

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

CRM-M No.61105 of 2022 (O&M)

Date of decision: 26.12.2022

Varinder Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Nikhil Ghai, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Request for fixed today has been made and accepted.

The Registry is directed to assign the number to the case.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.107 dated 06.05.2022 registered under Sections 7/8 of the Prevention of Corruption Act and under Sections 119, 166 and 166-A IPC at Police Station Civil Lines Batala.

Counsel for the petitioner has argued that as per the allegations in the FIR, which was got registered on a direction issued by the Illaqa Magistrate exercising the power under Section 156(3) Cr.P.C. it is stated in the FIR that on 08.08.2021 and 11.08.2021, the petitioner has made some illegal demand of money from the complainant and later on, the tender was allotted on 06.09.2021. It is further submitted that at the relevant time, the petitioner was posted at Pathankot and therefore at the time when the tender was allotted, he was not in a position to give any undue favour.

Counsel for the petitioner has referred to the order of the Magistrate wherein it is observed that the complainant had approached the police to register the complaint but no action was taken by the investigating agency.

Counsel for the petitioner has referred to the complaint No.79 of 2020 filed by the complainant Harvinder Singh @ Lali under Section 156(3) Cr.P.C., wherein in the entire petition, it is nowhere mentioned that he had approached the police before filing of the complaint except that the alleged offence has taken place within the jurisdiction of Police Station Civil Lines, Batala. It is further submitted that without following the procedure under Section 154 Cr.P.C, the learned Magistrate has wrongly directed the police to register the FIR.

Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court ***"Priyanka Srivastava and another vs State of Uttar Pradesh and others"***, 2015(6) SCC 287, to submit that it has been held that the casual approach in issuing direction to register an FIR is not the correct approach as the power under Section 156(3) Cr.P.C. warrants application of judicial mind. The Hon'ble Supreme Court has also held that there has to be prior application under Sections 154(1) and 154(3) Cr.P.C., while filing a petition under Section 156(3) Cr.P.C. Counsel for the petitioner has, thus, argued that in the absence of any such application or pleading in the complaint filed under Section 156(3) Cr.P.C., the Magistrate could not have issued such direction to register the FIR.

Counsel for the petitioner has also argued that since the offence is triable by the Special Court, the Magistrate has no power

under Section 156(3) Cr.P.C., to issue a direction as even no prior sanction to prosecute the petitioner was granted by the competent authority.

Counsel for the petitioner has also relied upon the judgment “*Vasanti Dubey vs State of Madhya Pradesh*”, 2012(2) SCC 731, wherein it has been held by the Hon’ble Supreme Court that in the absence of any sanction of prosecution for offence under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, the Special Judge could not direct further investigation after the police has not registered the FIR. Counsel for the petitioner has also submitted that in the instant case, the complainant never approached the Special Judge/Designated Court under the Prevention of Corruption Act and has approached the Illaqa Magistrate, who had wrongly assume the jurisdiction under Section 156(3) Cr.P.C., without there being any prior sanction by the Government.

Lastly, counsel for the petitioner has argued that there is some recording of the petitioner with the complainant and the petitioner is ready to give his voice sample to find out the truth with regard to the allegations.

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab who is present in the Court accepts notice on behalf of the respondent – State and could not disputed the factual position.

After hearing the counsel for the parties and going through the allegation in the complaint filed under Section 156(3) Cr.P.C. wherein the compliance of Section 154 Cr.P.C. is missing and also in

view of the fact that the complaint was filed not before the Special Judge or the Designated Court and rather before the Illaqa Magistrate that too without any prior sanction to prosecute the petitioner and considering all these facts to be a matter of trial, this petition is allowed and the petitioner is directed to appear before the Investigating Officer within a period of 15 days to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the conditions envisaged under Section 438(2) Cr.P.C.

The petitioner will give the voice sample to the Investigating Officer and in case, he failed to do so, it will be open for the Investigating Officer to apply for cancellation of bail.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

26.12.2022
yakub

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