

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

CRM No. M-40528 of 2015 (O&M)

Date of Decision: 15.02.2016

Surinder Kumar

...Petitioner

Versus

Central Bureau of Investigation and another

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. J.S.Bedi, Senior Advocate with
Ms. Diya Sodhi, Advocate,
for the petitioner.

Mr. Sumeet Goel, Standing Counsel
for CBI.

Mr. G.S.Sandhu, Advocate,
for respondent No.2.

TEJINDER SINGH DHINDSA. J (ORAL)

Petitioner seeks benefit of regular bail pending trial in case No.RCCHG2015A0016 dated 13.08.2015, under Sections 120-B, IPC read with Sections 8, 17, 13(2) read with Section 13(1) (d) of PC Act 1988, registered by CBI, Chandigarh.

Brief facts that would require notice are that the present case was registered in CBI, ACB Chandigarh on 13.08.2015 on the basis of a complaint dated 12.08.2015 made by Smt. Guneet Kaur and a verification report dated 13.08.2015 of Sh. Mohinder Ram, Sub Inspector, CBI ACB, Chandigarh. Complainant has alleged that Smt. Deepa Duggal had got FIR No.375 dated 26.12.2014 under Sections 120-B, 420, 511, 468 and 471 IPC registered against the

parents of the complainant, namely, Shri Gurkirpal Singh Chawla, Smt. Jagjit Kaur Chawla as also brother Harmit Singh Chawla in the Economic Offences Wing, UT Police, Sector 17, Chandigarh. The case was in the process of investigation and Sh. Surinder Kumar, Sub Inspector (Present petitioner) was the Investigating Officer of the case under the supervision of Sh. Ram Chander Meena, Deputy Superintendent of Police, EOW Branch, UT Police. Sh. Aman Grover is the son-in-law of Smt. Deepa Duggal and Sh. Sanjay Dahuja is his friend. Complainant stated that the police was trying to arrest her parents and brother and on account of fear of arrest they were hiding themselves. Allegations are that on 11.08.2015, Aman Grover son-in-law of Smt. Deepa Duggal had contacted the complainant and informed her that Sanjay Dahuja was in contact with Ram Chander Meena, DSP and present petitioner and further told the complainant that aforementioned two police officials were demanding bribe of a sum of Rs.75 lacs through Sanjay Dahuja for not arresting her parents and brother as also to effect a compromise in the matter. Apparently, in the exercise of a verification conducted by Sh. Mohinder Ram, Sub Inspector, CBI, ACB Chandigarh it came to be revealed that on the request of complainant Guneet Kaur, accused persons, namely, Sanjay Dahuja and Aman Grover agreed to accept bribe of Rs.70 lacs i.e. Rs.40 lacs in cash to be paid to the police officials of EOW, UT Police, Chandigarh and a post-dated cheque of Rs.30 lacs for Aman Grover himself. After registration of the case on 13.08.2015 a trap was laid by the CBI, Chandigarh in which Sanjay Dahuja was caught while demanding and accepting the bribe of Rs.40 lacs in

cash and Aman Grover while demanding and accepting a post-dated cheque of Rs.30 lacs in the name of his mother-in-law Smt. Deepa Duggal from the complainant in the presence of independent witnesses, namely, Mandeep Kang and Manish Kumar. The bribe money of Rs.40 lacs is stated to have been recovered from Sanjay Dahuja and the post-dated cheque of Rs.30 lacs from Aman Grover. Sanjay Dahuja, at that point of time was to make a phone call to Ram Chander Meena, DSP for further delivery of bribe amount to him. Accordingly, a digital voice recorder was got ready for recording the conversation between Sanjay Dahuja and Ram Chander Meena. However, in the meanwhile, a phone call is stated to have been received from Ram Chander Meena, DSP on the mobile of Sanjay Dahuja and such call was recorded in the digital voice recorder. Such conversation is stated to clearly establish that Sanjay Dahuja had demanded and accepted the bribe amounting to Rs.40 lacs on behalf of Ram Chander Meena and who in turn had directed Sanjay Dahuja to keep the money with him as he would be coming after some time. On such broad allegations, Sanjay Dahuja, Aman Grover and Ram Chander Meena, DSP and Surinder Kumar, Sub Inspector (present petitioner) were arrested on 13.08.2015.

Present petitioner preferred two regular bail applications before the trial Court and which had been declined vide orders dated 17.09.2014 and 21.10.2015. It is under such circumstances that the instant petition under Section 439 Cr.P.C. has been filed before this Court.

Counsel for the parties have been heard at length.

The principles of law which the Court has to bear in mind while dealing with an application for grant of bail were dealt with extensively by the Hon'ble Supreme Court in **Sanjay Chandra Vs. CBI, 2011(4) R.C.R. (Criminal) 898 (SC)** and it was observed as under:

“In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, ‘necessity’ is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse

bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan

Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

Reverting back to the facts of the present case, it may be noticed that in the verification report dated 13.08.2015 furnished by Mohinder Ram, Sub Inspector, CBI, ACB, Chandigarh, no role and demand of bribe has been substantiated against the petitioner. The statements recorded under Section 161 Cr.P.C. by the Investigating Officer of the complainant Guneet Kaur, shadow witness Ms. Mandeep Kang and recovery witness Sh. Manish Kumar and trap laying officer Sh. Subhas Chander, Inspector CBI have been adverted to during the course of hearing. In each of these statements, it has come forth that accused Sanjay Dahuja upon having been asked by Subhash Chander, Inspector as to whether the bribe amount of Rs.40 lacs demanded and accepted by him from the complainant was meant for him or for any other person, his response was that he had demanded and accepted the bribe amount from the

complainant on behalf of Ram Chander Meena, DSP, EOW Branch UT Police, Chandigarh.

In the final report under Section 173 Cr.P.C. presented by CBI, it has been stated in para 16.5 as follows:

Investigation has revealed that accused Sanjay Dahuja was asked by Shri Subhash Chander, Inspector, whether the bribe amount of Rs.40 lacs demanded and accepted by him from the complainant was meant for him or for any other person, on which he disclosed that he has demanded and accepted the bribe amount for the complainant on behalf of Sh. Ram Chander Meena, DSP, EOW Branch, UT Police, Chandigarh.

This Court finds considerable merit in the submission raised by learned senior counsel appearing for the petitioner that prima facie there does not seem to be any substantive evidence against the present petitioner for demand, acceptance and recovery of bribe money which would otherwise be the three basic ingredients for offence under the Prevention of Corruption Act.

It has also gone uncontroverted during the course of arguments that transcripts of conversation between complainant Guneet Kaur and Sanjay Dahuja, between complainant Guneet Kaur, Aman Grover and Sanjay Dahuja as also between Sanjay Dahuja and Ram Chander Meena, DSP EOW, Chandigarh Police have been submitted by the CBI along with the challan documents and there is no transcript of conversation of the present petitioner with anyone. Apparently, there is no conversation of the petitioner with any of the co-accused or with complainant Guneet Kaur as also with any of the

accused persons named in the FIR No.375 dated 26.12.2014 in which the petitioner was Investigating Officer.

Prayer in the present petition seeking regular bail was vehemently opposed by learned counsel appearing for CBI by submitting that the petitioner is a member of the Chandigarh Police Force and wields considerable influence and consequently would be in a position to tamper with the witnesses/evidence.

With regard to such submission, it is observed that grant of bail cannot be denied only on a perceived apprehension that the accused without restored to liberty would tamper with the evidence. There must be some prima facie evidence on record or reasonable and justifiable grounds to believe that in case benefit of bail is extended to an accused, he is going to misuse such liberty or likely to be conditions which are not conducive to hold a fair trial.

In the present case, undoubtedly, the petitioner holds the rank of a Sub Inspector with the Chandigarh Police. However, he has been placed under suspension. The shadow witness, namely, Mandeep Kang and recovery witness, namely, Manish Kumar are themselves serving as Inspectors with the Central Excise and Customs Department, Chandigarh. The trap laying officer Sh. Subhash Chander is an Inspector with CBI. Without doubt they would be material witnesses. This Court finds it difficult to accept that a Sub Inspector of the Chandigarh Police who is under suspension would be in a position to intimidate or influence such witnesses.

Investigation in the case is already complete and challan

stands presented. Court has been apprised that the matter is now at the stage of framing of charges. The trial as such would take time to conclude. Petitioner has been in custody since 13.08.2015.

Court has further been apprised that co-accused Sanjay Dahuja from whom the bribe money of Rs.40 lacs is stated to have been recovered and whose bail application was dismissed by this Court vide order dated 14.10.2015 in CRM No.M-32948 of 2015 has been granted benefit of bail by the Hon'ble Supreme Court.

In view of the observations made above and in an overview of the matter, petitioner is held entitled to the benefit of bail. Petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the trial Court.

Liberty is granted to the CBI to make an appropriate application for modification/recalling of this order if there be any material to show that the petitioner directly or indirectly made any inducement or threat to any person connected with the case or has made an attempt to interfere in the course of fair trial.

It is also clarified that the observations contained in this order are confined only as regards considering the prayer of the petitioner for grant of bail and would have no bearing on the merits of the case.

15.02.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**