

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

CRM-M-33567-2018

Date of decision: 13.09.2018

Irshad Ahmad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.S.Bains, Advocate, for the petitioners.

Mr. Surinder Pal Singh Tinna, Addl. AG, Punjab

HARI PAL VERMA, J. (Oral)

Petitioner-Irshad Ahmad has filed the present petition under Section 439 Cr.P.C. for grant of regular bail in FIR No. 08 dated 02.02.2016 under Section 3 of Indian Official Secrets Act, 1923 and Sections 420, 467, 468, 471 & 394 of IPC as well as Sections 63, 65 & 68 of the Information Technology Act, 2000, registered at Police Station Shahpurkandi, Pathankot.

The aforesaid FIR was registered on the basis of a secret information that petitioner-Irshad Ahmad who was working as a labourer is having links with Secret Agency of Pakistan i.e. ISI. Previously, the petitioner had visited Punjab, Haryana, Delhi and Himachal Pradesh where after clicking the photographs of sensitive areas of the Indian Army and area of Air Base, provided them to ISI. Believing this information to be trustworthy and reliable, a case under Section 3 of the Indian Official Secrets Act, 1923 was registered and during investigation, the petitioner was arrested on 02.02.2016. On his personal search, one mobile phone make

Lava Irisfuel colour black having EMI Nos.911417050262249 and 911417050262256 containing SIM No. 8991091860000001890 of Reliance Company and SIM No. 8991932507312247079 of Videocon along with a memory card of 4 GB was recovered from the right pocket of the pant worn by the petitioner. Upon checking the gallery of the recovered mobile, photographs of sensitive Army areas of Mamun Cantt., Pathankot were found. One map of Army Area was also recovered from his pocket.

The recovered memory card was sent to Punjab State Cyber Crime Cell SAS Nagar Mohali and 9 photographs of inside area of Army Cantt. were found in it. During inquiry the petitioner (Irshad Ahmad) disclosed that he is having relations with Sujjad Hussain, who does the work of private computer. He (Sujjad Hussain) used to visit Pakistan and is having relations with ISI. Sujjad Hussain had asked the petitioner to send him the photographs of the Army Cantt. After clicking the photographs, he was to send the aforesaid photographs to Sujjad Hussain who would further send these photographs to ISI. In exchange of these photographs they get money from ISI. The above detailed documents were recovered from the mobile of the petitioner.

Learned counsel for the petitioner states that the petitioner has been falsely implicated in the case. While referring to Section 13(3) of the Indian Official Secrets Act, 1923, learned counsel for the petitioner has argued that no Court is competent to take cognizance of any offence, unless a complaint is made, by order of any authority, after taking necessary permission from the appropriate Government i.e. Central Government. In the case in hand, since such permission has not been granted, the very trial is against law. He has referred to zimini order dated 25.05.2018 passed by trial

Court, wherein SI Kuldeep Sharma has stated that sanction as required under the Indian Official Secrets Act, 1923, is yet to be received from the Ministry of Home and Affairs, Government of India. He further states that in the absence of such sanction, the trial in the case is a futility and the custody of the petitioner is illegal.

On the other hand learned State counsel, on instructions from ASI Kuldeep Sharma, states that from the mobile recovered from the possession of the petitioner, incriminating material has been found, which includes the photographs of sensitive army areas, which are otherwise prohibited. The police has also recovered a map, which was prepared by the petitioner in his own handwriting. He further states that as against the total 22 witnesses, cited by the prosecution, 12 witnesses have already been examined and only the persons from the mobile company remains to be examined. He also states that Sujjad Hussain, co-accused of the petitioner, approached this Court for a similar relief, however, vide order dated 23.05.2017 passed in CRM-M-3235-2017 titled as ***Sajad Hussain @ Sujjad Hussain versus State of Punjab***, this court has declined the concession of bail.

I have heard learned counsel for the parties.

The plea of the petitioner, that the appropriate authority has not granted sanction under Section 13(3) of the Indian Official Secrets Act, 1923 and in the absence of such sanction, the matter could not be decided by the trial Court, is not sustainable as the allegations against the petitioner, are very serious and the security of the country is at stake. The trial in the case is, otherwise, at an advance stage, as most of the material witnesses have since been examined and only witnesses from the mobile company are left to

be examined.

In view of the very serious nature of allegations against the petitioner, I do not find any reason to grant relief of regular bail to the petitioner.

Accordingly, the instant petition is hereby dismissed.

However, as the petitioner is in custody since 02.02.2016, it is expected that the trial court shall expedite the trial.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(HARI PAL VERMA)
JUDGE

September 13, 2018
SHABHA

Whether speaking/reasoned? : Yes/No

Whether reportable? : Yes/No