

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

201-2

**CRM-M-34022-2020
Date of decision : 02.12.2020**

Balbir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. H.S. Dhindsa, Advocate
for the petitioner.

Mr. P.S. Walia, Asstt. AG, Punjab
for respondent No.1-State.

ARUN KUMAR TYAGI, J (ORAL)

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

The petitioner has filed present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.65 dated 28.08.2020 registered under Sections 420 and 406 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Sudhar, District Ludhiana to which Sections 409 of the IPC and Section 13(2) of the Prevention of Corruption Act, 1988 were added lateron.

The above-said FIR was registered on the basis of letter dated 28.08.2020 sent by the BDPO, Pakhowal to the Senior Superintendent of Police, Jagraon for registration of FIR against Sukhpal Singh, Panchayat Secretary, Harpreet Singh, VDO, Balbir Singh, SEPO (Retd.) (the petitioner) having additional charge of BDPO, Pakhowal at the relevant time and Manjit Kaur, Ex-Sarpanch, Gram Panchayat, Pamal.

As per the prosecution version Sukhpal Singh, Panchayat Secretary filed CWP No.16468 of 2019 in this Court which was disposed of vide order dated 01.07.2019 with direction to decide the legal notice dated 29.04.2019 by passing speaking order within 6 weeks. The Financial Commissioner, Department of Rural

Development and Panchayats, Punjab got an enquiry conducted by constituting Committee which submitted report. Gram Panchayat, Pamal filed CWP No.4481 of 2018 in this Court which was disposed of vide order dated 21.03.2018 with direction to decide the legal notice dated 11.01.2018 within four weeks. DDPO, Ludhiana conducted inquiry and submitted report. On enquiries it was found that amount of Rs.76,85,416/- was withdrawn from the two bank accounts of Gram Panchayat, Pamal. As per Rule 24(6) of the Panchayati Raj (Gram Panchayat) Rules, 2012 and the relevant instructions, amount of more than Rs.25,000/- could not be withdrawn without signatures of Sarpanch, BDPO and Panchayat Secretary. Resolution passed by the Gram Panchayat was also required for withdrawals. Manjit Kaur, Sarpanch, Gram Panchayat, Pamal was found to have introduced proceeding register at her own level which was written by her. The Gram Panchayat had opened two proceedings registers at the same time. The requisite entries in the cash book, work register and stock register were not made after January, 2016. Even the then Junior Engineer did not submit the measurement book etc. to show how much amount had been spent by the Gram Panchayat on the development works. Executive Engineer, Panchayat Raj, Public Works Division, Ludhiana vide his letter dated 08.11.2019 submitted that measurements showed that work worth Rs.46,07,570/- had been done. The enquiries revealed that amount of Rs.30,77,846/- had been embezzled. Pursuant to registration of FIR, the matter is pending for investigation.

Apprehending his arrest, the petitioner has filed present petition for grant of anticipatory bail.

The petition has been opposed by the learned State Counsel in terms of status report filed by way of affidavit of Sh. Gurbans Singh Bains, PPS, DSP, Dakha, District Ludhiana (Rural) in the Registry which is taken on record.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case registered after more

than five years of the occurrence. The petitioner was working as Social Secretary and Panchayat Officer with additional charge of BDPO, Pakhowal. The petitioner was transferred on 03.05.2017 from the post of BDPO, Pakhowal and retired on 30.04.2018. In the FIR there is no allegation against the petitioner. Notice was issued to Manjit Kaur, Ex-Gram Panchayat, Pamal for recovery of the amount. In compliance with order dated 21.03.2018 passed on CWP-4481-2018 filed by the Gram Panchayat, Pamal, BDPO, Ludhiana conducted enquiry and found Sukhpal Singh Gill, Panchayat Secretary and Harpreet Singh, VDO to be responsible for not making entries of the expenditure in the record. In compliance with order dated 01.07.2019 passed by this Court in CWP-16468-2019 filed by Sukhpal Singh, Department of Rural Development and Panchayats, Punjab conducted enquiry and indicted Sukhpal Singh Gill, Panchayat Secretary, Manjit Kaur, Sarpanch and Harpreet Singh, VDO. The petitioner was held to have committed irregularities by not following the procedure while issuing cheques to the Gram Panchayat. It is the case of procedural irregularity against the petitioner and the petitioner has not embezzled any amount. There is no allegations that the petitioner after withdrawing money for the grants deposited the same in his personal account. There is no allegation as to demand or acceptance of any illegal gratification and offences under the Prevention of Corruption Act, 1988 are not made out against the petitioner. The petitioner is ready to join the investigation. Custodial interrogation of the petitioner is not required in the case as the relevant record is already in the possession of the police. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has argued that the petitioner in conspiracy with his co-accused embezzled the amount of the grants given to the Gram Panchayat, Pamal. The petitioner was over all in-charge and required to exercise powers of supervision over the Sarpanch, VDO and Panchayat Secretary. As per Rule 24(6) of the Panchayati Raj (Gram Panchayat) Rules, 2012 and the relevant instructions, amount of more than Rs.25,000/- could not be withdrawn without signatures of the petitioner. The petitioner and his co-accused

have withdrawn and embezzled amount of Rs.30,77,846/-. The record of the Panchayat and the amount embezzled are to be recovered from the petitioner and his co-accused and custodial interrogation of the petitioner is required in the case. The petitioner does not deserve the grant of anticipatory bail. Therefore, the petition may be dismissed.

In ***P. Chidambaram Vs. Directorate of Enforcement (SC)*** : **2019(4) R.C.R.(Criminal) 875** Hon'ble Supreme Court observed as under :-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

In ***State Rep. by The CBI Vs. Anil Sharma : (1997) 7 SCC 187***, the Supreme Court held as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those

entrusted with the task of disinterring offences would not conduct themselves as offenders."

In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See also ***D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434***, ***State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213*** and ***Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305***).

Keeping in view the facts and circumstances of the case, nature of accusation and evidence prima facie showing involvement of the petitioner in commission of the crime, also the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, collection of material evidence, recovery of the record and the amount embezzled, but without meaning to comment on merits, I am of the considered view that the petitioner does not deserve grant of anticipatory bail.

Accordingly, the present petition for grant of anticipatory bail to the petitioner is dismissed.

02.12.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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