

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

(204)

CRM-M-44623-2021.  
Date of Decision:-22.11.2021.

Raj Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

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Present: Mr. D.S. Matya, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

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**VIKAS BAHL, J. (Oral)**

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.491 dated 23.07.2021 under Sections 420, 465, 467, 468, 471, 120-B, 409, 511 of IPC, registered at Police Station Sadar Gurugram, District Gurugram.

On a complaint filed by Thakur Lal Sharma, Chief Engineer, Municipal Corporation, Gurugram dated 22.07.2021, the present FIR dated 23.07.2021 was registered, wherein a number of allegations were leveled to the effect that some officials of the Municipal Corporation, in connivance with the petitioner, who was a contractor, and other persons, had recommended the release of payments for development works which were not duly completed. With respect to Ward No.23 and Ward No.24, which was the work allotted to the petitioner, an amount of Rs.54,00,000/-

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(approx.) had been got sanctioned by the petitioner for the said two works from the Municipal Corporation, Gurgaon, on the basis of a forged document/report, which was never signed by the concerned Councillor. Thus, the present FIR was registered in which the petitioner was arrayed as one of the accused persons.

Learned counsel for the petitioner has argued that in the present case, only two works were allotted to the petitioner, with respect to Ward No.23 and Ward No.24 and it has been submitted that as per the inquiry report, the following observations had been made as far as the work allotted to the petitioner is concerned:-

*“VI. Name of work: Laying of 300 mm i/d Sewer line from Hero Honda to Service station on NH 8, Gurugram laying of pipe size 300 mm i/d const. of manhole and all other works Ward 23 under Municipal corporation Gurugram.*

*Start Date: - 14.02.2019*

*Completion Date: 13.07.2019:*

*Physical inspection:*

- 1. The sewer line installed at Hero Honda Chowk at main road was shown which seems to be less than 300 meters.*
- 2. It was told that sewer-line was installed 6-7 feet below and some main whole cover were also opened at the spot which were full of filth.*
- 3. The work of sewer line has been done in the inner street of the Ward which is the part of the said work, out of which, some main-hole covers were uncovered and checked.*

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VII. *Name of work: Laying of 300 mm i/d sewer line ModhpurJharsa Gurugram "Laying of SW pipe of size 300 mm i/d const. of manholes & all other works Ward 24 Gurugram and all other works contingent thereto.*

*Start Date:-10.04.2019.*

*Completion Date:-09.07.2019.*

*Physical inspection:*

- 1. At the spot, the sewer line has been installed in 3-4 streets.*
- 2. Some lids/covers of sewer line were also uncovered at the spot.*
- 3. This works seems to be less than 300 meter at the spot."*

Further reference has been made to concluding part of the inquiry report to state that the payment of the said works was not made to the petitioner and the other contractors and, thus, no loss was caused to the Municipal Corporation and, thus, the offence under Section 420 of IPC is not made out. It is further submitted that the petitioner had not forged the documents which are annexed with the reply filed by the State of Haryana (Annexure R-1 and R-2) and, thus, the offences of forgery under Sections 465, 467, 468 and 471 of IPC are also not made out against the petitioner. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court dated 11.05.2018 passed in ***Criminal Appeal Nos.359-360 of 2010*** titled as **"Sheila Sebastian Vs. R. Jawaharaj and another. Etc"**, in support of his arguments.

On the other hand, learned State counsel has submitted in the present case, it has been found that the two certificates (Annexure R-1 and

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R-2) both of which pertain to Ward Nos.23 and 24, where the work was allotted to the petitioner, was purported to have been signed by Sunil Kumar and Ashwani Sharma are both forged and fabricated, inasmuch as they do not contain the signatures of either Sunil Kumar or Ashwani Sharma. It is submitted that the custodial interrogation of the petitioner is very necessary, inasmuch it is apparent that the petitioner had got the said documents forged in order to show that the work had been carried out satisfactorily and the payment could be released to the petitioner. It is further argued that as is apparent from the impugned order rejecting bail to the petitioner, an amount of Rs.54,00,000/- was got sanctioned by the petitioner for the two works in the Municipal Corporation, Gurugram on the basis of the forged report, which was never signed by the concerned Councillors. Further reference has been made to the inquiry report sought to be relied upon by the petitioner himself, at Page 28 (Annexure P-1), moreso, paragraph 5 to highlight the fact that the Councillors had stated that the satisfaction certificate attached by the contractors were forged and fabricated. It is, thus, argued that the custodial interrogation of the petitioner is required for the above-said purpose and also to uncover the other transactions where a similar modus operandi has been adopted.

This Court has considered the arguments advanced by the learned counsel for the parties and has perused the paperbook.

The relevant portion of the inquiry report which had been highlighted by the petitioner himself (reproduced hereinabove) would show that there are discrepancies in the work carried out in Ward No.23 and Ward No.24. In Ward No.23, it was stated that the sewer line inside seems to be less than 300 mts. and it was also stated to be only 6 -7 ft below and

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some manholes were uncovered and with respect to Ward No.24, it was pointed out that the same was also less than 300 mts at the spot and that some lids/covers of sewer lines were uncovered at the spot. Further in paragraph 5 of the said inquiry report, which is sought to be relied upon by the learned counsel for the petitioner, the Councillors had given statements to the effect that the certificates attached by the contractors were forged and fabricated. The relevant portion of the inquiry report is reproduced hereinbelow:-

*“5. All the 11 Councillors got recorded their respective statements, in which, they stated that the satisfaction certificate attached by the contractors with the work file are fake and forged, out of 4 Councillors stated that some work has been done but the attached satisfaction certificates are forged and fake.”*

*6. In this manner, all three contractors namely Sh. Dilawar Singh Sh. Pawan Balhara, and Sh. Raj Kumar are guilty because they in connivance with officers/employees got prepared the false bills against their half/incomplete works or by attaching fake satisfaction certificates allegedly issued by the Councillors concerned and then sent the same for payment.”*

Reference is also made to Annexures R-1 and R-2. The relevant portion of Annexure R-1 at Page No.107 is reproduced hereinbelow:

*“SUNIL KUMAR*

*Councillor, Ward No.24, Municipal Corporation, Gurugram*

*Office:-Mohammedpur (Jharsa), Near Govt. School, Gurugram*

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E-mail:- [ward24@mcg.gov.in](mailto:ward24@mcg.gov.in)

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*Dated.....*

*To,*

*Executive Officer*

*MCG Gurugram*

*It is submitted that the work of laying of sewer line in my Ward has been completed by the contractor. The work is satisfactory.*

*Thus, the payment be made through cheque.*

*Sd/- Sunil Kumar*

*SUNIL KUMAR  
Councillor Ward No.24  
Nagar Nigam, Gurugram.”*

The relevant portion of Annexure R-2 at page No.109 is reproduced hereinbelow:

*“Executive Engineer*

*Municipal Corporation*

*Gurugram.*

***Subject: Laying of 300 mm i/d Sewer line from Hero Honda Service station to on NH-8 Gurugram. Const. of manhole and all other works Ward No.23 under MCG.***

*Contractor has done the above said work of laying of sewer line on NH-8 with full satisfaction and the work done by the agency is satisfied. Local residents are*

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*happy with this work.*

*Now done the payment of work as per MCG rules.*

*Thanking you.*

*Sd/-*

**(ASHWANI SHARMA)**  
**COUNCILLOR**  
**WARD No.23**  
**M.C. GURUGRAM”**

A perusal of the said documents would show that in spite of the fact that the work of the petitioner had some discrepancies and was not satisfactory yet in the said documents, the work in Ward No.24 and Ward No.23 was stated to be satisfactory and it was further stated that the payment of work should be released. It has been found that the said documents have not been signed by Sunil Kumar and Ashwani Sharma and, thus, they bore forged signatures of the said Councillors, as per the case of the prosecution. It is not in dispute that the said certificates pertain to Ward No.24 and Ward No.23, which was the work allotted to the petitioner. Learned counsel for the petitioner, at the first instance had argued that there are no signatures of any Councillor on the said documents but when it was pointed out by the learned State counsel that the same bears signatures but the signatures are forged, then the learned counsel for the petitioner, in the very next breath, stated that in fact the said signatures are not forged and they have been signed by Sunil Kumar and Ashwani Sharma and the Department is only trying to save the said persons.

From the above-said facts and circumstances, it is prima facie clear that forged documents have been prepared in order to get payment released from the department. Since the said documents pertain to Ward

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No.23 and Ward No.24, thus, the offence of forgery is prima facie committed by the petitioner and his custodial interrogation is required for the purpose of proper investigation.

Reliance sought to be placed by the learned counsel for the petitioner on the judgment of Hon'ble the Supreme Court in Sheila Sebastian's case (supra) does not further the case of the petitioner, inasmuch as the said case was a case in which the entire trial had been completed and the High Court had acquitted the accused therein, after considering the entire material documents and evidence on record. It was affirmatively found that in the said case, the signatures on the document were not of the accused-therein. The said aspect is still a matter of evidence/investigation in the present case. The document which was stated to be forged in the afore-cited case was a registered document, which is not the case in the present matter. In paragraph 20 of the said judgment, it was observed that an offence of forgery would not lie against a person who has not created it or signed it. In the present case, it is a matter of investigation for which the custodial interrogation of the petitioner is necessary to see that as to whether it is the petitioner who has created or forged the signatures of the Councillors concerned. Further reference can be made to paragraphs 23 and 26 to bring out the distinction. The relevant portion of paragraphs 23 and 26 are reproduced hereinbelow:-

*“XXX---XXX---The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case,*

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*even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.*

XXX---XXX---XXX

*26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. **In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents.***

XXX---XXX---XXX”

A perusal of the above-extracted judgment would show that it was found that the forgery and fraud were essentially matters of evidence, which are to be proved as a fact by direct evidence or by inference drawn from true facts and in the said case, there was no finding recorded by the trial Court that the accused therein had made any false documents or part of the document record. In the present case, the case is at the stage of anticipatory bail and the said facts are a matter of investigation and at this stage, the facts indicate that the documents have been forged and fabricated by the petitioner. A further reference to paragraph 27 of the said judgment would show that in the said case, even the person who had made the

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document was not found and the relationship of the accused therein with the said person who had made the document, was not established. Further in paragraph 28, it was specifically recorded in the said judgment that the document alleged to be forged in the said case was not executed by the accused therein.

Keeping in view the above-said facts and circumstances, the present petitioner is not entitled to the concession of anticipatory bail and accordingly, the present petition is dismissed.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

**(VIKAS BAHL)**  
**JUDGE**

**November 22, 2021.**

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No