

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23127-2020 (O&M)

Date of Decision: August 20, 2020

Dr. Ramesh Kumar Maheshwari

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Suvir Sidhu, Advocate, for the petitioner.

Mr. N.K. Banka, DAG, Punjab.

HARNARESH SINGH GILL, J.

The petitioner seeks grant of concession of anticipatory bail in case bearing FIR No. 121 dated 15.07.2020 registered under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') at Police Station Kotwali, District Bathinda.

Learned Senior Counsel appearing for the petitioner submits that the petitioner has falsely been implicated in the above noted FIR and the alleged audio which went viral on social media, is a doctored one and the prosecution has tampered with the same with a view to injuring and humiliating the petitioner. It is further submitted that the petitioner is ready to give his voice samples, which would bring the truth out and prove his innocence.

The FIR in this case has been registered on the basis of a complaint submitted to the police by the Civil Surgeon,

Bathinda. The petitioner is a District Health Officer. The allegations against the petitioner are that he used to take illegal gratification from the Milk Sellers; Grocery Shops and Ghee Factories for not drawing samples from their shops and the shopkeepers who did not pay him such gratification, he would draw samples from their shops. In this regard, the alleged conversation of 11 minutes and 40 seconds of the petitioner with Dr. Satish Garg (Retired S.M.O. Tohana, Haryana), in the shape of audio recording, went viral on the social media. Thereafter, on the directions of the higher authorities of the Department, the complainant had sent a complaint to the Senior Superintendent of Police, Bathinda, in this regard. The said complaint was marked to the Superintendent of Police (Investigation) Bathinda, for investigation. A detailed inquiry was conducted and the same was found in line with the contents of the audio (CD). Accordingly, after taking legal opinion from the DDA, Legal Bathinda, the above noted FIR was registered by the Police.

As noticed above, as the complaint submitted by the complainant arose out of an audio conversation that went viral on the social media, the police had conducted a detailed inquiry and during this process, after having associated all concerned and recording their statements, it was found that the petitioner had committed an offence under Section 7 of the Act.

While declining the anticipatory bail application of the petitioner, learned Special Judge, Bathinda, in his order dated 5.8.2020, has noticed the factum of the statements recorded by the Investigating Agency, as under:-

“.....There is another statement of Dr. Tarun Bansal Food Safety Officer recorded on 20.07.2020, which shows that the applicant/petitioner Dr. Ramesh Kumar was taking gratifications from the Milk Sellers and

Grocery Shops as well as Ghee Factories. One Maninder Kumar Bansal, owner of Bansal Milk Dairy has also suffered a statement that he had to pay Rs.5,000/- to the applicant/petitioner for his dairy licence. Ved Parkash, President of the Dairy Union, Bathinda has also disclosed that applicant/petitioner was in the habit of taking samples from the persons who were not working according to his system. Even there is statement of Ram Kewal, Class-IV employee of the office of Civil Surgeon, Bathinda, who disclosed during investigation that applicant/petitioner Dr. Ramesh Kumar was taking gratifications from three Milk Men Unions and sometimes used to visit their offices to collect the money. Apart from that, he was also taking money from the grocery shops through their President Om Parkash. Besides, he was also collecting money from the Sweet Makers at the instance of taking their samples. He was also getting gratifications from the factories, which used to prepare duplicate Ghee but was not taking samples from them which included Vicky Ghee Factory, another Ghee factory at Rampura Railway Line, Ghee Factories at Bhucho Mandi, Growth Centre Bathinda and Ghee Factory at village Dunewala. He was neither taking samples from them nor was allowing any other Inspector, to take samples from them.”

The petitioner is a District Health Officer. The allegations levelled against the petitioner are very serious. It may be noticed that the audio that went viral, was recorded by Dr. Satish Garg, a retired S.M.O., that too when his brother Vinod Kumar, one of the shopkeepers, was also asked to pay the illegal gratification. Moreover, the shopkeepers running the business of Grocery, Dairy Sweets and even the employees of the Food Safety Department, have also made statements against the petitioner, before the Investigating Agency.

The Hon’ble Supreme Court in **P.Chidambaram Vs. Directorate of Enforcement**, (2019)9 SCC 24, has held that economic offence is committed with a deliberate design with an eye on personal profit regardless of the consequences to

community. It was further held that the economic offences, forming a class apart, need not be visited with a different approach in the matter of bail. It was held as under:-

“41 Under Article 20(1) of the Constitution, no person shall be convicted of any offence except for violation of law in force at the time of commission of that act charged as an offence. FIR for the predicate offence has been registered by CBI under Section 120B I.P.C., 420 IPC and Section 13 of the Prevention of Corruption Act and also under Section 8 of the Prevention of Corruption Act. As discussed earlier, Section 120B I.P.C. and Section 420 I.P.C. were included in Part A of the Schedule only by Amendment Act 21 of 2009 w.e.f. 01.06.2009. Section 13 of the Prevention of Corruption Act was included in Part A of the Schedule by Amendment Act 16 of 2018 w.e.f. 26.07.2018. Section 8 of the Prevention of Corruption Act is punishable with imprisonment extending upto seven years. Section 8 of the Prevention of Corruption Act was very much available in Part A of the Schedule of PMLA at the time of alleged commission of offence in 2007-2008. It cannot therefore be said that the appellant is proceeded against in violation of Article 20(1) of the Constitution of India for the alleged commission of the act which was not an offence as per law then in existence. The merits of the contention that Section 8 of the Prevention of Corruption Act cannot be the predicate offence qua the appellant, cannot be gone into at this stage when this Court is only considering the prayer for anticipatory bail.

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76. Power under Section 438 Cr.P.C., 1973 being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

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78. Observing that economic offence is committed with deliberate design with an eye on personal profit

regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364, it was held as under:-

"5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

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81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

In view of the above, this Court is the opinion that the present case involving the economic offence, the petitioner does not deserve the concession of anticipatory bail, as any such indulgence would seriously hamper the effective investigation in the matter.

No case is made out to grant the concession of anticipatory bail to the petitioner.

Hence, the present petition is dismissed.

August 20, 2020
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(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No