

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

CRM-M No.8232 of 2018
Date of Decision: May 16th, 2018

Dr. Pankaj Garg

...Petitioner

Versus

Central Bureau of Investigation, New Delhi

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Rai, Senior Advocate
with Mr. Aman Arora and Ms. Rubina, Advocates
for the petitioner.

Mr. Sumeet Goel, Advocate
for CBI.

Mr. Navkiran Singh, Advocate
for the complainant.

AUGUSTINE GEORGE MASIH, J.

This petition under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') has been filed by the petitioner in FIR No.RC1(S)/2015 SCU.V/SCII CBI/New Delhi dated 07.01.2015 under Sections 120-B, 326, 417 and 506 IPC at Police Station SC-II CBI/New Delhi, wherein he has been summoned by order dated 12.02.2018 (Annexure P-2) on a report under Section 173 Cr.P.C. having been filed by the Central Bureau of Investigation (hereinafter referred to as 'CBI') alleging the petitioner to have committed offences punishable under Section 120-B read with Sections 326, 417 and 506 of the Indian Penal Code with substantive offence punishable under Section 326 IPC directing him to appear before the Special Judicial Magistrate, CBI, Panchkula, on 28.02.2018 and after rejection of his application under Section 438 Cr.P.C. by the learned Special Judge, CBI, Panchkula, by order dated 21.02.2018 (Annexure P-4).

2. Briefly the facts are that *Civil Writ Petition No.13395 of 2012* was filed by Hans Raj Chauhan, a follower of Sant Gurmeet Ram Rahim, Head of Dera Sacha Sauda, Sirsa, Haryana, who alleged that he along with others had been got castrated by Gurmeet Ram Rahim through Dr. M.P. Singh and Dr. Pankaj Garg (petitioner) during the period 1999-2000 and had sought investigation of the case through CBI. The said writ petition was allowed by the learned Single Judge of this Court on 23.12.2014 directing registration of an FIR and investigation by the CBI. In pursuance to the directions issued by this Court, the above-mentioned FIR was registered. Petitioner had been summoned and he had joined the investigation as and when called upon to do so. Investigation continued with effect from January 2015 till the filing of the report under Section 173 Cr.P.C. on 01.02.2018. The Special Judicial Magistrate, CBI, Panchkula, took cognizance of the same on 12.02.2018 and summoned the petitioner to put in appearance in person on 28.02.2018. Offence under Sections 326 IPC although is triable by a Magistrate but being punishable with life imprisonment, the Magistrate, as per the provisions of Section 437 (1) (i) Cr.P.C., has no power to grant bail and, therefore, the petitioner apprehending that he would be sent to custody on appearance before the trial Court and thus, moved an application under Section 438 Cr.P.C. before the Special Judge, CBI, Panchkula, for grant of anticipatory bail, which was dismissed by order dated 22.02.2018, therefore, this petition.

3. It is the contention of learned senior counsel for the petitioner that there is an inordinate delay on the part of the complainant in

approaching the High Court by filing a writ petition in the year 2012 levelling allegations with regard to the offences committed in the year 1999-2000. Petitioner has not been named in the FIR which has been registered in pursuance to the directions issued by the High Court in the writ petition. That apart, he contends that for three long years when the investigation was in progress, petitioner was not arrested, rather he had been joining investigation all through as and when he was called upon to do so. His submission is that the petitioner had been faithfully cooperating with the investigating agency to its satisfaction and has promptly appeared and joined investigation. There has never been any allegation with regard to the petitioner ever influencing any person or hampering or tampering with the collection of evidence. He has never abstained or made an effort to evade the process of law in any manner. Petitioner has his own house in Panchkula, where he is residing with a family comprising of wife, two minor kids and old age parents, who are dependent on him. He has a well established clinic where he has good practice. He has deep roots in the society and a well known Colorectal Surgeon with ten inventions to his name with various awards granted to him for his contribution to the medical profession. During these three years of investigation, he has gone abroad on various occasions but has never thought of fleeing from law as he is well established in Panchkula. Petitioner is a law abiding citizen and he has never been named or involved in any criminal case as an accused except for the present FIR where also he asserts that he is innocent. Counsel submits that the petitioner be granted the concession of anticipatory bail.

His assertion is that bail is a rule and jail is an exception. In this regard, he has placed reliance upon various judgments passed by the Hon'ble Supreme Court. Reliance has also been placed upon the judgments of the *Delhi High Court in Court on its motion Versus CBI* reported as 2006 (4) R.C.R. (Criminal) 206, which has been confirmed by the Division Bench of the same Court by judgment dated 27.10.2017 passed in *Criminal Reference No.4 of 2017* titled as *Court on its own motion Versus State*. Reliance has also been placed upon the observations of the Hon'ble Supreme Court in *SLP (CRL.) 151 of 2018* titled as *Dataram Singh Versus State of Uttar Pradesh & Anr.* decided on 06.02.2018. He, therefore, prays that the present petition deserves to be allowed.

5. Counsel for the CBI has opposed the prayer of the counsel for the petitioner by asserting that although the petitioner had been cooperating in the investigation and has neither tampered with the evidence nor had influenced any witness but now there is every likelihood of the same as with the presentation of the charge-sheet, which has been filed against him, he is well aware of the evidence which has been now collected against him, which is in the form of statements of the victims and others under Sections 161 and 164 Cr.P.C. There is every likelihood of he not attending the proceedings in Court, thus hampering and evading the process of law as he may leave the country and not return. Petitioner is a very resourceful and influential person and can hamper the further investigation. It is however, admitted that there is no other case against the petitioner except the present one. In response to the judgments on which reliance has been placed by the

counsel for the petitioner, he has referred to the judgment of the Hon'ble Supreme Court in *Criminal Appeal No.321 of 2018* titled as *Pankaj Jain Versus Union of India & Anr.*, decided on 23.2.2018, to contend that despite there being general observations in the judgment, on which reliance has been placed by the counsel for the petitioner i.e. *Dataram Singh's case (supra)* but the Hon'ble Supreme Court has held that those are dependent on the facts and circumstances of each case and, therefore, it is the discretion of the Court to exercise its powers. Referring to Section 88 of Cr.P.C., he contends that the word 'may' used in the said Section has been interpreted by the Hon'ble Supreme Court to confer discretion on the Court whether to accept a bond from the accused person for appearing in Court or not, it cannot be read as 'shall'. Reliance has also been placed by him on the judgment of Supreme Court in *State through C.B.I. Versus Amaramani Tripathi 2005 (8) SCC 21* laying down the factors to be considered for grant of bail.

6. Similarly counsel for the complainant has also referred to the judgment of the Hon'ble Supreme Court in *Siddharam Satingappa Mhetre Versus State of Maharashtra and others 2011 (1) SCC 694* to impress upon the Court with the factors and parameters, which are required to be taken into consideration while dealing with anticipatory bail.

7. They have, therefore, asserted that the petitioner be not granted the concession of bail as prayed for and the petition deserves to be dismissed.

8. I have considered the submissions made by the counsel for the

parties and with their able assistance, have gone through the records of the case as well as the judgments referred to by the counsel.

9. The principles, factors and parameters, which have been brought out in various judgments which can be taken into consideration while dealing with the prayer for grant of anticipatory bail are well known. Reference in this regard may be made to paras 122 to 125 of the judgment of Hon'ble Supreme Court in *Siddharam Satingappa Mhetre's case (supra)*, wherein it has been observed as follows:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i.) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(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, 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.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

125. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is

exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.”

10. When the facts and circumstances of the present case are seen in the context of the above factors which have been mentioned by the Hon'ble Supreme Court not exhaustive and only illustrative in nature, it can safely be said that the petitioner would deserve the concession of bail, as has been prayed for.

11. Reference need to be made to the observations of the Hon'ble Supreme Court in the case of *Dataram Singh (supra)*, where in paras 2 to 5, it has been held as follows:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have

been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to

incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

*5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in **In Re-Inhuman Conditions in 1382 Prisons.**”*

12. This Court would not be able to accept the contention of learned senior counsel for the petitioner that merely because an accused has not been arrested during the investigation would be a ground in itself for the said accused to claim bail as a matter of right as it would be a discretion of the Court to exercise its powers judiciously keeping in view the facts and circumstances of that particular case with reference to the allegations, nature and gravity of the accusation, his role, the evidence collected and the conduct of the accused apart from other factors, as have been laid down in various judgments.

13. Present is a case where the main accused is Gurmeet Ram Rahim, Chief of Dera Sacha Sauda, Sirsa, Haryana. Allegations against him are that he is the person, who motivated and incited his followers to get themselves operated for removal of their testicles. It is alleged that on behest of Gurmeet Ram Rahim, petitioner along with another doctor, Dr. M.P. Singh, had carried out operation for castration of some of

the followers. These operations are said to have been carried out during the year 1999-2000 and for the first time, writ petition has been preferred in the year 2012 highlighting this aspect resulting in an order dated 23.12.2014 by the High Court directing CBI to register a case and conduct investigation into the incidence of castration of devotees in Dera Sacha Sauda, Sirsa, Haryana. FIR was registered in January 2015 and since then, investigation continued till the filing of report under Section 173 Cr.P.C. On 01.02.2018 before the Special Judicial Magistrate, CBI, Panchkula. During this interregnum, it is an admitted position that the petitioner, as and when called upon to appear, had without fail, joined investigation and cooperated with the same. It is also an admitted position that all through the investigation, petitioner has never endeavoured or made an effort to tamper with evidence or to influence any witness in any manner. It is also not denied that the petitioner is residing in Panchkula permanently and is running his clinic there, from which he is earning his livelihood. There being no other case against him except for the present one and has all through been resident of Panchkula, giving no apprehension what to say of reason to contemplate arresting him during the most vulnerable and crucial time of investigation, the apprehension now of the respondent is misplaced. Merely because a person is well known Surgeon and, therefore, influential, would not in itself be a ground for denying a person his liberty. Unless proven guilty, a person is presumed to be innocent. Arrest and custody should not be resorted to for penalising a person for the alleged offence curtailing liberty by confining a person

unless the circumstances so require and that too for the purpose of restraining that person so that he may not, in any manner, hamper the process of justice.

14. The apprehension of the counsel for the CBI that the petitioner may abscond and even leave the country and go abroad, can very well be taken care of by the trial Court calling upon him to deposit his passport and not to leave the country without permission of the Court.

15. In view of the above, the present petition stands allowed.

16. Since the petitioner has already appeared before the learned trial Court in compliance with the order of this Court dated 27.02.2018 and has been admitted to interim bail to the satisfaction of the Court, an application be moved by the petitioner within a period of two weeks for grant of regular bail, which shall be entertained and he be admitted to regular bail to the satisfaction of the trial Court.

17. It would be open to the trial Court to impose strict conditions including the deposit of passport and obtaining prior specific permission of the Court for leaving the country for going abroad.

May 16th, 2018

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No