

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-8480-2023 (O&M)
Reserved on: 06.11.2023
Pronounced on: 20.11.2023

Dharampal

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Varun Baanth, Advocate
for the petitioner(s).

Ms. Shubhra Singh, Addl.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
26	21.10.2022	SVB Hisar, District Hisar	7A of the Prevention of Corruption Act (for short, "the PC Act") and Section 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. The state’s counsel opposed the bail. He has submitted that although voice samples of the petitioner have been obtained, but simply because of that, it is not a case for bail considering the heinous nature of allegations and the effect it can cause on selling prior information on results that are yet to be published after the selection process.
4. Facts of the case are being taken from the reply dated 18.5.2023 filed by way of affidavit of Dy.S.P., Anti Corruption Bureau (H), Hisar, which read as under: -

“[2]. That the brief facts of the case are that in compliance of direction of the Chief Secretary Govt. to Haryana vide memo No. 15/9/2021-2 Vigilance-1 dated 03.02.2022, a Vigilance enquiry bearing No. 01 dated 09.02.2022 was registered by the State Vigilance Bureau, Haryana, Panchkula vide Endstt. No. 2124/I-1/SVB(H) dated 10.02.2022 on the complaint of complainant Mukesh Kumar S/o Sh. Ram Chander, R/o H. No. 500, Gali No. 4

Mela Ground, Begu Road, Sirsa alleging therein that he had passed out the examination of Assistant Manager (Utility), applied vide advertisement No. 14/2019, under roll No. 1419800117 by the Haryana Staff Selection Commission, Panchkula. The result of the same was declared on 07.10.2021.

That on 13.10.2021 two unknown persons came to the house of complainant at Sirsa in his absence they demanded Rs. 15,00,000/- (Fifteen Lakhs) from his family members for recruitment of the said complainant on the post of Assistant Manager (Utility). They have full details regarding his credentials which were supposed to be available only with the Haryana Staff Selection Commission, Panchkula. They asked them to give Rs. 2 Lakhs on 21.10.2021 i.e. on the date for verification of documents and remaining amounts of bribe was to be paid later on. They (two unknown persons) addressed themselves as agents of Haryana Staff Selection Commission and claimed to be involved in proceedings of said appointment. They provided their mobile No. 9215200000 but refused to tell their names. They also challenged his family member to the extent that without the said demanded bribe, it is impossible to get this job. Sister of complainant recorded all these conversations between these two persons in her mobile phone and he (complainant) asked legal action against those unknown persons.

That during course of enquiry, with the help of CAF ID and CDR of mobile No. 9215200000 given by the petitioner to the family member of complainant, it was found that accused/petitioner Dharampal and other co-accused Om Parkash S/o Ram Partap R/o Village Gangwa Distt. Hisar were those. unknown person who went to the house of complainant and demanded Rs. 15,00,000/- from his father for getting the complainant appointed on the post of Assistant Manager (Utility).

As such a case FIR No. 26 dated 21.10.2022 u/s 120-B IPC & 7A PC Act, PS, SVB (Now ACB), Hisar registered against the petitioner and other co-accused.

[3]. That during course of investigation of the above said case, the conversation between the accused and family members of complainant regarding demand of bribes for appointment of complainant on the post of Assistant Manager (Utility) was transcribed into writing. The true translated copy of the same is annexed as **Annexure R-1."**

5. As per the allegations, two persons, whose names were later found to be Dharampal (petitioner) and Om Prakash, allegedly went to the house of the complainant and demanded Rs.15,00,000/- for the appointment of the complainant as Assistant manager (Utility). On 21.10.2021, they asked them to give Rs.2,00,000/- i.e., on the date of verification of documents, and the remaining amount was to be paid after the selection. The complainant had recorded the conversation between the accused and his family members regarding the alleged demand for a bribe for the appointment, and its transcript is annexed with the reply, which I have read.

6. Petitioner seeks bail, firstly on the ground that no offence under Section 7A of the Prevention of Corruption Act could be constituted against the petitioner because the

petitioner was not a public servant, and furthermore, the complainant was selected for the job on merits, which would show false implication. Petitioner's counsel submits that the allegations are that two unknown persons, of which the petitioner was allegedly one of them, claiming themselves to be agents of the Haryana Staff Selection Commission, demanded illegal gratification from the complainant's family. However, there is no evidence that public servants were involved, so that no offence would be constituted under Section 7A of the Act.

7. This argument assumes that no public servant has been arraigned as an accused in the present case. It would be relevant to refer to Section 7A of the PC Act, which reads as follows: -

“7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.--

Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine

8. A perusal of Section 7A of the PC Act reveals that the provision of Section 7A does not require that a person who commits an offence under the Prevention of Corruption Act must be a public servant. It can be any person who takes undue advantage to induce a public servant by corrupt or illegal means. The Investigator has already added criminal conspiracy as one of the offence, and further investigation is required to find out that in actual, any public servant was induced by the accused or such a public servant had conspired to do so by corrupt or illegal means or by the exercise of their personal influence to perform or to cause the performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant.

9. On the face of the allegations, not only an offence under section 7A of the PC Act is made out, but even an offence under section 420/511 IPC is apparent. Simply because, as of date, the investigators did not add it would not imply that this court should ignore it. Even otherwise, there is sufficient evidence of conspiracy.

10. Although the offence under Section 7A of the PC Act and Section 120-B IPC, on the face of it, is made out, but the ingredients of Sections 420/511 IPC, which may also be attracted. It is for the Investigator to investigate this aspect and do the needful. As such, in the facts and circumstances peculiar to this case, the argument of the

servant is not legally tenable.

11. The *modus operandi* is two-fold. Firstly, suppose the complainant gets the job on his merit. In that case, they will claim that he had got the job because of their efforts, or they may have been using their resources for complainant's appointment and they want to extract money from the complainant, for which custodial interrogation of the petitioner is required. Secondly, the accused had a source who had apprised them about the petitioner's name in the selection list, and they wanted to extract money by inducing the complainant's family to pay bribe for a job he already got on merits. To unearth the whole truth, custodial investigation of the petitioner is required.

12. It is undisputed that the complainant was selected for the job for which the petitioner and his accomplice had contacted the complainant's family to pay the bribe. An investigation is required to find out whether someone already knew about the result and then conspired with the accused to get money taking advantage of the advance knowledge of the complainant's selection? Suppose this part of the investigation finds some evidence, in that case, an investigation also needs to be conducted to determine whether the Haryana Staff Selection Commission employees were involved, and such a possibility cannot be brushed aside outrightly for which petitioner's custodial interrogation is required to unearth the den. The sly way the petitioner and his accomplice(s) wanted to con the complainant points out the dangerous trend of the revival of *thuggee* by revisiting the history.

13. The next arguments on behalf of the petitioner are that there is a delay of one year in registering the FIR, and the complainant paid no bribe. He further submitted that voice samples of the petitioner have already been taken, and the petitioner has also joined the investigation ten times, ranging from 5 to 10 hours; thus, no custodial interrogation of the petitioner is required. In support of his case, the petitioner's counsel has referred to judgments of this Court in the cases of Daljit Singh v. State of Punjab, CRM-M-26656-2017; Bijender Singh v. State of Haryana, CRM-M-8268-2018; and Gurkamaljit Singh @ Sharpy v. State of Punjab, CRM-M-41479 of 2021.

14. Given the serious nature of allegations, it is not a case for anticipatory bail. As far as the judgments of this Court in the cases of (*supra*) cited on behalf of the petitioner are concerned, the same are on different parameters and are not attracted to the facts and circumstances of the present case.

15. In State of Gujarat v. Mohanlal Jitmalji Porwal (1987) 2 SCC 364, Supreme Court holds,

[5].The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A

disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

16. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Supreme Court holds,

[6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented 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. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.

17. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

18. In Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, Supreme Court holds,

[34]. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

[35]. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses

being tampered with, the larger interests of the public/State and other similar considerations.

19. In P. Chidambaram v. Directorate of Enforcement, 2019 9 SCC 24, Supreme Court holds,

[70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

20. In Central Bureau of Investigation v. Santosh Karnani, Cr.A 1148 of 2023, dated 17-04- 2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

[24]. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

[31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

21. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner

fails to make a case for anticipatory bail.

22. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. All orders of interim bail are recalled. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

November 20, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes