2015**

Laykat Rai

..... Petitioner

versus

State of Punjab

... Respondent

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Jasjit Bedi, Senior Advocate with
Harpreet Mulkani, Advocate
for petitioner.**

Mr. Gaurav Garg Dhuriwala, DAG Punjab.

ANITA CHAUDHRY, J.

The factual matrix giving rise to the present application, in short,
is as under:-

The petitioner is serving as Sub Divisional Officer (Electrical) in Punjab Mandi Board and is presently under suspension. Earlier he was working as Executive Engineer(Electricity) and was reverted on 18.12.2012. A complaint was made by the Chief Engineer which led the Vigilance to hold an enquiry and AIG, Vigilance Bureau made a report to the police and the FIR under Section 13 of the Prevention of Corruption Act was registered on 11.03.2014. As the investigation started, some more offences under Sections 465, 467, 468 and 471 IPC were added.

In this petition, the petitioner is seeking anticipatory bail in FIR No. 04 dated 11.03.2014, registered at Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali, District S.A.S. Nagar.

The allegations that emerge are that the petitioner while working

as Executive Engineer gave a technical sanction to the estimate of Rs.3.87 crores for the year 2012-13 without deducting the salary of 79 work charged employees, whereas the estimate should have been 1.86 crores. The allegations are that an amount of Rs.2,79,14,940/- was illegally spent by the petitioner. Additionally, during his tenure as Executive Engineer, the petitioner appointed work charged helpers as electricians without necessary approval. 12 out of those employees did not fulfill the basic qualification. The petitioner is alleged to have regularized the services of 24 electricians.

The petitioner alleges that he was reverted to the post of SDO with a biased attitude and was a victim of his superiors. He had lodged a complaint with National Commission for Scheduled Castes and Scheduled Tribes detailing reasons and prejudices held by his senior officers. The petitioner claims that he had made a complaint against the Chief Engineer regarding his disproportionate assets in July 2013 and to counter the two complaints made by him, the present FIR had been registered on 07.10.2013. The petitioner claims that he had filed an application under Section 156(3) Cr.P.C.(Annexure P-12) before CJM, Chandigarh against Sh. Suresh Kumar, IPS for monitoring the investigation in the complaint made by him against Chief Engineer, which had been entertained by the Court and the SHO had been directed to file the report. The petitioner further pleaded that the FIR had been registered without affording any opportunity or furnish explanation and no notice or charge-sheet had been served. The petitioner claims that he had not received any pecuniary advantage or illegal gratification and facts had been concocted.

The petitioner claims that he had sanctioned the estimate of Rs.3.86 crores for whole of the State, which was approved by the Superintending Engineer and the FIR was based on imaginary and hypothetical figures and without any basis. The petitioner further claims that the employees who were appointed were regularized and promoted and they

had filed a writ petition No. 5143 of 2013 and this Court had granted stay against their reversion.

While issuing notice of motion, the Coordinate Bench of this Court vide order dated 29.04.2014 had directed the petitioner to join the investigation. The case was adjourned a number of times to enable the petitioner to assist in the investigations but it was reported that he had not cooperated. The investigating agency was asked to handover a questionnaire in writing so as to seek his answers. The investigating officer had submitted on 16.01.2015 that the answers given in the questionnaire were evasive.

Learned Senior counsel appearing for the petitioner submits that the petitioner has been falsely implicated and if inflated estimates had been made, then the officer who had taken charge after the petitioner's reversion, could have revised the estimate. It was urged that the FIR had been registered as a counter-blast to the complaint made by the petitioner to the National Commission for Scheduled Castes and Scheduled Tribes. It was urged that the petitioner had cooperated and custodial interrogation was not necessary as the case was based on documentary evidence. It was urged that after the petitioner's reversion, his successor had spent Rs.1.8 crores but no action has been taken against him. It was urged that no one has levelled allegation that the petitioner had taken any money. It was contended that there was a typographical error in Annexure P-6. It was urged that they had obtained copy of Despatch register, which shows that the last letter bearing No. 8256 was issued and letter Annexure P-18 had not been written by the petitioner and the Department in fact had played a fraud. It was urged that the issue regarding promotions is under consideration before the Division Bench and stay had been granted and the respondents have failed to file reply in the petition despite repeated adjournments. It was urged that there is no financial irregularity and there are mandatory provisions contained in Section 41 Cr.P.C. and the respondents are bound to follow the law laid down in **Arnesh**

Kumar Vs. State of Bihar & Anr. 2014(3) RCR(Crl.) 527. Reliance has also been placed on **Lalita Kumari Vs. Govt. of U.P. & Ors. 2014(1) SCC(Cri.) 524.**

While opposing the prayer, learned State counsel has urged that the complaint to the Commission was made after the reversion of the petitioner and an enquiry was ordered which threw up facts which have to be investigated. It was urged that custodial interrogation was not necessary to elicit information regarding the appointments or the promotions. It was urged that custodial interrogation was required as the petitioner had given evasive replies and was not cooperating and information can only be elicited when he is interrogated. It was urged that Annexure P-6 refers to a order number which is wrong and there is a reference to another order which does not relate to the subject and false record had been prepared. It was urged that prior to 2011, Mandi workers' salary was paid from the maintenance head and thereafter payments were to be made from the regular head, but while making the estimates, the salary amount was not deducted and estimate of Rs.3.87 crores was made and financial irregularity is one part of the allegations and custodial interrogation would only help them to discover where the huge amount was spent and what was the modus-operandi and this information can be obtained only through a sustained interrogation. He further submits that though the petitioner has joined the investigation, but so far he has not yielded any useful information. It was urged that the petitioner had admitted that he had written letter Annexure P-18 and it contradicts his stand.

Responding to the arguments, it was urged by learned Senior counsel for the petitioner that order number was inadvertently written in Annexure P-6 and movement order No.48 related to flood lighting system. It was urged that Annexure P-18 was not written by the petitioner and an addition had been made in the despatch register.

Before deliberating on the factual score, it would be necessary

to refer to the factors and parameters that can be taken into consideration as laid down by the Apex Court while dealing with the application for anticipatory bail. They are:-

- i. The nature and gravity of the accusation and the exact role of the accused;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

The Court is expected to carefully examine the available record, particularly the allegations which are directly attributable to the accused. The relief under Section 438 Cr.P.C. is discretionary in nature.

The Apex Court in the case of **Bharat Chaudhary v. State of Bihar AIR 2003 Supreme Court, 4662,** observed that the object of Section 438 of the Code is to prevent undue harassment of the accused persons by pretrial arrest and detention. It was held that the gravity of the offence is an important factor to be taken into consideration while granting anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail.

In the case of **Adri Dharan Das v. State of West Bengal, AIR 2005 Supreme Court 1057,** the Apex Court said that the power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of the Code. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation in non-bailable offences.

The Apex Court, in the case of State represented by the **C.B.I. v. Anil Sharma, AIR 1997 SC 3806,** while emphasizing importance of custodial investigation observed as follows:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

In the case of **K.K. Jerath v. Union Territory, Chandigarh , 1998**

Crl. L.J. 2555, it was observed:

“5. We do not wish to enter into any detailed discussion on these legal aspects raised by the learned Counsel for the respondents as this Court in the several decisions referred to by the learned Counsel for the petitioner has explained the scope of the provisions of Articles 20(2) and 21 of the Constitution and Section 486 of the Code of Criminal Procedure and their inter-relationship. We may only State in considering a petition for grant of bail necessarily if public interest requires detention of citizen in custody for purpose of investigation could be considered and rejected as otherwise there could be hurdles in the investigation

even resulting in tampering of evidence.”

A three Judges Bench of the Apex Court in the case of **Pokar Ram v. State of Rajasthan, AIR 1986 Supreme Court, 969** observed as under:

“Relevant considerations governing the Courts decision in granting anticipatory bail under Section [438](#) are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during the pendency of the appeal.”

Learned Senior counsel for the petitioner had extensively referred to the complaint made against the Chief Engineer, Quality Control as well as reply submitted by him in the enquiry proceedings. Admittedly, the petitioner is facing an enquiry. The petitioner was reverted and was suspended. Though, the petitioner alleges that he has not written letter Annexure P-18, but in response to the questionnaire he has admitted that he had written the same. An attempt was made to raise the issue of malafide and bias and was pleaded, but the senior counsel faintly touched the issue, but did not press it. The entire emphasis was that the officer who had taken charge after the petitioner was similarly placed, but no action had been initiated against him. It is clear that the reversion was much prior to the complaint to the National Commission for S.C. & S.T.

I have considered the rival submissions.

Considering the various principles laid down by the Apex Court and the nature of allegations, gravity of the offence and the circumstances of the case, the fact that the petitioner is not cooperating, I find force in the submissions made by the State counsel that custodial interrogation of the petitioner is necessary. In a case like this, effective interrogation of the

petitioner would be of tremendous advantage in eliciting information and material. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail. The present case cannot be said to be of false implication. I do not think that the accused is entitled to the discretionary relief of anticipatory bail.

The petition is dismissed.

April 21, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE