

CRM-M-25430-2021 (O&M)

Through video conference

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

**CRM-M-25430-2021 (O&M).
Decided on: September 30, 2021.**

Hamza Salam

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Preetinder Singh Ahluwalia, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

**Mr.Ghulam Nabi Malik, Advocate,
for the complainant.**

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for the grant of anticipatory bail in FIR No.153 dated 29.4.2021, under Section 409 IPC, registered at Police Station Civil Lines Patiala.

As per the allegations contained in the FIR lodged on the basis of a complaint made by Harun Rashid, Estate Officer, Punjab Waqf

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Board, Patiala, present petitioner who is working as rent collector of the Punjab Waqf Board and is posted at Patiala, has destroyed the office record of the Punjab Waqf Board and has illegally benefited some of the lessees of the properties. It has been stated that Bahi Khata of the Punjab Waqf Board at Sr. No.512 (Vol.2) and Sr. No.10 (Vol.1) of the index was erased with fluid and pages were stapled to destroy the record of these two properties. It was further stated that lease files of the properties in question were not available in the branch office at Patiala at the time of checking.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated because of enmity with the senior officers of the same department and it was because of this reason that present FIR has been falsely lodged against the petitioner in order to oust him from the job. He has submitted that basic ingredients of Section 409 IPC are not fulfilled and at best, it is a case of Section 218 IPC which is a bailable offence. He submitted that the allegation with regard to stapling of the pages and putting fluid does not pertain to the petitioner at all. He further submitted that the original file was in the Head Office itself and it was only a photocopy which was in district level and the police has not only obtained the said file rather an inquiry has also been conducted and the petitioner has co-operated with the entire enquiry process and in the initial inquiry one file has already been received.

Notice of motion was issued by this Court on 6.7.2021 and the arrest of the petitioner was stayed. Thereafter, on 31.8.2021, the learned counsel for the petitioner had stated that although the arrest of the

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petitioner was stayed but the Investigating Officer of the case has not permitted him to join the investigation on the ground that there was no express order by this Court and therefore, it was directed that the petitioner shall join investigation and shall appear before the Investigating Officer on 09.09.2021 and shall fully cooperate with the investigation process. In case, the investigating agency needs any specific questions to be answered then the investigating agency may also put a written questionnaire to the petitioner which the petitioner shall be supposed to answer and in case any document is required from the petitioner, the petitioner shall supply the same in this regard.

Learned State counsel has submitted that in pursuance to order dated 31.8.2021, the petitioner has joined investigation and has fully cooperated with the investigation process. He has submitted that one mobile phone has already been recovered from the petitioner and one file pertaining to Simranjit Singh has also been taken by the investigating officer from the head office.

Mr.Ghulam Nabi Malik, Advocate, who has caused appearance on behalf of the complainant has argued that investigation in the present case has not been completed in view of the fact that record which was allegedly handed over to the lessees has not been recovered by the police as yet.

Replying to the submissions made by the learned counsel for the complainant, it has been argued by the learned counsel for the petitioner that it is a case where even the lessees have not been arrayed as

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accused in the FIR and the police is already investigating the matter in its own wisdom and so far as petitioner is concerned, he has already handed over all the documents including his mobile phone to the police and rather the stand of the State is that the file has been taken into possession by the investigating officer from the head officer whereas the petitioner is posted at District Patiala and therefore, it cannot become a ground for denial of anticipatory bail to the petitioner as his fundamental rights are being adversely affected.

I have heard the learned counsel for the parties.

Admittedly, the petitioner in pursuance to the order dated 31.8.2021, has joined investigation and has fully cooperated with the investigation process and the documents which were required by the investigating officer including the mobile phone belonging to the petitioner have been taken by him for the purpose of further investigation. The case pertains to the documentary evidence which is already with the police. It is settled law that while considering the grant of anticipatory bail the Court has to strike a balance between the liberty of an individual on one hand and likelihood of the petitioner tampering with the evidence or influencing any witness or absconding from justice and magnitude of the offence and impact of the same on public interest etc. on the other hand. It is not the case of the State that if anticipatory bail is granted to the petitioner, then he may influence any witness or tamper with evidence or may flee from justice.

Therefore, considering the totality of the circumstances of the present case, I deem it fit and proper to allow the present petition.

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Consequently, the present petition is allowed. Interim order dated 31.8.2021 is hereby made absolute.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

September 30, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No