

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1907-2023

Date of decision : 07.11.2023

HARKANWALJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shakti Bhardwaj, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Sehajbir Singh, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0259 dated 26.12.2022 (Annexure P-1) registered under Sections 409 and 120-B IPC, 1860 at Police Station City Kotkapura, District Faridkot.

2. The present FIR came to be registered on the statement of the Assistant Engineer, PSPCL, Jaswinder Singh Pawar, Central Store Kotkapura who stated that he was posted as SDO Central Store Kotkapura. Harkanwaljit Singh UDC/Store Keeper (petitioner) used to work under him (complainant). An inspection of some store materials had taken place on 05.12.2022 in the presence of Harkanwaljit Singh. In the said inspection, ACSR Conductors (Weasel, Raccoon and Rabbit)

were found short by around 73 Kms. When the record was inspected, it was found that tampering had been done with the drum numbers and their lengths of the conductors so that the length of the conductors could be shown more than the actual length. He (complainant) had prepared an SVR on the spot which had been signed by the petitioner. It was the petitioner being the head store keeper who was directly responsible for the shortages in the physical stock as compared to the actual stock and for tampering with the drum numbers and their lengths. Further, after his transfer from the office, he (petitioner) had misused his power/authority to manage and adjust the shortages, himself uploaded/made online the SVR No.001 to 0011 dated 05.12.2022 without getting the checking done from the office and without the authorization of higher officials on his own. ICTs were issued in large numbers along with challans without authorization of higher officials and items had been sent to other stores in an unauthorised manner whereas the items did not reach those stores. The said items had been usurped by the petitioner in connivance with the other people. Higher officials had been informed regarding the said shortages and they had formed a Committee to look into the matters of shortages and as per the inquiry so done by the Committee, the petitioner had shown shortages of material worth Rs.64 lakhs and further checking was underway. Thus, the petitioner had misused his powers and legal action was to be taken against him.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He had an unblemished service record for the last 10 years. He had made multiple

complaints regarding the poor status of the boundary wall etc. However, the complainant who was the actual store in-charge and Beant Singh, Additional Superintending Engineer had not taking any action on the said complaints. It was the officials namely, Jaswinder Singh and Beant Singh who were responsible for any shortage found in the stock. As the case was based on documentary evidence and the department already had the entire record and had revoked his suspension, no case for custodial interrogation was made out and he was therefore, entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel contends that the FIR had been registered on the basis of an inquiry. Subsequent to the registration of the FIR, a detailed inquiry had taken place in which it had been clearly found that the petitioner had defalcated a huge amount by misappropriating the material of PSPCL. He had issued challans to show that the material had been despatched to Moga but that material which have been withdrawn from the storage had in fact, never reached Moga. Despite multiple opportunities to explain his position, the petitioner had failed to satisfy the authorities. Thus, he had been completely non-cooperative during the departmental inquiry. As the office was *prima facie* established, the misappropriated property of PSPCL was to be recovered and the investigation was to be taken to its logical conclusion, the petitioner was not entitled to the concession of anticipatory bail.

5. The learned counsel for the complainant has placed on record an Inquiry Report dated 20.03.2023. While referring to the said report, he contends that the offence stands established beyond

reasonable doubt. It has been found that the material on a large scale at the Central Store, Kotkapura had been misappropriated by illegally using the deficiencies in the online Store Transaction Module of PSPCL and by manipulating the stock material record. The shortage was in excess of about Rs.1,15,00,000/-. He contends that in the order dated 13.01.2023 passed by this Court whereby the arrest of the petitioner was stayed, it had been wrongly mentioned that the petitioner was to appear before the departmental authorities on 16.01.2023 to explain his version in the present case whereas in fact, the petitioner was to appear before the authorities on 16.01.2023 with respect to another issue as was apparent from Annexure R2/1. As the offence had been *prima facie* established, necessary recoveries were to be effected from the petitioner and the investigation was to be taken to its logical conclusion, the petitioner was not entitled to the grant of anticipatory bail.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** 2022 Live Law (SC) 870 held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent

No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to***

decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

8. In the reply dated 26.03.2023 by way of an affidavit of Shamsheer Singh, PPS, Deputy Superintendent of Police, Sub Division Kotkapura, it has been stated as under:-

“4.The further investigation established the petitioner was entrusted the duty of store incharge of central storage, Kotkapura vide Order dated 27 dated 21-12-2016, whereby he was declared the overall incharge of material at sight. The misappropriation of stock is huge and thereby loss caused to the department is very high. During stock verification by committee, the petitioner was issued letter no.1511 dated 06-12-2022 and letter no.1514 dated 07-12-2022 whereby he was categorically directed to remain present at the site to co-operate with the stock verification but he took leave through Email on 07-12-2022 but when he came on duty on 08-12-2022 then he refused to sign the SVR prepared by committee. In order to misappropriate the material of PSPCL, he issued challans of material outlet store to Moga and petitioner made entry in his record of stock transferred but that material which was withdrawn from storage was never reached at Moga. After some time a return challan was issued from Moga to Kotkapura store but material was never deposited. An explanation was called from petitioner vide letter no.1595 dated 19-12-2022 but he failed to satisfy the authorities.”

9. The relevant extract of the Inquiry Report dated 20.03.2023 is as under:-

“In respect of the above, as per the directions given by the Director/Commercial at CP/118, in compliance of the instructions given in this office order No.11 dated 16.01.2023 (CP-111), the committee has thoroughly perused the record and the report. The Controller of Stores and Disposal (North) Ludhiana and (South) Patiala has submitted the report from noting page No.134 to 167, which may kindly be perused.

During the till date verification of the material (stock and scrap) in Central Store Kotkapura, shortage of Rs,96,91,095/- in 45 number of items and the excess of Rs.17,45,021/- in 69 number of items has been found, in respect of which the particulars has been mentioned at noting page No.65 and the detail is at CP-93.

The excess-shortage of the material at large scale in Central Store, Kotkapura was being concealed by illegally using the deficiencies in the online Store Transaction Module of PSPCL, by manipulating the stock since long and the material was being misappropriated. In this regard, I.T. wing has been written for immediately implementing the suggestions given by the Committee Members (S.No.114 and to include in the E.R.P. module and the work of software development is in progress, which will be complete very shortly and will be implemented.

In view of the inquiry conducted by the Committee, the irregularities/negligence committed by the officials and officers have been mentioned at noting page No.134 to 167 in a tabulated form. By virtue of the negligence/irregularities committed by the officials and officers, the following punishment is proposed:

<i>Sr. No.</i>	<i>Name of the official/ designation/ father's name/I.D. No./date of birth/date of retirement/present place of posting</i>	<i>Proposed punishment</i>
1.	<i>Sh. Harkanwaljit Singh, Upper Division Clerk/Store Keeper, ID No.308800 (now under suspension)</i>	<i>It is proposed for the issuance of charge sheet and in future for posting at a non-public dealing and non- financial wing and outside store/workshop wing.</i>
2.	<i>Sh. Jaswinder Singh Pawar, AEE/Store Incharge, I.D. No.267189</i>	<i>It is proposed for the issuance of charge sheet and for the transfer from outside store/workshop wing.</i>
3.	<i>Sh. Sher Mohammad, AEE/Store Incharge, ID No.266890</i>	<i>It is proposed for the issuance of charge sheet and for the transfer from outside store/workshop wing.</i>
4.	<i>Sh. Himanshu Joshi, Upper Division Clerk/Store Keeper, ID No.308799</i>	<i>It is proposed for the issuance of charge sheet and for the transfer from outside store/workshop wing.</i>
5.	<i>Er. Sheetal Kumar Bansal, A.E. now A.E.E. Code No.110214</i>	<i>It is proposed for the issuance of charge sheet.</i>
6.	<i>Sh. Vijay Kumar, LDC/Store Keeper, ID No.336928 (now under suspension)</i>	<i>It is proposed for the issuance of charge sheet and for the transfer from outside store/workshop wing.</i>
7.	<i>Er. Daljit Singh, Additional Superintending Engineer, Code No.105906</i>	<i>Show cause notice</i>
8.	<i>Er. Rajinder Kaur Gill, Additional Superintending Engineer, Code No.107744</i>	<i>Show cause notice</i>

9.	Er. Beant Singh, Additional Superintending Engineer, Code No.107562	Warning letter.
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As per the opinion mark ‘A’ of the Inquiry Committee at noting page 167, by virtue of exposing the matter by Er. Beant Singh, Additional Superintending Engineer, lenient view has been taken against him.

For dismissing the employees of PESCO, action has already been initiated by the concerned C.O.S.

The file is submitted as per the above, please.

Sd/-

*Chief Engineer/Stores & Workshop
Director/Commercial*

The undersigned agreed with the report as per ‘X’ (NP-168/169). For consideration and approval, pl.

Sd/- 16.03.2023

(Er. Ravinder Singh Saini)

Director/Commercial, PSPCL”

10. A perusal of the aforementioned facts would clearly establish that *prima facie*, it is the petitioner who is liable for having defalcated material (stock and scrap) from the Central Store, Kotkapura to the extent of approximately Rs.1.15 crores. Therefore, the offence stands *prima facie* established against him. Even otherwise, as the the recovery of the material is to be effected from the petitioner and the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.
11. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

12. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

**(JASJIT SINGH BEDI)
JUDGE**

07.11.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No