

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

**CRM-M-39173-2021 (O&M).
Date of Decision: 24.05.2022.**

Balwinder SinghPetitioner.
Versus
State of PunjabRespondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Keshavam Chaudhari, Advocate,
Mr. Kunal Sharma, Advocate, and
Ms. Bhavika, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 438 Cr.P.C. read with Section 482 Cr.P.C. has been moved by petitioner-**Balwinder Singh** for issuance of directions to Officials of Police Station Vigilance Bureau, SAS Nagar (Mohali) to comply with the mandate of law laid down by Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar, (2014)8 SCC 273** as amalgamated in the directions issued by Hon'ble Supreme Court in its order dated 07.05.2021 in **Suo Motu Writ Petition(C) No.1/2000, In Re: Contagion of COVID-19 Virus in Prisons** as well as **Order dated 28.04.2021** passed by this Court in **CWP-PIL-77 of 2021** and accordingly for grant of pre-arrest bail in case FIR No.7 dated 03.06.2021 under Sections 384, 419 and 420 IPC [Section 8 of Prevention of Corruption Act (hereinafter to be referred to as 'Act') and Section 120-B IPC added lateron], registered at Police Station Vigilance Bureau, Phase-I, SAS Nagar (Mohali).

Learned counsel for the petitioner *inter alia* contends that the petitioner has approached this Court in peculiar circumstances as despite specific guidelines having been laid down in the cases where maximum sentence prescribed is seven (07) years, the petitioner is being subjected to a witch-hunt with a threat to his liberty. He further urges that there appears a gross violation of the procedure and it is a case of shocking abuse of power, wherein the Vigilance Bureau, having limited jurisdiction, circumscribed and confined to look into the allegations against '*public servant*' under the provisions of the Act, alone have embarked upon a witch-hunting campaign by registering a case under the various provisions of Indian Penal Code and thereafter, discreetly introduced Section 8 of the Act, to justify registration of the case. He further urges that as a matter of fact petitioner runs a welding workshop at Rajpura and on 01.06.2021 he approached complainant, who is a Patwari Revenue in the constituency of Dhakansu, Tehsil Rajpura, District Patiala, for the purpose of getting the mutation entered and sanctioned, who refused to process the same for want of bribe of Rs.1000/- and the said episode was videographed by the petitioner. He further urges that instant FIR has been registered on the allegations that petitioner had threatened the complainant to expose his deeds if he failed to pay Rs.5 Lakhs to him. He further urges that allegedly on 02.06.2021, the petitioner threatened the complainant to pay Rs.5 Lakhs, which the complainant promised to pay on 03.06.2021. He further urges that allegedly on 03.06.2021, the complainant approached Vigilance Bureau for initiation of action against the petitioner and instant FIR was registered. He further urges that on 23.07.2021, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against co-accused Gurdhian Singh in the

Court and said Gurdhian Singh has already been extended concession of regular bail by learned Special Judge, SAS Nagar (Mohali), vide order dated 02.08.2021 (Annexure P-4). He further urges that in this case the Vigilance Bureau has exercised powers beyond its jurisdiction. He further urges that neither any money was received by the petitioner nor any recovery has been got effected. He further urges that only allegation against the petitioner is that he impersonated as a Vigilance Officer, but the recording made by the petitioner clearly shows that no such averment was ever made by him, rather it was the complainant (Patwari) who was asking for bribe to perform his official duty. He further urges that even if the allegations against the petitioner are taken at their face value, the offences alleged against the petitioner are punishable upto maximum period of seven (07) years, therefore, curtailment of liberty of petitioner could only be by way of an exception and not as a matter of routine, as per the mandate of provisions of Section 41(1)(b)(ii) Cr.P.C. He further urges that it is well settled that any person accused of an offence which is punishable upto seven years or less could be arrested only after following a due procedure of law and in support of his contentions, he has relied upon decision of Hon'ble Supreme Court in Arnesh Kumar's case (supra). He further urges that though previous petition (CRM-M-25620-2021) for pre-arrest bail moved by the petitioner was dismissed on merits by this Court, vide order dated 20.07.2021 (Annexure P-1), however, it is well settled that second petition for anticipatory bail is well maintainable on additional facts and circumstances. He further submits that in the previous petition, it was not brought to the notice of the Court that the offences complained of are punishable upto maximum period of seven years and, therefore, by virtue of provisions of

Section 41(1)(b)(ii) Cr.P.C. read with Section 41-A Cr.P.C. and the principles enunciated in Arnesh Kumar's case (supra), the prayer of petitioner for grant of pre-arrest bail is to be dealt with by adopting a different approach. He further urges that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has argued that on the pretext of getting mutation entered in the name of Gurmeet Singh, petitioner had approached Dharampal Singh, Patwari (complainant) and offered bribe of Rs.1000/- to the complainant, which amount was returned by the complainant to the petitioner after retaining photocopy of document with him (complainant) for processing. He further urges that later on petitioner had told the complainant that he was Inspector Vigilance, whereas brother-in-law of his brother was posted as SHO, Police Station Shambhu and that he had made a video recording of the entire incident, for which he was going to get complaint registered against him for demand and acceptance of bribe and then raised demand of Rs.5 Lakhs from the complainant for not reporting the matter to the authorities concerned. He further urges that on 02.06.2021, petitioner again approached the complainant and raised demand of Rs.5 Lakhs for not reporting the matter, however, complainant told him that he could arrange only Rs.60,000/- to 70,000/-, which incident was videographed by the complainant and then the matter was reported to the Vigilance Bureau, Flying Squad-I. He further urges that thereafter on 03.06.2021, trap was laid by Vigilance Bureau, where petitioner had deputed his son Gurdian Singh

(co-accused) to collect extortion money from complainant and further to cover his misdeeds petitioner asked his son Gurdian Singh to issue a bill of Rs.50,000/- in the name of complainant for manufacturing gate grills in back date and accordingly Bill No.315 dated 19.05.2021 amounting to Rs.49,790/- of gate grills was issued in the name of complainant. He further urges that co-accused Gurdhian Singh was caught red-handed on the spot by the Vigilance Bureau while accepting extortion money amounting to Rs.50,000/- from the complainant and that too in the presence of official witnesses. He further submits that after the arrest of co-accused Gurdhian Singh, during his personal search, mobile phone was recovered and after hearing the calls recorded in the said mobile phone, it became crystal clear that he alongwith his father (petitioner-Balwinder Singh) was fully involved in extracting extortion money from complainant-Patwari. He further urges that in the recording made by complainant-Dharampal Singh, petitioner had disclosed to the complainant his earlier misdeeds for having involved another Patwari in a similar scam, who in order to get rid of said situation, had paid him Rs.10 Lakhs. He further urges that in view of these allegations requisite notice under Section 41-A(1) Cr.P.C. was issued to the petitioner on 04.06.2021 but he did not prefer to join investigation. He further urges that number of raids were conducted at the residence and other suspected places of the petitioner on 26.06.2021, 16.07.2021, 19.07.2021, 03.08.2021, 06.11.2021, 15.11.2021, 21.01.2022, 04.02.2022, 26.02.2022, 05.03.2022, 10.03.2022, 03.04.2022 and 23.04.2022, however, petitioner is absconding from the process of law. He further urges that process for issuance of warrants of arrest was initiated against the petitioner and on 22.04.2022, non-bailable warrant was issued against him and consequently, raid was

conducted on 23.04.2022 but to no avail. He further urges that Vigilance Bureau has jurisdiction to entertain, enquire and investigate a case related to the provisions of IPC. He further urges that offering of bribe to a Government servant by a person is an offence under Section 8 of the Act. He further submits that recovery of mobile phone by which the purported video was prepared by the petitioner as well as the back dated bill prepared in the name of complainant, is to be effected from petitioner and further earlier scams, if any, committed by the petitioner, are to be unveiled. He further urges that in a given scenario custodial interrogation of petitioner is also necessitated to take details of other cases of extortion and blackmailing committed by him. He further submits that previous petition (CRM-M-25620-2021) moved by petitioner seeking pre-arrest bail, was dismissed on merits by this Court, vide order dated 20.07.2021 and the second petition is not maintainable as there is no change in scenario and further the fact that allegations against the petitioner are serious in nature, he does not deserve the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition and record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner conspired with co-accused Gurdhian Singh and then to effectuate their illegal designs offered bribe of Rs.1,000/- to complainant-Patwari on the pretext of getting mutation entered and further got videographed said incident with ulterior motive to blackmail the complainant. Allegedly, petitioner while disclosing himself as Inspector Vigilance further pressurized the complainant to part with extortion money of Rs.50,000/- and then to collect said amount

(extortion money), he had mischievously deputed his son Gurdhian Singh (co-accused), who was apprehended on the spot alongwith extortion money by the team of Vigilance Bureau.

As pointed out by learned State counsel, though notice under Section 41-A(1) Cr.P.C. was issued to the petitioner on 04.06.2021 but he did not prefer to join investigation. Besides that number of raids were conducted at the residence and other suspected places of the petitioner on various dates, as detailed above, but to no avail.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation as recovery of mobile phone by which purported video of incident dated 01.06.2021 was made and the back dated bill of manufacture of gate grills is to be effected. Further, petitioner is to be interrogated about the alleged

scams, in terms of which, he had got involved and deceived public servants to extort money from them. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for.

At this juncture, it is relevant to point out here that on these allegations, previous petition (CRM-M-25620-2021) moved by the petitioner for grant of pre-arrest bail, has already been dismissed on merits, by this Court, vide order dated 20.07.2021. In view of above, there is no change in scenario after the dismissal of previous petition.

In **G.R. Ananda Babu Vs. State of Tamil Nadu and another,** 2021 SCC Online SC 176, the Hon'ble Supreme Court has held as under:-

“7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and moreso, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

In **Md. Shamim Khan Vs. the State of Jharkhand,** SLP (Crl.) No.9449 of 2021, the Hon'ble Supreme Court, vide order dated 16.12.2021, dismissed the Special Leave Petition on the ground that the petitioner was unable to show any change of circumstance to invoke the jurisdiction of filing second petition under Section 438 Cr.P.C. and further deprecated such practice of filing second petition under Section 438 Cr.P.C. after the first being rejected.

Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner

for his entitlement to pre-arrest bail and even otherwise the specious reason of change in circumstance cannot be invoked for successive anticipatory bail applications, once it is rejected by speaking order.

As a sequel to above, instant petition seeking directions as well as for grant of pre-arrest bail moved by the petitioner-**Balwinder Singh**, being devoid of merits, is dismissed.

Since the main petition itself has been dismissed, pending application, if any, also stands disposed of.

(LALIT BATRA)
JUDGE

24.05.2022

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No