

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

**CRM-M-43120 of 2021
Date of decision: 12.01.2022**

ASI-Shashpal Singh

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashish Aggarwal, Advocate for the petitioner.
Mr. V. G. Jauhar, Senior DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 438 Cr.P.C. is filed seeking anticipatory bail in FIR No. 81 dated 1.4.2021, under Sections 409 and 120- B IPC and Section 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Jandiala, District Amritsar Rural.

The petitioner is an ASI in Punjab Police. At the relevant time, he was incharge of Malkhana of Police Station, Jandiala, District Amritsar. As per the allegations, case properties from the malkhana were found missing. The petitioner inspite of his transfer on 3.2.2020 had not handed over the charge to his successor. A team was constituted and most of the missing articles were found in the basement of malkhana. Some of the case property articles with regard to FIR No. 222 were found lying open in the malkhana whereas they were kept in a double lock, still one DVR is

missing. The petitioner made a complaint against ASI-Jang Bahadur Singh alleging that he had not taken the charge from him. It has come on record that ultimately formal charge was handed over by the petitioner to ASI-Kishan Chand on 6.5.2020. On 29.11.2020, FIR No. 407 was registered against ASI-Kishan Chand who had taken charge from the petitioner. In complaint made by petitioner, on an application filed by the wife of ASI-Jang Bahadur Singh in an enquiry held, the petitioner was nominated as accused.

Learned counsel for the petitioner contends that ASI-Jang Bahadur refused to take charge. Petitioner handed over the keys of malkhana to Sandeep Singh. There is a statement of the painter that malkhana was white washed. He further submits that it is a case of false implication, the petitioner was the complainant yet has been nominated as accused. He further submits that the petitioner co-operated in recovery of articles. The contention is that once statements of Sandeep Singh and painter had been recorded that Sandeep Singh was in possession of the keys, no role can be attributed to the petitioner.

The State filed reply dated 16.11.2021 pleading that Special Investigating Team (for short, 'SIT') was constituted to look into the missing articles in the malkhana and the petitioner was the member of the team. On a query from the court as to how a person who was the complainant could be made member of the SIT, time was sought by the State to file a better affidavit.

A short reply dated 15.12.2021 by way of affidavit of Rakesh Kaushal, IPS, Senior Superintendent of Police, Amritsar Rural is filed. It is

pleaded that team was formed and not the SIT. The petitioner was member of team being custodian of malkhana and was not nominated as accused till then.

Learned counsel for the State opposes the prayer for grant of anticipatory bail. He submits that a deeper probe is required as cases of other FIRs in which case properties went missing are also affected.

He fairly submits before the court that on basis of instructions and the reply, he is not in a position to defend the conduct of the police department in the manner the entire matter was handled. On a further query as to what effective steps were taken after nomination of the petitioner, he submits that nothing is forthcoming from the two replies filed. He further submits that the petitioner could not have been made member of team being a complainant against ASI-Jang Bahadur Singh.

The case property in FIR No. 222 of 2018, i.e. one DVR along with two volt meter and a bundle of currency notes serial number mentioned and five notes bearing counter signatures of Tehsildar along with Canadian dollar and mobile phone were found missing. In spite of the search, the case property could not be located. The enquiry was initiated, a team was constituted of which the petitioner was the member and apart from DVR and two volt meter, rest of the case property was recovered from basement of the malkhana, the recovered property was lying in open, whereas these were kept in a double lock. It would not be appropriate for this court at this stage to make any comment on merits of this issue. It is not disputed in the contention made by learned counsel for the petitioner that in spite of not handing over the formal charge, he handed over the keys

of malkhana to Sandeep Singh and malkhana was opened.

Any comment made by this court at this stage on the conduct of investigating agency would cast shadow upon the case under investigation and its trial, a refrain is exercised in not venturing into that area. The petitioner is stated to be suspended, though none of the party is disclosing the date of suspension. From the facts and the conduct of the parties, it is clear that a deeper probe is necessary to unearth the specific role played by each of the accused and recovery of DVR is yet to be made. The petitioner even after suspension is able to delay the investigation and with his official status would be in a position to influence the evidence and the investigation.

No case is made out for pre-arrest bail.

The petition is dismissed.

However, it is clarified that nothing stated above shall be taken as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

12th January, 2022

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| 1. Whether speaking/ reasoned | : | Yes /No |
| 2. Whether reportable | : | Yes /No |