

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CRM-M-54787-2021 (O&M)

Date of Decision : February 24, 2022

Anil Kumar

.. Petitioner

Versus

State of Haryana

.. Respondent

(101-2)

CRM-M-54801-2021 (O&M)

Kuldeep Singh @ Kuldeep Huda

.. Petitioner

Versus

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.P.S. Deol, Senior Advocate, with
Mr. Arjun Singh, Advocate and
Mr. Akashdeep Singh, Advocate,
for the petitioner in CRM-M-54787-2021.

Mr. Keshav Pratap Singh, Advocate,
for the petitioner in CRM-M-54801-2021.

Mr. Karan Garg, Assistant Advocate General, Haryana, with
Inspector Nawal Kishore.

HARSIMRAN SINGH SETHI J. (ORAL)

CRM-2902-2022 in CRM-M-54787-2021

Present application has been filed for placing on record
representation dated 21.01.2022 and the video script as Annexures P-7 and

P-8.

Keeping in view the averments made in the application, the same is allowed and Annexures P-7 and P-8 are permitted to be taken on record.

CRM-6868-2022 in CRM-M-54787-2021

Present application has been filed for placing on record Annexures P-9 to P-11.

Keeping in view the averments made in the application, the same is allowed and Annexures P-9 to P-11 are permitted to be taken on record.

CRM-2575-2022 in CRM-M-54801-2021

Present application has been filed for placing on record the Compact Disk and transcript as Annexures P-8 and P-9.

Keeping in view the averments made in the application, the same is allowed and Annexures P-8 and P-9 are permitted to be taken on record.

CRM-M-54787-2021 and CRM-M-54801-2021

By this common order, both the petitions, the details of which have been given in the heading of the order, are being disposed of as both the petitions arise out of the same incident and the prayer of the petitioners is for the grant of anticipatory bail in respect of same FIR No.17 dated 09.12.2021 registered under Section 7 of the Prevention of Corruption Act, 1988 at Police Station State Vigilance Bureau, Gurugram.

The allegations alleged in the FIR are that a convict namely Sandeep lodged in District Jail , Narnaul was being harassed by the officials of the District Jail, Narnaul and money was being extorted from him by

extending threat that he will be put in a security cell or will be transferred to another jail in case the demands of illegal gratification are not met. The complainant, who is brother of the said convict Sandeep, has alleged that a sum of Rs.5 lacs was already extorted from him in November, 2021 by extending the threat that in case, the money is not being paid, the said convict will face inconvenience in the jail premises but despite the fact that a sum of Rs.5 lacs was paid to the accused persons, still the said convict was sent to the security cell and once again, illegal gratification was demanded so as to bring the convict Sandeep out of the security cell. Being harassed, the complainant approached the Vigilance Department, Haryana raising the said grievance and filed a complaint stating that he received a call by his convict brother on 07.12.2021, on which date the said convict was already in the security cell through which he told him that in case, another sum of Rs.1 lac is not paid, the said convict will continue to remain in the security cell. The complainant was informed by the convict during the said conversation that one of the Jail Warder either Rajan or Gaje Singh will meet the complainant outside the jail and he should be handed over a sum of Rs. 1 lac. The Vigilance Department laid a trap and on the fixed date i.e. 09.12.2021, one Warder namely Rajan met the complainant outside the jail premises, the said Warder Rajan was caught red handed with the money he received from the complainant and in the disclosure statement of the said accused Rajan, the petitioners were named stating that the money actually was meant for them and he had only collected the same on their instance.

The petitioners approached the trial Court under Section 438 of the Cr.P.C for the grant of anticipatory bail and the stand taken by the petitioners before the trial Court was that they have wrongly been roped in

the present case and they had no connection with the money which was paid by the complainant to one of the co-accused with which he was caught red handed and the petitioners have been involved for ulterior purpose. The explanation given for putting the convict Sandeep into the security cell by the petitioners was that it was done in pursuance of the order of the Jail Headquarters to lodge hardcore criminals in the security cell.

The trial Court, after considering all the facts including the factum that a proposed co-accused Warder Vivek who was later on let off the case in his statement recorded under Section 164 Cr.P.C has implicated both the petitioners wherein, he has stated that the initial money paid by the complainant stated to be Rs.5 lacs, which was paid in November, 2021, was given to one of the petitioner namely Kuldeep Singh @ Kuldeep Huda in the presence of the other petitioner namely Anil Kumar and the money was kept by them and Rs.1.30 lac, was taken out of the said bag containing money by the petitioner Kuldeep Singh @ Kuldeep Huda and given to him for buying buy sweets for inmates on the occasion of Diwali.

Learned senior counsel appearing on behalf of the petitioner Anil Kumar (in CRM-M-54787-2021) argues that though, the money amounting to Rs. 1 lac has been recovered by the Vigilance Department in the raid conducted on 09.12.2021 from the co-accused Rajan but the said money cannot be linked to the petitioner in any manner and therefore, merely that in a disclosure statement, the petitioner has been named by a co-accused cannot be treated as gospel truth so as to treat the petitioner as an accused and as the petitioner, who has unblemished service record, and is ready to join the investigation and cooperate with the same, he may kindly be extended the concession of anticipatory bail.

Similarly, learned counsel for the petitioner Kuldeep Singh @ Kuldeep Huda (in CRM-M-54801-2021) submits that the allegations being alleged by the complainant in his complaint that the petitioner was harassing the convict Sandeep and was extorting money by extending threat of sending the said convict into the security cell and thereafter, transfer him into another prison, are totally false and frivolous. Learned counsel for the petitioner further submits that even the disclosure statement of the co-accused namely Rajan and Gaje Singh as well as statement of Warder Vivek recorded under Section 164 Cr.P.C have only been made so as to implicate the petitioner, without there being any fault on his part. Learned counsel for the petitioner further submits that rather the petitioner had played no role in sending the convict to the security cell and he is being only made a scapegoat at the behest of the other petitioner and hence, the question of demand of the money for the said purpose being alleged against him, are false and frivolous and as the petitioner is ready to join the investigation and cooperate with the same, he may kindly be extended the concession of anticipatory bail.

Learned State counsel, on the instructions from Inspector Nawal Kishore, submits that keeping in view the investigation conducted so far into the allegations alleged in the FIR, enough material has been collected by the Investigating Agency to prima facie establish the role of the petitioners in the said incident. Learned State counsel further submits that through the disclosure statement of co-accused Rajan and Gaje Singh and the statement of the complainant coupled with the statement of Warder Vivek, which has been recorded under Section 164 Cr.P.C, the involvement of the petitioners in the alleged incident is prima facie established. Learned

State counsel further submits that the argument, which is being raised by the petitioners that they are not involved, cannot be believed as it has already come on record during the investigation in the form of disclosure statements of co-accused namely Rajan and Gaje Singh that they were only acting as couriers for the petitioners to collect the money as the authority to send the convict to the security cell, is only with the Deputy Superintendent of Jail, when confirmed by the Superintendent of Jail and the same is the case in respect of the transfer of a convict from one jail to another and the Warders being a class III employee have no jurisdiction for the said act, hence, in fact, the Warders, who have been caught accepting the money from the complainant, had committed the said act only at the behest of the petitioners.

Learned State counsel further submits that keeping in view the facts, which have emerged during the investigation so far, the convict Sandeep was put in a security cell in the last week of November, 2021 keeping in view the order passed by both the petitioners coupled with the fact that the said convict was made to give a call to his family on 07.12.2021 while being in security cell and purpose of the said call, keeping in view the said recorded conversation, makes it clear that the same was for delivery of the money, which act took place on 09.12.2021 wherein, a Warder Rajan was caught red handed receiving the money from the complainant, the chain of events, clearly show the involvement of the petitioners in the incident keeping in view the allegations alleged in the complaint, disclosure statement of the co-accused and statement of the Warder Vivek recorded under Section 164 of the Cr.P.C, hence, the custodial interrogation of the petitioners is necessary to elicit the truth as

well as to recover the amount, allegedly paid by the complainant on 03.11.2021 i.e. Rs. 5 lacs.

Learned counsel for the petitioner Kuldeep Singh @ Kuldeep Huda (in CRM-M-54801-2021) submits that on the date when the convict Sandeep made a call on 07.12.2021 asking his brother to bring amount of Rs. 1 lac, Kuldeep Singh @ Kuldeep Huda was not on duty and it was only the Superintendent Jail Anil Kumar i.e. one of the petitioner, who was on duty on the said date and therefore, the petitioner Kuldeep Singh @ Kuldeep Huda cannot be made to answer as to why the said call was made by the convict Sandeep asking his brother to deliver the money to the Warder so as to secure his release from the security cell and to further not transfer him to any other prison.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the allegations are very serious in nature. It is not a simple case of bribe but the allegations, if proved, will amount to systematic extortion of money from the jail inmates through harassment by the jail officials by colourable exercise of power. It is a conceded position as of now that a Warder of the jail i.e. co-accused Rajan, was caught red handed with the money which was being extorted from the complainant under threat and the said jail Warder, in his disclosure statement, has stated that he had gone to collect the money on the instructions of another co-accused Gaje Singh and was informed that the said money is meant for one of the petitioner namely Anil Jangra. Furthermore, the jail Warder Vivek has already got a statement recorded under Section 164 Cr.P.C to the effect that a bag containing money was given by the complainant Hans Raj in his

presence on 03.11.2021 to the petitioner Kuldeep Singh @ Kuldeep Huda at which time the other petitioner namely Anil Kumar was also present and the petitioner Kuldeep Singh @ Kuldeep Huda took out a sum of Rs.1,30,000/- out of the said bag and gave the same to Warder Vivek to buy sweets to be distributed to the inmates of the jail on the occasion of Diwali and rest of the money was kept by the petitioners with themselves. The said facts are very significant and the investigating agency needs a stern hand to investigate the same so as to elicit truth. It is a matter of fact that as per the jail manual, the Warders, who are working on a class III post, have no authority either to send a convict in security cell or to transfer him to another jail as the said power, according to rules, exist only with the Deputy Superintendent of Jail/Superintendent of Jail, which posts are being manned by both the petitioners.

Now the question which arise before this Court is whether, keeping in view the facts and circumstances of this case, accepting the plea of the petitioners that they should be allowed to join the investigation, will be good enough to serve the purpose of effective investigation. It is noted here that the petitioners have been changing their stance with respect to the facts of the case time and again. Before the trial Court as well as in his representation before the State authorities, the stance of the petitioners especially Anil Kumar, qua the reason for sending the convict Sandeep to security cell, was that it was done in pursuance to the orders of Jail Headquarters but when asked about the said orders purportedly issued by the Jail Headquarters and as to how the convict Sandeep was chosen to be sent to the security cell, given the limited availability of such cells, no plausible reason has been put forward even before this Court to show that

action taken was without any motive or extraneous reason.

Surprisingly today, during the hearing, a new stand has been taken by the petitioner Anil Kumar to support the action of sending convict Sandeep to the security cell which is that the convict is a known gangster and a proposal was made by the Warder to the Deputy Superintendent of Jail to send the convict Sandeep to the security cell, which proposal was considered and accepted by the Deputy Superintendent of Jail i.e the petitioner Kuldeep Singh @ Kuldeep Huda, who made the recommendation for the said action for sending the convict Sandeep to the security cell, which recommendation was accepted by the petitioner namely Anil Kumar being Jail Superintendent, hence, no fault can be found in sending the convict to the security cell. On being asked to substantiate the said stand on the basis of the record, the petitioners failed to present any record to support the said factual aspect.

Rather during the hearing, learned counsel for the petitioner Kuldeep Singh @ Kuldeep Huda has taken a contrary stand and submitted that in fact petitioner Kuldeep Singh @ Kuldeep Huda has played no role in sending the convict Sandeep to the security cell as he was only working as Deputy Superintendent (Maintenance) and the job of sending the convict to the security cell is of Deputy Superintendent (Security), which post was being manned at the relevant time by Sarwar Singh and no such recommendation was ever made by petitioner Kuldeep Singh @ Kuldeep Huda for sending the convict Sandeep to the security cell, hence, the petitioner Kuldeep Singh @ Kuldeep Huda is not at all involved in any manner in lodging the convict in the security cell.

Learned State counsel, at this stage, pointed out that the averment being raised by the learned counsel appearing on behalf of petitioner Kuldeep Singh @ Kuldeep Huda, is patently false, as the Deputy Superintendent (Security) Sarwar Singh was not on duty on the day when convict Sandeep was lodged in the security cell and in fact the said recommendation was made by the petitioner Kuldeep Singh @ Kuldeep Huda while discharging the duties of the said post, which fact can be proved from the record itself. Learned counsel for the petitioner Kuldeep Singh @ Kuldeep Huda could not deny the said factual aspect.

From the above, it is clear that the petitioners have not been honest before this Court and are changing their stance time and again so as to get the relief prayed for by them in these petitions. In order to get the discretionary relief, the petitioners have to be truthful rather than indulge in misleading the Court. The petitioners through their conduct have raised doubts in the mind of the Court with regard to their bona fides of cooperating with the investigating agency so as to elicit the truth behind the allegations, if directed to join the investigation with concession of interim bail.

Besides this, the allegations alleged against the petitioners are very serious in nature and if proven, amounts to extortion by harassing the convicts and the material which has been collected by the Investigating Agency so far prima facie shows the involvement of the petitioners, hence, keeping in view all the aspects, which have been noted hereinbefore coupled with the fact that the trail of the bribe paid by the complainant on 03.11.2021 (Rs.5 lacs) is yet to be unearthed and especially when there is another FIR being FIR No.22 dated 11.01.2022 registered at Police Station

City Narnaul, Mahendergarh against the petitioners and other co-accused in the present case, with similar allegations, the custodial interrogation of the petitioners is deemed necessary.

Hon'ble Supreme Court of India in *State represented by the C.B.I. Vs. Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, has held that in case where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail. The relevant paragraph of the said judgment is as under:-

“4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders.”

Keeping in view the above, this Court is satisfied that the

purpose of investigation can only be achieved through the custodial interrogation of the petitioners.

No ground is made out to grant the benefit of anticipatory bail to the petitioners as being prayed for. Accordingly, both the petitions are dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

February 24, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No