

CRM-M-2447-2015 and other connected petitions

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

Date of Decision: 07.07.2015

1. CRM-M-2447-2015

Satish Chander
... Petitioner(s)

Versus

State of Punjab
... Respondent(s)

2. CRM-M-4224-2015

Joginder Singh
... Petitioner(s)

Versus

State of Punjab
... Respondent(s)

3. CRM-M-4263-2015

Surinder Kumar
... Petitioner(s)

Versus

State of Punjab
... Respondent(s)

4. CRM-M-4644-2015

Romesh Kumar
... Petitioner(s)

Versus

State of Punjab
... Respondent(s)

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5. CRM-M-6910-2015

Balraj Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

AND

6. CRM-M-17951-2015

Gurmeet Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. A.P.S.Doel, Sr. Advocate with
Mr. H.S.Mani, Advocate,
for the petitioner in CRM-M-2447-2015.

Mr. Vipin Mahajan, Advocate,
for the petitioners in CRM-M-4224-2015 and CRM-M-
4263-2015.

Mr. M.K.Dogra, Advocate,
for the petitioner in CRM-M-4644-2015.

Mr. N.P.S.Mann, Advocate,
for the petitioner in CRM-M-6910-2015.

Mr. C.L.Premy, Advocate,
for the petitioner in CRM-M-17951-2015.

Mr. S.S.Chandumajra, DAG, Punjab.

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Paramjeet Singh, J.

This order shall dispose of CRM-M-2447-2015, titled 'Satish Chander vs. State of Punjab', CRM-M-4224-2015, titled 'Joginder Singh vs. State of Punjab', CRM-M-4263-2015, titled 'Surinder Kumar vs. State of Punjab', CRM-M-4644-2015, titled 'Romesh Kumar vs. State of Punjab', CRM-M-6910-2015, titled 'Balraj Singh vs. State of Punjab' and CRM-M-17951-2015, titled 'Gurmeet Singh vs. State of Punjab', as all these petitions have been filed seeking anticipatory bail to the petitioners in case FIR No.22 dated 18.12.2014, under Sections 409, 467, 468, 471, 120-B of the Indian Penal Code and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, District Amritsar.

Brief facts of the case are to the effect that aforesaid FIR has been registered against the petitioners on the allegations that auction of 594 trees belonging to Gram Panchayat, village Mehrajpur, Block Dina Nagar was fixed for 30.11.2012 and reserve price of 594 trees as assessed by the forest department was fixed at ₹13 lacs. Since reserve price was more than ₹10 lacs, auction was to be conducted under the supervision of Divisional Deputy Director(Panchayats), Jalandhar Division, Jalandhar. The District Development & Panchayat Officer, Gurdaspur (in short, 'DDPO'), Block Development and Panchayat Officer, Dina Nagar (in short, 'BDPO'), Panchayat Secretary, Sarpanch and Gram Panchayat, Mehrajpur were also asked to be present to participate in the auction under the supervision of the Divisional Deputy

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Director (Panchayats), Jalandhar Division, Jalandhar. The open auction of trees was held in the presence of general public and bidders. The entire auction process was videographed. In fact, the last bid was for ₹27,51,000/-, but subsequently in the panchayat proceedings book, it was shown to be only for ₹17,23,000/- in connivance with the Divisional Deputy Director (Panchayats), DDPO and BDPO, Panchayat Secretary, final auction bidder and others. It is also alleged in the FIR that although the auction was for 594 trees, but 1350 trees were cut down illegally without any auction.

I have heard learned counsel for the parties and perused the record.

Learned senior counsel for the petitioner in CRM-M-2447-2015 contended that petitioner-Satish Chander, Divisional Deputy Director (Panchayat), Jalandhar Division, Jalandhar, was only supervising the auction and had no role to play in auction proceedings. The auction was carried out in his presence, but he had not signed any document including auction proceedings. Petitioner-Satish Chander is not responsible for the alleged acts and has been falsely implicated in the present case, rather the petitioner is a whistle-blower, who has conducted the enquiry. The entire payment has been made by auction purchaser-Joginder Singh.

Learned counsel for the petitioner-Balraj Singh, DDPO and petitioner-Gurmeet Singh, BDPO, in CRM-M-6910-2015 and CRM-M-17951-2015 respectively contended that the petitioners are not

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responsible for the alleged act. The Divisional Deputy Director (Panchayat), Jalandhar Division, Jalandhar was the head of auction and he was supervising the auction process. They had not signed the proceedings which were allegedly prepared illegally. The whole proceedings have been signed by the Divisional Deputy Director (Panchayat), Jalandhar Division, Jalandhar.

Learned counsel for the petitioner in CRM-M-4644-2015 contended that petitioner-Ramesh Kumar, Panchayat Secretary, had not signed the proceedings. The senior officers directed him to write the proceedings which are now in dispute.

Learned counsel for the petitioner in CRM-M-4263-2015 contended that petitioner-Surinder Kumar, Sarpanch has nothing to do with the alleged acts and everything has been done by the govt. officers/officials.

Learned counsel for the petitioner in CRM-M-4224-2015 contended that petitioner-Joginder Singh, auction purchaser, had deposited the amount of ₹20 lacs at the time of bid and he has no concern with the present case. Even receipt of the amount paid was not given to him.

Per contra, learned State counsel vehemently opposed the contentions made by learned counsel for the petitioners and contended that CD prepared at the spot clearly indicates that highest bid for 594 trees was ₹27,51,000/- and transcript of the CD was also shown to this Court. He further contended that everything has happened in connivance

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with the Divisional Deputy Director (Panchayat), Jalandhar, who has signed the first page of the proceeding book of Panchayat wherein he has written word “seen”. There is a deep-rooted conspiracy for usurping the amount received by way of bid. The record has been forged and fabricated and the petitioners misappropriated the public funds. He further contended that DDPO & BDPO are required to check the amount deposited in the account of Gram Panchayat from time to time which has not been done in this case. He further contended that petitioner-Satish Chander is not a whistle-blower, rather he is king-pin of the alleged fraud. The auction was held on 30.11.2012 and enquiry was made in 2014 when the issue was raised in the State Legislative Assembly. Petitioner-Satish Chander cannot claim that he is not responsible for anything as he was the supervising authority of the auction. He was required to sign the documents and papers where last bid was given which is also videographed and CD has been placed on record from which it is clear that auction was held for 594 trees. Not only this, 1350 trees were cut down by petitioner-Joginder Singh in connivance with the officials and Sarpanch etc. against the auction of 594 trees and thus, the petitioners in connivance with each other have misappropriated public fund by forging public record and have caused loss to the Govt./Panchayat. He further contended that custodial interrogation of the petitioners is necessary to find out how the booty has been shared by the petitioners and how they have used the same and without custodial interrogation, truth will not come out.

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I have considered the rival contentions of learned counsel for the parties.

Admittedly, as per the instructions, the auction was carried out in the presence of Divisional Deputy Director, Jalandhar and he is visible in the CD prepared at the time of auction. Admittedly, last bid was in favour of Joginder Singh for ₹27,51,000/- qua 594 trees, however, as per the proceedings book, the same has been shown to be only for ₹17,23,000/-. The said proceedings have been signed by the Divisional Deputy Director (Panchayat), Jalandhar Division, Jalandhar and DDPO has recorded "seen", meaning thereby they were aware of the fact that bid amount has been wrongly mentioned in the proceedings. It is pertinent to mention here that the Panchayat Secretary should produce the pass book of the account of panchayat to the BDPO every month and the BDPO should check the same. The Sarpanch and auction purchaser were aware that the last bid was made for ₹27,51,000/-, but the same was entered only for ₹17,23,000/- in the Panchayat proceeding book. They had not raised any objection at that time. They were party to the auction bid and the entire amount was to be deposited in the account of Panchayat. They should have pointed out true fact that wrong entries are being made in the proceedings book and less amount has been shown in the record as the bid was much more. Not only this, with the connivance of the petitioners with each other, 1350 trees were cut down despite the fact that auction was held only for 594 trees resulting into huge loss to the Government.

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So far as the contention of learned senior counsel for the petitioner in CRM-M-2447-2015 that petitioner-Satish Chander is a whistle-blower, is concerned, the same is not sustainable. The auction was held on 30.11.2012 and enquiry was conducted on 26.02.2014 i.e. after more than 15 months of the auction. The matter was enquired into by the Divisional Deputy Director himself fastening the liability upon others. Since petitioner-Satish Chander himself was the person involved in the auction, therefore, he could not have enquired into allegations in question. It is not the case of petitioner-Satish Chander that he had proceeded with the matter immediately after the proceedings recorded came into his notice. All the petitioners appear to be equally responsible for the alleged fraud. This particular scandal barely scratches the surface of a base of power of the Government officers. In this case, protectors have turned into poachers. The official petitioners have failed to protect the public money, rather appear to have connived with auction purchaser and others. It is a case where the misuse of power by the government officers in connivance with the bidder is apparent.

In CRM-M-13911-2012, titled '***Susheel Kumar and others vs. State of Haryana***', decided on 21.05.2012, this Court has dealt with the similar matter and held as under:

“With regard to the contention of the learned counsel for the petitioners that FIR should not have been registered in the case as there is no complainant, I do not agree with the contention of the learned counsel for the

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petitioners. FIR is an important document as it sets the process of criminal justice delivery system in motion. Crime plagues every nook and cranny of the society. Citizens rely upon the crime protectors and law enforcers to keep safe and uphold the criminal justice system. What would happen if they are the ones committing it? This appears to be one case where the officers that uphold their duty and work to expose their colleagues, deserve public praise and appreciation. Police officers/officials are supposed to maintain higher standards than ordinary people, in order to keep their ranks clean and free from crime involvement. The petitioners are protectors allegedly turning predators. A defender is not supposed to be an offender. This is not expected from the police officials that they will misuse their authority to extort money from the people. Allegedly the petitioners have not only misused their official position, but after extorting money from the persons who may be indulging in some illegal activities and may be offenders of serious offence, had been allowed to go scotfree. So petitioners cannot be granted relief of anticipatory bail. The allegations against the petitioners are very serious and sensitive and needs to be probed by all means including custodial interrogation.

*The Hon'ble Supreme Court in the case of **State Vs. Anil Sharma**, (1997) 7 SCC 187 referred to the necessity of custodial interrogation and importance thereof particularly in matters like the one in which the petitioners are involved. The observations made by Hon'ble Supreme Court are reiterated hereunder:*

“Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with favourable order under

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Section 438 of Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also material which could 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 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 those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

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 anticipatory bail, a detailed examination of evidence and elaborate documentation of the merits 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 or declined, particularly, where the accused are charged of having committed a serious offence.

In the light of the above observations and nature of allegations against the petitioners, custodial interrogation of the petitioners is utmost necessity and warranted to bring out the truth.

For the reasons stated above, I am not inclined to grant concession of pre-arrest bail to the petitioners. The views expressed above shall not be taken as expression on the merits of the case.”

In *Vikas Garg vs. State of Punjab*, 2013 (1) R.C.R.

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(Criminal) 552, this Court has dealt with the issue qua responsibility of senior officers, who do not perform their duties with due diligence and apparently appear to be a party to the commission of alleged crime and it has been held as under:

“11. From the perusal of the police file and the call details, it is clear that petitioners in both the cases were in touch with each other and petitioner – Vikas Garg had passed the order ignoring the earlier order of the Deputy Commissioner as well as the provisions of the Registration Act. The market value of the property as stated by the Investigating Agency is more than Rs. 250 crores. Therefore, such like scandal needs to be thoroughly probed and the custodial interrogation is necessity in such like cases.

12. There are many other things noticed above but it is not necessary to refer to and discuss the same on merits. To appreciate their evidentiary value at this stage is unwarranted. It will prejudice the right of both, petitioner and the prosecution. It is the function of the Trial Court only.

13. This Court deems it appropriate to mention here that the Indian Administrative Service (IAS) is one of the premier Civil Services of the country. The Deputy Commissioner, an IAS officer is the head of the whole of the District Administration. He being administrative head of the district, is required to have first hand knowledge of the ground realities in the various parts of his District. Petitioner- Vikas Garg appears to have acted in an inward looking manner. His attitude is one of the indifference and insensibility to the government property. It points out inefficiency and ineffectiveness towards administration.

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The Government depends upon his officers who should be competent and motivated persons to run the system in order to provide efficient administration. When the officers commits or misuses the power, the policy of the government in regard to the crime committed by them, should be of zero-tolerance in order to create a climate of compliance with the laws which leads to maintenance of public order and effective steps for administration at the district level. So, this principle is applicable to the officers in the entire State. The civil servants manage various institutions of the government as trustees. Their approach to good governance is of great relevance. Ethics also require that they should look into the various aspects which affect the administration. The action and inaction on their part if apparently is in conflict with the duties and responsibilities as Head of the District, it should be dealt with a heavy hand.

14. *In the present case, the action of the petitioner-Vikas Garg in connivance with the vendees-petitioners in CRM M-38607 of 2012 and others is inconsistent, incompatible, rather in conflict with the established values and duties of a Deputy Commissioner. He failed to protect the government and public properties and resultantly acted in an inefficient manner, rather it appears that the petitioner is directly accountable for the mis-use of powers and responsibilities for his action. It is clear case of misuse of power and mal-administration. Herein the government property worth Rs. 250 crores is involved. This particular scandal barely scratches the surface of a base of power by the Government officer. Here is a case where the misuse of power by the government officer has been shown.*

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15. In view of the above discussion custodial interrogation is necessity to unearth the scam, therefore, both the petitions are dismissed. I clarify here that whatever has been said above is only for the limited purpose of deciding the anticipatory bail and anything said herein above shall not be treated an expression of opinion on the merits of this case.”

In view of law laid down in ***Susheel Kumar (supra)*** and ***Vikas Garg (supra)*** and to blow the lid off fraud allegedly played by the petitioners in connivance with each other, their custodial interrogation is required to find out the fact as to how the amount of ₹10 lacs has been distributed amongst themselves. Any hasty interim relief to the petitioners will hamper the fair investigation.

In view of above, no ground for anticipatory bail to the petitioners is made out.

Dismissed.

I clarify here that whatsoever has been said above is only for the limited purpose of deciding the anticipatory bail and the same shall not be treated as an expression of opinion on the merits of the case.

It goes without saying that interim orders stand vacated.

07.07.2015

parveen kumar

(Paramjeet Singh)
Judge