

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.37721 of 2020 (O&M)
Date of Decision.17.02.2021
(Heard through VC)

Harmeet Singh ...Petitioner

Vs

State of Punjab ...Respondent

2. CRM-M No.41913 of 2020

Tarlok Chand ...Petitioner

Vs

State of Punjab ...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amit Jhanji, Advocate
for the petitioner in CRM-M No.37721 of 2020.

Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner in CRM-M No.41913 of 2020.

Mr. Gaurav Garg, Dhuriwala, Sr. DAG, Punjab.

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JAISHREE THAKUR J.

1. This order of mine shall dispose of two Crl. Misc. Petitions bearing No.41913 of 2020 and 37721 of 2020 arising out of FIR No.9 dated 21.08.2020 registered under Sections 420, 465, 467, 468, 471 and 120-B IPC and Sections 7, 7(A) and 8 of the Prevention of Corruption Act, 2018 registered at Police Station Vigilance Bureau, Phase 1, Mohali. The facts are being enumerated from CRM-M No.41913 of 2020.

2. In brief the facts are that an FIR came to be registered based on the information received by the Vigilance Bureau that Som Nath owner of Sadhu Transport had been indulging in tax evasion in connivance with the officials of the Excise and Taxation Department, Punjab. It was alleged that

the tax was being evaded by ensuring that there was no checking or verification of the documents or goods, while being transported to and from the State of Punjab. The goods loaded in the vehicles were brought to Punjab and sent through escape routes in connivance with the officials of the Excise and Taxation Department and in lieu of that, Som Nath was paying huge bribe and thereby causing loss to the State Exchequer by evasion of tax. The bribe was being paid monthly. The information supplied was that one Shiv Kumar clerk of SomNath and Pawan Kumar (who was working as a driver with one of ETOs) were helping Som Nath and doing the work of distributing bribe amount to the officials. The mobile numbers of these persons were pin-pointed and on obtaining permission from the competent authority, these phones were put under the surveillance and their call details were recorded. From the conversation recorded, names of certain officials/officers came forth as also the details of amount to be paid to them. The Vigilance Department pursued the call details for a year and thereafter got the FIR registered against the petitioners herein and others persons under Sections 420, 465, 467, 468, 471 and 120-B IPC and Sections 7, 7(A) and 8 of the Prevention of Corruption Act, 2018. Apprehending their arrests, the petitioners preferred applications under Section 438 Cr.P.C. seeking anticipatory bail, which petitions were dismissed, leading to the filing of the instant petition in the High Court.

3. Mr. Gagandeep Singh Sirphikhi, learned counsel appearing on behalf of the petitioner in CRM-M No.41913 of 2020 would contend that he has been falsely implicated in the said matter and was not named in the said FIR and there is no allegation made therein regarding the demand and acceptance of any money by the petitioner. It is also argued that the call

details were made available with the respondent-State as far back as 15.03.2020, however, he has been nominated as an accused under the said FIR in August, 2020. It is also argued that there is no direct evidence available with the State regarding any demand having been made by the petitioner, which could be termed as '*illegal gratification*'.

4. Mr. Amit Jhanji, learned counsel appearing for the petitioner in CRM-M No.37721 of 2020 would contend that registration of the FIR itself is not sustainable, he was never posted as an ETO in the Mobile Wing at Amritsar nor has he been nominated in the said FIR. It is submitted that he has been implicated merely on account of a disclosure statement of Shiv Kumar *munshi* of Som Nath and on the basis that a register was seized in which details of amounts paid to the officials/officers were maintained. He would further argue that the judgments rendered by the Delhi High Court in **L.K. Advani Vs. CBI 1997 (4) RCR (Criminal) 26** and the judgment rendered in **CBI vs V.C. Shukla (1988) 3 SCC 410** have clearly held that for such entries to be made admissible under Section 34 of the Indian Evidence Act, it must be shown that the entries are in books of accounts, books are being regularly maintained in the course of business and the entries alone are not sufficient enough to charge any person with liability.

5. It is also argued that there is non-compliance of Section 17A of the Prevention of Corruption Act, in so far as no prior permission has been taken from the State before instituting the investigation or registration of the FIR. A plea has been raised that the petitioner neither demanded nor accepted the alleged illegal gratification and there is no conversation in this regard. He relied upon judgment rendered by the Rajasthan High Court in

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passed in Criminal Misc. (Pet) No.159 of 2018 on 07.04.2020 to contend that investigation without prior approval would amount to gross abuse of process of law. Similarly, he relies upon judgment rendered by the **Kerala High Court in Ramesh Chennithala Vs. State of Kerala 2018 SCC Online Ker 14261**. It is also argued that the judgment relied upon by the State in Devender Kumar Vs. Central Bureau of Investigation and others 2019 (1) RCR (Criminal) 791 would not be applicable in the facts and circumstances of the present case.

6. Per contra, Mr. Gaurav Dhuriwala, Sr. DAG Punjab, learned counsel appearing on behalf of the respondent-State argued that both the petitioners herein have rightly been nominated as accused in the FIR. The High Court in a similar matter bearing CRM-M No.28786 of 2020 has already dismissed the bail application of other Excise and Taxation Officers named in the FIR. It is further argued that 12 officers have been named in the FIR and though the petitioners have not been specifically named in the FIR but their names have been disclosed by other ETOs during investigation. It is argued that mobile number of Pawan Kumar, who was one of the intermediaries between SomnNath and the officials was put on surveillance and it was surfaced that 14 calls were made from mobile No.9914877877 of Pawan Kumar to Mobile No.8437830730 of Tarlok Chand. The petitioner Tarlok Chand is one of the persons with whom Pawan Kumar had conversation with, whereas, Harmeet Singh's name has clearly been reflected in the register maintained by the accused Shiv Kumar as one of the persons, who had received illegal gratification to the extent of Rs.7,67,000/-.

7. I have heard learned counsel for the parties and have perused

the paper books and the case laws cited.

8. The argument raised on behalf of learned counsel appearing for Harmeet Singh that the alleged register maintained by the Munshi cannot be looked into for the purpose of implicating the petitioner in the said FIR as there is no proof regarding the fact whether these books were maintained in the regular course of business nor is there any certificate to that effect, would not be sustainable at the present moment, as the matter is still under investigation. The register is relied upon by the respondent-State for ascertaining the role of the petitioner herein in his culpability regarding extending help in evasion of GST.

9. The second plea as raised by the counsel appearing for the petitioner that there is non-compliance of Section 17A of the Prevention of Corruption Act as amended in 2018 is again not sustainable. Section 17A of the Prevention of Corruption Act is reproduced as under:-

“17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties:- (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent

to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.''

10. In the celebrity judgment of **Devender Kumar vs. CBI** (supra), it has been held that by incorporating Section 17A as it reads by itself, the intention of the Legislature was to protect the public servants in the *bona fide* discharge of their official functions or duties. It was further held that when act of a public servant is *ex facie* criminal or constitutes an offence, prior approval of the Government would not be necessary. Section 17A would be applicable to cases where offense is relateable to any recommendation made or decision taken. A similar view has been taken by Chattisgarh High Court in the judgment rendered in **Satish Pandey Vs. Union of India** and others passed in REVP No.43 & 49 of 2020 on 06.02.2020 and judgment rendered by Bombay High Court in **Kamlakar R. Shenoy Vs. State of Maharashtra** and others passed in PIL No.28 of 2017 on 18.09.2019. Therefore, in the opinion of this Court, it would not be necessary by the respondent-State to have obtained prior approval of the State Government before initiating enquiry or investigation in the said matter. The bar to enquiry or investigation under Section 17A of the Prevention of Corruption Act is apropos such alleged offence, as may be relateable to any recommendation made or decision taken by a public servant

in discharge of his official functions or duties. In the present case, there is no recommendation or decision on record by a public servant in the discharge of his official functions or duties.

11. No doubt the personal liberty of the petitioners is at stake, as stated while praying for anticipatory bail, but in the instant case the custodial interrogation would be required to unearth the nexus between the petitioners and the intermediaries, as well as the amount of tax evasion involved in its entirety. The complicity of the petitioners herein as alleged would be revealed and fortified only with further investigation, for which as a necessary corollary custodial interrogation of the petitioners would be required. In the case in hand, there has to be a deviation from normal rule of bail rather than jail, since the allegations and *prima facie* investigation revealed that there was evasion of tax at a very large-scale and officials were being paid bribes on a monthly basis. The investigation is at a very nascent stage regarding the role of the petitioners herein. The petitioners are also persons of influence and would be in a position to scuttle a proper investigation.

12. As an upshot of my finding, I do not find any ground to accede to the prayer of the petitioner(s) for grant of anticipatory bail. Restulantly, both the petitions are dismissed. However, any observations made herein are only for the purpose of deciding the bail application, and not to be construed as an expression on merits of the case.

(JAISHREE THAKUR)

JUDGE

February 17, 2021

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No