

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

CRM-M No. 23553 of 2020

Date of Decision: 22.12.2020

Sandeep Mitter

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lekh Raj Sharma, Advocate,
for the petitioner.
Mr. Sarabjit Singh, A.A.G., Punjab.

RAJ MOHAN SINGH, J.

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.07 dated 21.07.2020 under Sections 409, 420, 465, 466, 467, 468, 471 IPC and 13 (1) (a) read with Section 13(2) of Prevention of Corruption Act registered at Police Station Vigilance Bureau Range, Jalandhar.

Allegations against the petitioner are that he in his personal capacity without obtaining sanction from the competent authority had issued two receipts from receipt book No.369 under his signature vide receipt No.25/369 dated 07.08.2019 in the sum of Rs.25,000/- and receipt No.36/369 dated 04.09.2019

in the sum of Rs.25,000/- in respect of plot No.161A, Scheme No.3 and has not deposited the said amount in Trust Funds.

Further allegations are that two drafts No.244419 for a sum of Rs.35,000/- and draft No.244421 for a sum of Rs.35,000/- were also recovered from him for which no receipt was issued by the competent authority and the amount of said drafts was not deposited in the account of the trust. Further allegations are that the petitioner of his own executed the sale deed of four plots in the office of Sub Registrar, Phagwara by forging the signature of E.O. and therefore, he being a public servant has cheated and caused financial loss to the Government exchequer.

Learned counsel for the petitioner submitted that two drafts in respect of disputed receipts were in respect of non-construction fee charged from one Pankaj Kalra in order to execute sale deed from the Improvement Trust. The amount had already been returned to said Pankaj Kalra and Pankaj Kalra had no objection in respect of these two receipts. The amount was returned to aforesaid Pankaj Kalra on oral orders of the Chairman, Improvement Trust, Phagwara. After getting the amount, he moved an application to Jalandhar Improvement Trust stating that he is ready to deposit the entire non-construction fee of Rs.2 lacs approximately.

Learned counsel for the petitioner further submitted that the amount under demand drafts was not encashed by the petitioner. The demand drafts in the name of Improvement Trust could not be encashed by anyone except the payee in whose favour the drafts were prepared. The sale deeds do not bear the signatures of the petitioner. The petitioner only appeared for the registration of the same. The E.O. at the behest of Chairman, Improvement Trust has sent a wrong and baseless letter against the petitioner for registration of FIR. The vendees of the sale deed have not made any complaint till date nor the sale deeds carried the signatures of the petitioner in any manner. Money of the Improvement Trust is still lying with the trust and no recovery is to be effected from the petitioner. The petitioner has not executed any sale deed nor has received any amount. Petitioner never encashed the drafts nor has altered any document thereby cheating anyone.

Learned counsel for the petitioner further submitted that before registration of FIR, Improvement Trust wrote letter No.646 dated 12.12.2019 to the Director, Local Government, Punjab Chandigarh on the subject of commission of embezzlement by the petitioner. Thereafter vide serial No.5 dated 03.01.2020, office of Improvement Trust Town, Phagwara wrote letter to SSP, Vigilance Bureau, Kapurthala on the same

subject matter. Thereafter, a letter No.427-P dated 18.02.2020 was issued by Senior Superintendent of Police, Kapurthala to Chairman, Improvement Trust in respect of offence of cheating by the petitioner. Petitioner has referred to letter No.463 dated 18.09.2019 issued by the office of Improvement Trust to Tehsildar, Phagwara thereby giving authority letter to the petitioner for appearing personally on behalf of the Executive Officer to execute the sale deed. Similarly letters bearing No.465 dated 18.09.2019 and 466 dated 18.09.2019 were also issued by the Improvement Trust in favour of Tehsildar, Phagwara, authorizing the petitioner in the context of execution of sale deeds.

Learned counsel further submitted that when the petitioner filed first anticipatory bail before the Additional Sessions Judge, Kapurthala, then the Court vide order dated 15.07.2020 passed the order on the basis of statement of ASI Kuljas Rai No.7/14/IRB, Vigilance Bureau Unit Kapurthala that no complaint, enquiry or FIR is pending against the petitioner as per information received from MHC. On the basis of statement of ASI and learned counsel for the petitioner, the bail application was dismissed as withdrawn vide order dated 15.07.2020.

By referring to the aforesaid order, learned counsel for the petitioner refuted the letters dated 12.12.2019,

03.01.2020 and 18.02.2020 which were issued prior in point of time then the order dated 15.07.2020 passed by Additional Sessions Judge, Kapurthala.

At the time of issuance of notice of motion on 20.08.2020, following order was passed by the Coordinate Bench:-

“Case is taken up for hearing through video conferencing.

Through the instant petition under Section 438 Cr.P.C., the petitioner seeks anticipatory bail in case FIR No. 07 dated 21.07.2020 registered under Sections 409, 420, 465, 466, 467, 468, 471 IPC and Section 13(1)(a) read with Section 13(2) of Prevention of Corruption Act, 1988, as amended by PC(Amendment) Act, 2018 at Police Station Vigilance Bureau Range Jalandhar.

Learned counsel for the petitioner submits that the amount received vide receipts No. 25/369 dated 07.08.2019 and 36/369 dated 04.09.2019, for Rs. 25,000/- each, has been returned back by the petitioner to the person concerned. As far as the two drafts are

concerned, both were got encashed by the Improvement Trust, Jalandhar and the petitioner is not responsible for that. Rather, the amount is lying in the Government accounts.

Learned counsel for the petitioner also denies the allegations regarding forging of the signatures.

Notice of motion.

On the asking of this Court, Mr. H.S. Sitta, AAG Punjab, accepts notice on behalf of the respondent-State and prays for time to file reply.

On his request, adjourned to 22.09.2020.”

Thereafter, vide order dated 04.11.2020, learned State counsel was directed to file a better affidavit dealing with the contents recorded in the order dated 20.08.2020 and it was ordered that no coercive steps shall be taken against the petitioner.

In the reply by way of affidavit of Ashwani Kumar, PPS, Deputy Superintendent of Police, Vigilance Bureau Unit, Kapurthala, allegations have been changed from the word 'issued' to 'stolen receipt'. There is no such allegation of stealing receipt book No.369 by the petitioner. Since demand drafts were in the name of payee, therefore, deposit of amount in Jalandhar

Improvement Trust would not be attributed to the petitioner in any manner. Allegations are related to documents.

In view of above, the petition is allowed. Petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 25.12.2020 and in the event of his arrest, he shall be released on anticipatory bail on his furnishing adequate bail bonds/surety bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C:-

- i) that the petitioner shall make himself available for interrogation before the Investigating Officer as and when required;
- ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- iii) that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.

22.12.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No