

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

**CRM-M No.6137 of 2021 (O&M)
Decided on: 15.02.2021**

Karan Pal Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Karambir Singh Nalwa, Advocate
for the petitioner.

Ms. Monika Jalota, DAG, Punjab
and Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.4077 of 2021

Heard.

Allowed as prayed for.

Additional affidavit along with Annexure P-20 are taken on
record, subject to all just exceptions.

CRM-M No.6137 of 2021

Prayer in this petition is for issuance of directions to
respondents No.1 to 3 i.e. Director General of Police and Director
Bureau of Investigation, to transfer the investigation of FIR No.0179
dated 05.12.2020 registered under Sections 420, 506 of the Indian
Penal Code, 1860 (in short 'IPC') and 4 of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station
Kulgari, District Ferozepur and G.D. No.030 dated 19.12.2020 vide
which Sections 465, 468, 471, 34, 120-B IPC have been added in the

aforesaid FIR No.0179 dated 05.12.2020 to a Special Investigating Team (S.I.T.) to be headed by some Senior Officer outside the jurisdiction of Ferozepur Range, Ferozepur, with a further direction to stay the investigation of FIR No.0179 dated 05.12.2020 till an S.I.T. is constituted and with a further prayer that no coercive action be taken against the petitioner in pursuance to FIR No.0179 dated 05.12.2020, during the pendency of the petition of the present petition.

Counsel for the petitioner has submitted that the petitioner is a Barrister and permanent resident of Canada since 2018. The father of the petitioner is a social worker and businessman and is permanent resident of District Ferozepur. The father of the petitioner had received some threats and FIR No.114 dated 17.10.2019 was registered under Sections 307, 506, 120-B IPC at Police Station Kulgari, District Ferozepur and protection was provided to the father of the petitioner. It is further submitted that the father of the petitioner is having an old enmity with respondent No.7 – Hardial Singh Mann, now Deputy Inspector General of Police (D.I.G.), Ferozepur Range, Ferozepur and has referred to an order of the Punjab Human Rights Commission dated 17.08.2001 in which on a complaint given by the father of the petitioner, it was observed that respondent No.7 has misused his authority while being posted as Superintendent of Police (Vigilance) Ferozepur.

Counsel for the petitioner has also referred to a communication dated 10.01.2003 issued by the Deputy Inspector General of Police (Vigilance Bureau) to Director Vigilance Bureau, Punjab that respondent No.7 has misused his official position regarding

purchase of bricks while constructing his house at Mohali.

Counsel for the petitioner has also submitted that the local MLA Parminder Singh Pinky from Ferozepur belongs to ruling Congress Party and he is also inimical towards the father of the petitioner. It is further stated that one Daljeet Singh was P.A. to the MLA and later on, he has filed affidavit that he was allured by the MLA and his brother-in-law to procure money on the pretext of providing job to various persons. It is also argued that the MLA became annoyed with the presumption that on the asking of the father of the petitioner, the said affidavit was given by Daljeet Singh.

Counsel for the petitioner has further relied upon certain communications send by Daljeet Singh to various authorities regarding cheating and fraud committed by local MLA in Railway Recruitment Scam. It is further submitted that on the basis of a complaint given by complainant Amandeep Kaur, the father of the petitioner was directed to join an enquiry by an S.I.T. and he filed the reply.

Reliance is also placed upon certain FIRs registered against Daljeet Singh.

Coming to the facts of the case, counsel for the petitioner has submitted that the present FIR No.179 was got registered by Amandeep Kaur on 05.12.2020 without giving any specific date of alleged cheating and fraud by father of the petitioner. Counsel for the petitioner has argued that as per the FIR, the first occurrence is regarding payment of Rs.18 lacs in the last week of January, 2018, which was given by the husband of the complainant, on a promise to provide a job. Counsel for the petitioner has further submitted that no

fair enquiry was conducted and the police did not collect the CCTV footage regarding visiting of the complainant or the witnesses to the house of the father of the petitioner during that period.

Counsel for the petitioner has also argued that in fact, the petitioner has been falsely implicated by putting him in Column No.7 of the FIR and later on vide G.D. No.30 dated 19.12.2020, the petitioner along with 02 other persons were also arrayed as an accused.

Counsel for the petitioner, on merits of the FIR, tried to establish that as per the FIR, the money was paid by the complainant and her husband in the presence of Daljeet Singh in the last week of January, 2018, whereas the petitioner got married in December, 2017 and in the year 2018, he was travelling abroad and various places. It is further stated that the second occurrence is of 19.10.2020 and the father of the petitioner was not in District Ferozepur at that time as he was at District Ludhiana whereas the petitioner was staying in Chandigarh.

Counsel for the petitioner has further argued that he can prove his plea of alibi by referring to some documents. It is further stated that the police has wrongly invoked Section 4 of the SC&ST Act as in the pre-registration enquiry stage, the police has wrongly recorded the statement of Daljeet Singh, Iqbal Singh and Rupinder Singh, in this regard. It is further submitted that one Sunil Kumar, who is also added as an accused has filed an a petition i.e. CRM-M No.33566 of 2020, before this Court for constituting an S.I.T. in which notice was issued for 26.10.2020.

Counsel for the petitioner has also argued that later on, Sunil Kumar was granted anticipatory bail by the Court of Sessions on

29.01.2020.

Counsel for the petitioner has also tried to submit that one FIR No.159 dated 10.10.2020 was registered against his father with similar allegations by other complainant and later on, the present FIR No.179 dated 05.10.2020 was also registered with the similar allegation against the father of the petitioner.

Counsel for the petitioner has further relied upon the judgment ***“State of West Bengal and another vs Swapan Kumar Guha and another”***, 1982(1) SCC 561, to submit that the Hon'ble Supreme Court has held that the investigation which has commenced upon registration of the FIR, can be quashed or stayed by the Court. Reliance is also placed upon the judgment of this Court ***“Sohan Singh vs State of Punjab and others”*** 2019(1) RCR (Criminal) 912, wherein a similar view was taken by this Court for transfer of the investigation.

Counsel for the petitioner has further argued that in fact, Kinder Kaur (complainant) has been introduced by the local MLA Parminder Singh Pinky and the respondent No.7 – Deputy Inspector General of Police, Ferozepur Range, Ferozepur to involve the petitioner and his father in the present petition. Counsel has further submitted that the husband of the complainant is the Sarpanch of the village and is close to MLA, who belongs to the Ruling Party and therefore, a false story has been concocted.

Counsel for the petitioner has further stated that the name of the petitioner was later on added vide G.D. No.30 dated 19.12.2020 along with 02 persons namely Baljinder Singh Bedi and Sushil Kumar @ Shila. It is further submitted that since, on the face of it, the

prosecution of the petitioner and his father is on account of settling the personal vendetta, the petitioner and his father have given representations to higher authorities but no action has been taken.

Counsel for the petitioner on the basis of the additional affidavit has further submitted that Kinder Kaur – complainant has tried to made some improvement while making the statement before the police by giving a date and the victim i.e. her husband Chhinder Singh has not named Daljeet Singh as a witness of occurrence. It is further argued that another witness Iqbal Singh is also a Congress worker and is a Sarpanch of a nearby village. It is also submitted that Rupinder Singh has not been named as a witness by the complainant or her husband.

Counsel for the petitioner has also relied upon certain photographs to show that Chhinder Singh is attending some political function of Congress party.

On advance notice given to counsel for the State, Ms. Monika Jalota, DAG, Punjab has argued that the present petition is not maintainable as the petitioner has not approached the competent Court for applying the anticipatory or regular bail.

Counsel for the State has argued that 02 other persons, who were added as an accused along with the petitioner namely Sushil Kumar and Baljinder Singh Bedi, have already been granted the concession of bail. It is further submitted that an S.I.T. headed by the Superintendent of Police Investigation/Detective, Deputy Superintendent of Police, Punjab Bureau of Investigation and Deputy Superintendent of Police (Vigilance), Punjab, has already been

constituted on 06.02.2012, therefore, and the prayer of the petitioner to transfer the same out of Ferozepur Range, Ferozepur, is just to delay the entire proceedings.

Counsel for the State has further submitted that there is no mala fide on the part of respondent No.7 – Deputy Inspector General of Police, Ferozepur Range, Ferozepur, as the petitioner has relied upon an order of Punjab Human Rights Commission which relates to the year 2001 and the FIR has been registered now in the year 2020 and in the intervening period of 19 years, there was no malice or mala fide on the part of respondent No.7, though throughout, he remained posted at various Districts and the petitioner is trying to set up a case of mala fide just because respondent No.7 is presently again posted at Ferozepur. It is further argued that the allegations against the MLA are totally uncalled for as the local MLA Parminder Singh Pinky has not been arrayed as a party and therefore, no proper reply can be given on his behalf.

Counsel for the State has further submitted that as per the information, Daljeet Singh never remained a P.A. of the local MLA and he was only a party worker, who had taken money from people and therefore, he was booked in some FIRs and to create a defence, he has filed complaints before various authorities.

Counsel for the State has also argued that in fact, the father of the petitioner, who is an accused in FIR No.159 on which heavy reliance is placed by the petitioner, that the *modus operandi* in the present FIR are similar in nature, his anticipatory bail was dismissed by this Court vide order dated 12.11.2020 passed in CRM-M No.36799 of

2020 by passing the following order:-

“I have heard the learned senior counsel appearing on behalf of the petitioner and learned State counsel as well as learned senior counsel appearing on behalf of the complainant.

So far as the first argument advanced by the learned senior counsel for the petitioner with regard to the findings/conclusion report of the SIT that only the first part was proved and not the second part is concerned, it can be seen that the conclusion report is a comprehensive report giving the sequence of events starting from February 2020 which led into exchange of whatsapp messages and calls etc. and the same have now been authenticated through the report of Director Di-Tack State Cyber Crime Cell, Punjab, as per the SIT report. When the SIT was dealing with the alleged episode of last week of June 2020, there was no definite conclusion with regard to the same and it was stated in the report that no specific comments can be made in this regard and thereafter, the FIR was registered. The matter being at the investigation stage cannot be deemed to be concluded at the point where the SIT made its observations. Any further aspects are to be seen so as to conduct a fair and impartial investigation and therefore, at this stage, it cannot be said that the petitioner is not guilty of aforesaid allegations only because the SIT was not able to arrive at a definite conclusion with regard to the episode pertaining to the last week of June 2020.

So far as the delay aspect is concerned, the submission made by the learned State counsel that in such like cases where such like allegations are made and where the honour and dignity of a woman and her family members is involved, delay could be normal in our society does carry weight. Furthermore, the learned State counsel

has also pointed out from the FIR that the petitioner had threatened her with dire consequences in case she reported the incident to somebody and therefore, the delay itself cannot become a ground for the grant of anticipatory bail to the petitioner.

So far as the mala fide alleged by the learned senior counsel for the petitioner is concerned, primarily the same has been made against the DIG of Ferozepur range and the local politicians. All such allegations have been refuted by the learned State counsel as well as the learned senior counsel for the complainant during the course of submissions. The question that would arise for consideration before this Court would be as to whether on the basis of such allegations of mala fide, the petitioner can be granted anticipatory bail in the light of other factors and grounds which have been raised by the learned State counsel as well as by the learned senior counsel for the complainant.

The law with regard to the grant of anticipatory bail in case Siddharam Satlingappa Mhetre (supra) which has been referred to by counsel for both the parties is concerned, the same is clear from the perusal of para 112 of the aforesaid judgment reproduced above. The parameters as enunciated by Hon'ble the Supreme Court including the gravity of the accusations and exact role of the accused etc. are concerned, it has been observed that while considering the prayer for the grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused and the Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and that the arrest should be

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

In the present case, the respondent-State as well as the learned senior counsel for the complainant have categorically stated and also referred to the statements made to the police as well as to the learned Judicial Magistrate First Class, under Section 164 Cr.P.C. and to the contents of the FIR itself that the complainant is being threatened by the petitioner by various means. Therefore, while considering the plea for the grant of anticipatory bail, the aforesaid factors would be paramount in deciding the same. Therefore, while considering the grant of anticipatory bail to the petitioner, the allegations of mala fide levelled by the petitioner in lodging of the FIR would become subservient to the aforesaid factors as submitted by the respondent-State as well as by the learned counsel for the complainant with regard to threat to the complainant by different means. Furthermore, as per State counsel, the CCTV camera and the equipments containing footage of the same as well as revolver is yet to be recovered from the petitioner and therefore, custodial interrogation would be necessary in the facts and circumstances of the case.

So far as the plea raised by the learned counsel for the petitioner that before lodging of present FIR, another draft FIR was prepared is concerned, the explanation given by the learned State counsel that the said draft FIR seems to be an outcome of the connivance of petitioner with some officials of the police seems to be plausible. The lodging of FIR by excluding Sections 342 and 376/511 IPC, initially despite opinion of legal panel and letter dated 6.10.2020, to the SSP, Ferozepur, by the SP (Headquarter) and DSP (Investigation), to register FIR

under Sections 342, 376/511, 354, 354-A, 506 and 509 IPC read with Section 67-A of the I.T. Act, would certainly substantiate the argument raised by the learned State counsel in this regard.

Therefore, considering the totality of the circumstances of the present case and considering the submissions made by the learned counsel for the parties, I am of the considered view that it is not a fit case for interference and therefore, the present petition for the grant of pre-arrest/anticipatory bail to the petitioner is hereby dismissed.”

Later on, his anticipatory bail was dismissed by the Hon'ble Supreme Court of India in SLP (Crl.) No.965 of 2021 vide order dated 05.02.2021, by passing the following order:-

“1. We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India.

2. The Special Leave Petition is accordingly dismissed. However, upon the petitioner surrendering before the competent court and applying for regular bail, the application for bail be considered expeditiously in accordance with law.

3. The High Court in the concluding paragraph of its impugned order dated 12 November 2020 has clarified that the observations of the court are only for the purpose of deciding the application for anticipatory bail and shall not in any manner whatsoever reflect on the merits of the case. We, therefore, clarify that the application for regular bail shall be considered independently without treating the findings of the High Court as conclusive on whether regular bail should be granted.

4. Pending applications, if any, stand disposed

of.”

Counsel for the State has also submitted that in the entire petition, the petitioner has not disclosed the fact that the SLP filed by the petitioner has been dismissed.

Counsel for the State has further submitted that the present petition has been filed with ulterior motive, just to delay the investigation of the case.

On merits, counsel for the State has referred to the contents of the FIR wherein it has been observed that during pre-registration enquiry, notices were given to the petitioner and his father, however, they failed to join the investigation and never provided any CCTV footage as relied upon by the petitioner in the present petition. Counsel for the State has further argued that while recommending registration of the FIR, it was specifically observed by the Deputy Superintendent of Police (D), Ferozepur, that so far as the allegations against Karan Handa (present petitioner) son of Varinder Pal Singh are concerned, the same shall be considered during the course of investigation of the case. For joining Varinder Pal Singh @ V.P. Singh and others, letters were sent but it was found that for the last few days, they are not at their homes.

Counsel for the State has further argued that the FIR was registered after conducting a due enquiry by the Superintendent of Police (D), Ferozepur and finding that the complainant has produced 05 witnesses to prove she and her husband were cheated by the petitioner, his father and 02 other persons named above with the allegation that they have committed fraud by taking large money for providing a job

and even issued fake IDs. Lastly, it is submitted that even the witnesses of the complainant have supported the allegations of remarks relating to her caste and therefore, Section 4 of the SC&ST Act was rightly invoked.

Counsel for the State has further submitted that though the petitioner has placed reliance upon the FIR No.159 registered against the father of the petitioner, however, the petitioner has deliberately not placed on record the order dated 12.11.2020, dismissing the anticipatory bail of Varinder Pal Singh @ V.P. Singh, the father of the petitioner and in the petition, the petitioner has concealed filing of SLP as well as its dismissal on 05.02.2021.

In reply, counsel for the petitioner has argued that there was no occasion for the complainant to pay the money on 02 dates as given in the FIR and if the investigation is transferred outside Ferozepur, the truth will come.

After hearing the counsel for the parties, considering the fact that the case is still at the initial stage of the investigation and the petitioner and his father have opted not to join the pre-registration enquiry and now are relying upon the evidence, which can be produced before the S.I.T. already constituted under a Senior Officer i.e. the Superintendent of Police (D), Ferozepur along with 02 other Deputy Superintendents of Police, the grievance of the petitioner is partly redressed, the present petition is nothing but just an attempt to stall the investigation proceedings.

The allegation of *mala fide* against respondent No.7 as well as the local MLA were even pleaded by the father of the petitioner

in his anticipatory bail, as noticed in the aforesaid paragraph and were found having no force.

Even, it is admitted case that after a period of 19 years, the respondent No.7 has not remain posted outside District Ferozepur and the petitioner could not demonstrate any malice or *mala fide* on his part during this period. It is only after he was again posted in District Ferozepur, the petitioner has tried to build up a defence by levelling allegation of mala fide against him after a period of 19 years. The FIR has been registered after a due enquiry conducted by the Superintendent of Police (D), Ferozepur, which is based on recording the statement of 05 witnesses and verification of the facts.

Needless to say that it has been held by the Hon'ble Supreme Court in “*State of Telangana vs Habib Abdullah Jeelani and others*”, 2017(2) SCC 779, that the petition filed under Section 482 Cr.P.C., cannot be a substitute to 438 Cr.P.C. for grant of anticipatory bail as the second prayer of the petitioner is to stay the investigation and not to adopt any coercive method, is just a ploy to get anticipatory bail in this petition.

Accordingly, finding no merit, this petition is dismissed.

Though, some concealments are made by the petitioner, however, no costs are imposed.

(ARVIND SINGH SANGWAN)
JUDGE

15.02.2021

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Whether speaking/reasoned

Yes/No