

CRM-M No.4629 of 2021

Date of Decision : 06.04.2021

Amar Singh

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Pradeep Virk, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

B.S. Walia, J. (VC)

[1] Prayer in the petition u/s 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.0005 dated 07.01.2021 registered u/s 13 (2), Prevention of Corruption Act, 1988, Section 52-A, Prisons Act, 1894& Sections 51 & 56, Disaster Management Act, 2005 at Police Station City-1, Sangrur.

[2] Learned counsel contends that although the FIR was registered against the petitioner, Deputy Superintendent, Balwinder Singh, Superintendent, Gurpartap Singh, Jail Warden, all at District Jail Sangrur, and later after investigation, against Dhanna Singh, Chakkar Havaladar, District Jail, Sangrur on the allegations that the aforesaid officials in connivance with each other, provided facilities to under trial Kamal Kumar @ Rocky and Arun Kumar @ Arru by not transferring them from District Jail Sangrur, shifting their barracks, providing medical as well as mobile phone facility, contrary to rules / instructions and for monetary considerations, but the petitioner had been falsely implicated in the case as much prior to the registration of the FIR, he had submitted representation (Anneuxre P/1) dated 30.11.2020 to the Deputy

Inspector General (Jails), Patiala Circle, Patiala expressing apprehension of

being implicated in a false case due to strict enforcement of discipline by him in

jail, that the petitioner could not transfer an under trial from District Jail, Sangrur to any other jail without the approval of the higher authorities, that transfer of the undertrials barrack was on account of the undertrial having come in contact with a Covid patient, besides, medical facilities provided to under trial Kamal Kumar @ Rocky were on the advice and recommendation of the jail doctor.

[3] Learned Addl. AG, Punjab, on the other hand contended that the under trials, namely Kamal Kumar @ Rocky and Arun Kumar @ Arru were not shifted from Special Jail Sangrur by Balwinder Singh, Superintendent, Amar Singh, Deputy Superintendent, and Gurpartap Singh, Warden, District Jail Sangrur, by misusing their position, misleading headquarters by sending false information while conniving with family members of the prison inmates and further providing unauthorised mobile phone and medical facilities by violating Prison Rules / Instructions. Learned Addl. A.G. contended that as per instructions issued by the authorities, transfer of inmates after corona test on expiry of 21 days quarantine was mandatory, that as per directions of the head office, new undertrials were required to be lodged in Special Jail Sangrur in one barrack for quarantine and after the test were required to be shifted to other barracks but the officers of District Jail Sangrur did not do so, instead mislead the head office by sending a false report of under trial Arun Kumar @ Arru having come in contact of corona positive undertrials, besides, medical and mobile facilities were provided to the aforementioned undertrials besides other undertrials, for monetary consideration and there was material available to show payment having been made by relatives of the undertrials to the petitioner through the Jail Warden, who had submitted an affidavit to the above effect on 30.12.2020 in the preliminary inquiry conducted by the Deputy Inspector

General (Jails), Patiala Circle, Patiala. Learned Addl. A.G. further contended that out of 04 accused, only Dhanna Singh, Chakkar Havaladar, District Jail,

Sangrur had been arrested, while the petitioner, Balwinder Singh, Superintendent and Gurpartap Singh, Jail Warden, District Jail, Sangrur were at large and their custodial interrogation was essential to ascertain the persons involved, modus operandi of running of racket in District Jail Sangrur for providing facilities to undertrials / detenues, for monetary considerations, contrary to the rules as well as instructions issued by the authorities as also to effect recovery of bribe money besides to ascertain details of all involved in the racket.

[4] Learned Addl. A.G. contended that on 30.12.2020, the ADGP (Prisons), Punjab, marked an inquiry into malpractices in District Jail Sangrur to the Deputy Inspector General (Prisons), Circle Patiala, who submitted report (Annexure R-1/T) dated 02.01.2021 that under trial Kamal Kumar @ Rocky and Arun Kumar @ Arru were not transferred from District Jail, Sangrur to another jail on completion of 21 days of quarantine in violation of instructions / directions of the Head Office, that while under trials were required to be lodged in Special Jail, Sangrur in one barrack for quarantine and after testing, were to be shifted to another barrack but the same was not done in the case of the undertrials, that the Head Office was mislead by sending a wrong report regarding transfer of under trial Arun Kumar @ Arru as also by wrongly representing that the under trial had come in contact with a Corona positive patient, that facility of mobile phone was provided to under trials for monetary consideration, that under trial Kamal Kumar @ Rocky was sent to hospital outside the jail for treatment, all for monetary considerations by the petitioner, Balwinder Singh, Superintendent, Gurpartap Singh, Jail Warden and Dhanna Singh, Chakkar Havildar, all of District Jail, Sangrur by misusing their position and getting money from relatives of under trials through Paytm, Google

[5] Learned Addl. A.G. contended that as per the enquiry report, under trial Kamal Kumar stated that he had been lodged in barrack No.01 on his first day in District Jail, Sangrur on 22.09.2020 but on Chakkar Havildar Dhanna Singh, demanding money from him and being paid Rs.65,000/-, he was shifted to VIP barrack No.10/01, that barrack No.10/01 and 10/02 in District Jail, Sangrur, were VIP barracks and from his barrack, 07, under trials were shifted after taking money from them, besides facility of mobile phone was also provided to aforesaid under trials on payment of Rs.2,35,000/- through Harjot Singh son of Sukhvinder Singh under trial, to Warden Gurpartap Singh, Gunman of Amar Singh, Deputy Superintendent (Maintenance) District Jail, Sangrur, out of which Rs.60,000/- was given by Mohit, brother of under trial Vishavnath, that as per the statement of under trial Arun Kumar @ Arru, challan of an under trial received in District Jail, Sangrur for shifting to another jail, used to be kept pending by charging Rs.25,000/- to Rs.30,000/- and that he had details regarding payment of the amount on Google Pay and Paytm besides the mobile number through which the amount was paid. Learned Addl. A.G. has referred statement of under trial Kamal Kumar in the enquiry report that for his admission in Civil Hospital, Sangrur, he had paid Rs.2,15,000/- in cash through his son Jatin Kumar, to Warden Gurpartap Singh outside the jail premises on 07.12.2020 whereupon the petitioner had told the Medical Officer, District Jail, Sangrur to provide him Guard, and on 08.12.2020 at about 12 'O' clock, he was sent to Civil Hospital, Sangrur along with jail Guard, where he was admitted after taking Rs.20,000/- with the money transaction being done by Warden Ajit Singh in collusion with Warden Gurpartap Singh and when the doctor tried to discharge him from the hospital then Warden Gurpartap Singh demanded Rs.3,00,000/- from him to admit him in Rajindra Hospital, Patiala, which was settled at Rs.2,50,000/- and the aforesaid amount was taken by Warden Gurpartap Singh on 10.12.2020 at about 12.30 p.m. from Civil

Hospital, Sangrur but on the same day, he was discharged from Civil Hospital, Sangrur, and admitted in jail at about 4.30 p.m., that on meeting Warden Gurpartap Singh during his rounds, he was told to be patient and that he would be sent out as such matters took time. Thereafter on 12.12.2020, he was again sent to Civil Hospital, Sangrur, but was not admitted whereupon, he asked Warden Gurpartap Singh to return the money, that he was thereafter called by the petitioner in his office and told that they had not received any money, that after he disclosed the whole story he was told that Warden Gurpartap Singh would meet him and after meeting him he was asked to return Rs. 1,50,000/- which he returned to his son and out of entire amount, Rs.65,000/- was given by way of Google Pay and the remaining in cash.

[6] Learned Addl.A.G. has referred to enquiry report which records statement of Warden Gurpartap Singh that he had been told by the petitioner in the first week of December that the son of under trial Kamal Kumar, lodged in jail, would hand over a packet and that he should take the same as the said under trial was to be sent to Civil Hospital, Sangrur and the petitioner had also supplied him mobile number of the son of said under trial, that he received call on his mobile phone bearing No. 98157-98156 from Jatin, son of under trial Kamal Kumar and was called outside the jail premises where he went at about 7.30 p.m. and was handed over a packet, whereafter said Jatin went away in his car, thereafter, he went to the residence of the Deputy Superintendent i.e. the petitioner and handed over the said packet to him, who opened the same and found Rs. 2,15,000/- in it. On the next day, the petitioner handed over to him a black colour packet in which there was 02 bundles of Rs.500/- notes and there was some more notes of Rs.500/- and told him that that the said packet was to be handed over to Balwinder Singh, Superintendent, District, Jail, Sangrur, whereupon he handed over the said black packet to Superintendent, District Jail, Sangrur at his residence and further the amount which used to be given as

bribe, was shared by the Deputy Superintendent i.e. the petitioner and Superintendent, Balwinder Singh in the ratio of 60:40.

[7] Learned Addl. A.G. contended that Warden Gurpartap Singh further stated that on 08.12.2020 under trial Kamal Kumar @ Rocky was sent to Civil Hospital, Sangrur for treatment through the Medical Officer of the jail by the petitioner, along with guard and that when the above said under trial was being discharged from Civil Hospital, Sangrur on 10.12.2020 then the petitioner talked to Sanjiv Kumar @ Sanju, close relative of under trial Kamal Kumar @ Rocky at the residence of the petitioner, whereafter the petitioner told him that he would be handed over a packet by Sanjiv Kumar @ Sanju and that said Sanjiv Kumar @ Sanju handed over a packet to him in Civil Hospital, which on counting revealed cash Rs.2,50,000/-, that on 12.12.2020, under trial Kamal Kumar was again sent to Civil Hospital, Sangrur but was not admitted in the hospital and on his coming back to jail, he demanded his money back, whereafter the petitioner gave back Rs.1,50,000/- to him i.e. Warden Gurpartap Singh and told him to return the said amount to under trial Kamal Kumar, whereafter he received a phone call from Jatin son of under trial Kamal Kumar that amount be returned, then he i.e. Warden Gurpartap Singh returned the said amount of Rs.1,50,000/- to him. Learned Addl. A.G. has further referred to statement of Warden Gurpartap Singh that co-under trials of under trial Kamal Kumar, who was lodged in barrack No.10/1 with him were given the facility of getting mobile in jail, on settlement with the petitioner, for a sum of Rs.1,75,000/- whereupon the petitioner told him that a phone call would be received by him and he would be given Rs.1,75,000/- and thereafter as per telling of the petitioner, a phone call was received by him from a person who called him outside the jail premises, came in a car and handed him

[8] Learned Addl. A.G. next contended that Assistant Superintendent Harbans Singh stated that as per orders of the Head Office, under trials coming to the jail were transferred to different jails after covid test conducted serial number wise and test being negative, by sending names to the Head Office and on receiving orders from the Head Office, under trials were sent to different jails and before the transfer of the said under trials whatever orders were received from the Head Office, their numbers and list of names used to be put up before the Deputy Superintendent who used to pass orders as to which under trials were to be transferred and which under trial was to be retained and as regards, the under trials in question, the petitioner i.e. Deputy Superintendent Jail had told him not to transfer said under trials.

[9] I have considered the submissions of learned counsel and gone over material referred to by the learned Addl. A.G. FIR has been registered in the matter after conduct of preliminary inquiry and finding material linking the petitioner with violation of orders of the Head office in not transferring under trials Kamal Kumar and Arun Kumar @ Arru to other jails, in shifting them to VIP barracks, providing under trial Kamal Kumar medical facilities outside the jail, as also providing facility of mobile phone, all for monetary consideration through relatives of the undertrials, to undertrials Kamal Kumar, Arun Kumar @ Arru and 07 others, contrary to the rules / instructions.

[10] Material on record does not indicate false implication. In the circumstances, I find merit in the contention of learned Addl. A.G. that since investigation is on, custodial interrogation of the petitioner is essential to ascertain the names of others involved in the racket, the modus operandi of running of illegal racket of providing aforementioned facilities for monetary considerations to under trials as also to recover the money paid to the petitioner/ through the petitioner in the light of decision in '**P. Chidambaram v.**

Directorate of Enforcement, AIR 2019 SC 4198. Relevant extract of the same is reproduced as under:-

72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. By the CBI v. Anil Sharma, (1997) 7 SCC 187, the Supreme Court held as under:-

“6. 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.”

73. *Observing that the arrest is a part of the investigation intended to secure several purposes, in Adri Dharan Das v. State of W.B. (2005) 4 SCC 303, it was held as under:-*

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

[11] Accordingly, in the light of position noted above, and finding no merit in the petition under Section 438 Cr.P.C., the same is **dismissed**. However, nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.

(B.S. Walia)
p Judge

April 06, 2021

‘Rajneesh-Amit’

RAJESH KUMAR
2021.04.14 16:09
i attest the accuracy and
authenticity of this document

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