

205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27083-2023 (O&M)

Date of Decision: 02.06.2023

RASHIM GARG

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl. A.G., Punjab with
Mr. Sanjeev Soni, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner seeks grant of regular bail in case bearing FIR No.01 dated 16.02.2023 registered under Sections 7, 7(a) of the Prevention of Corruption Act, 1988 (as amended by P.C. (Amended) Act, 2018) and under Section 120-B IPC at Police Station Vigilance Bureau, Bathinda, District Bathinda.

[2]. Co-accused Amit Rattan has been granted regular bail by this Court vide order dated 22.05.2023 passed in CRM-M No.20607 of 2023. The factual details of the case as recorded in the said order from para nos.2 to 4 are reproduced hereasunder so as to avoid repetition of facts:-

“[2]. The FIR in question has been registered on the

statement of Pritpal Kumar, who has alleged that his wife is Sarpanch of the village Ghudda since 2019. His wife has got different development works done in the village. In these development works, the Panchayat has purchased goods from different firms, but payment has not been released for the material used in the development works. The complainant and his wife have met the BDPO Sangat and employees of concerned departments on many occasions, but payments have not been released to the concerned firms. Due to aforesaid in-action, new work could not be started for want of payments to the firms as no firm is ready to give any material to the Panchayat on credit basis. The complainant and his wife met the petitioner for getting the payments made to the firms, so that new development work could be started. The petitioner was made aware about the pending payments and pending development works in the village. The Panchayat has money in its account for making these payments, but the BDPO Sangat is not issuing the cheques for these payments intentionally as the wife of the petitioner has not given any bribe to the aforesaid officer. The complainant further submitted that the officials of the department are harassing the petitioner and his wife. Other works could not be started as the officials have not assigned any duty for making the assessment. The petitioner on hearing the grievance of the complainant, asked him to come again and they would sit and discuss the issue alone. The complainant is alleged to have met the petitioner alone in a room in the circuit house, Bathinda in October 2022, where the petitioner and Rashim Garg were present in the room, whom the complainant knew beforehand and who is private P.A of the petitioner, who used to supervise the whole work of the petitioner. The complainant requested them in

respect of pending payments of development works in the village. The petitioner asked the complainant as to how much amount is due and how much amount is lying in the Panchayat fund. The complainant told the petitioner and Rashim Garg that about Rs.25 lacs are lying in the Panchayat fund and bills of around Rs.12-13 lacs are pending to be paid to the firms. The petitioner assured the complainant that he will get the payment of these bills done from the BDPO Sangat on the condition that the complainant will have to give them an amount of Rs.5 lacs as bribe in lieu of the work. The complainant did not want to say yes, but due to compelling circumstances, he had to say yes for giving bribe to the aforesaid persons in order to get the payments released in favour of the firms as the firms were raising demand for their payments time and again. The petitioner asked his private P.A Rashim Garg to call BDPO Sangat to the circuit house. Before the BDPO came there, the petitioner asked the complainant to do the transaction with his P.A Rashim Garg only. He told the complainant that he is his private P.A so the complainant should pay the money to him and he will transfer the same in favour of the petitioner. In the meanwhile, BDPO reached there and the petitioner asked the BDPO to make the payments of pending bills of the Panchayat immediately and also told him that whatever the Sarpanch says, the work to be started immediately. The petitioner also told the BDPO that in future, he will not create any hurdle in any work and he can take share directly from Rashim Garg and he will take care of all. The complainant went back and after some days, the complainant got a call from Rashim Garg, asking him whether the payment of money has been made or not. The complainant told him that till now, the Junior Engineer has not come to take assessment of the

works done by the Panchayat. Rashim Garg replied to the complainant that he will call him after talking with the BDPO. After some time, Rashim Garg told the complainant that JE is coming to the village for doing the assessment work. He asked the complainant to get their payment made. Satwinder J.E came to the village in the evening and made the assessment of the work done by the Panchayat in the village and after some days, payment of around Rs.6 lacs was released by the BDPO Sangat to different firms. About 2-3 payments were kept pending intentionally by BDPO. The complainant made Rashim Garg aware in person as well as telephonically. Rashim Garg used to tell that their share is of about Rs.1.5 lacs and payment of the same be made first and then only he will get the balance amount released. The complainant did not want to give bribe, therefore, he delayed the matter time and again. Rashim Garg called upon the complainant through whatsapp few days back in this regard to give amount of bribe as the petitioner is getting angry because of non-payment of his share. The complainant asked Rashim Garg to tell when the petitioner will come to Bathinda as he would come to meet the petitioner. On 09.02.2023, Rashim Garg called upon the complainant and told him that the petitioner has come to Bathinda and the complainant can come to the house of the MLA next morning. On the next day i.e. 10.02.2023 at about 8:30 AM, the complainant went to the house of the petitioner where Rashim Garg was also present. The petitioner met the complainant and they sat in the room. When the complainant requested the petitioner to get the payment released for the work done, then the petitioner and Rashim Garg asked the complainant to give them Rs.5 lacs as committed by the complainant. The complainant told them that only an amount of Rs.7-8 lacs

have been released, then they asked the complainant to pay the share of Rs.1.5 lacs out of payment of Rs.7-8 lacs on that very day. The complainant requested them to get the payments of all the work done and gave them false assurance for making payment of Rs.5 lacs on Tuesday, but the petitioner asked him to pay Rs.3 lacs in the evening, then they will get the payments released of all the pending amounts. Out of compulsion, the complainant made promise regarding Rs.2 lacs on 10.02.2023 and came back home. The complainant had done the recording of all the conversations in the recorder. On his return, Rashim Garg again called him in the evening, asking him as to why he did not visit him. The complainant out of compulsion, arranged Rs.50,000/- and gave it to the petitioner and Rashim Garg and made false promise for making payment of the balance amount on Tuesday or Wednesday and thereafter, went back home. The complainant further alleged that Rashim Garg had already taken Rs.2.5 lacs from the complainant for appointing S.C Namberdar Gurdas Singh in the village. The complainant was delaying the payment of bribe despite the payment made by them. With these allegations, the FIR in question came to be registered.

[3]. Thereafter, a trap was laid and Rashim Garg was apprehended. Dr. Parampal Singh, Polyclinic, Bathinda and Dr. Devraj, Polyclinic, Village Ghudda were associated and their introduction was done with the complainant and were joined in the raiding party. 200 notes of Indian currency of denomination of Rs.2000/- with specific numbers were produced before the police and powder phenyl pathalyn was applied upon the notes and handed over the aforesaid notes laced with powder to the complainant with the instructions that when Rashim Garg will demand for the

bribe, then he must give powder laced currency notes to him and the petitioner. The proceedings were initiated, whereupon the complainant and official witnesses Dr. Parampal Singh, Polyclinic, Bathinda and Dr. Devraj, Polyclinic, Village Ghudda appended their signatures and the DSP attested the same. As per trap, the complainant and official witnesses were given appropriate instructions and they were made to depart towards circuit house, where DSP along with raiding party kept on waiting for the signal. Thereafter, the complainant and official witnesses went inside the circuit house. After some time, official witness namely Dr. Parampal Singh, Polyclinic, Bathinda gave the signal by swirling his right hand over his head to the raiding party, then DSP along with the raiding party reached near the shadow witness and witness Dr. Parampal Singh, Polyclinic, Bathinda told the DSP that the amount of bribe has been received from the complainant by a person sitting in white coloured Creta car bearing No.PB-11-DB9860. The person driving the Creta car took out the vehicle from the circuit house, then DSP intercepted the vehicle and stopped the vehicle and signaled the person driving the vehicle to come out. The person driving the vehicle came out. In the presence of the raiding party, DSP asked for his introduction, then he disclosed his name as Rashim Garg. On being asked, Rashim Garg told the raiding party that the amount received from the complainant was lying towards the window of driver seat. The security personnels were deployed near the vehicle and Rashim Garg was asked the reason for coming to the circuit house and then he told that he is private PA of MLA/petitioner. On being asked, Rashim Garg told that the MLA is sitting inside the circuit house in room No.1. Thereupon, the DSP along with the raiding party and Rashim Garg went inside the room in the circuit

house, where the petitioner and a person wearing a turban were sitting, who was his personal P.A. Ranbir Singh. DSP asked the petitioner as to whether Rashim Garg is his private P.A, then the petitioner/MLA told that he knows Rashim Garg personally, but he is not his P.A.

[4]. In the presence of the witnesses, DSP poured water in clean glass and mixture of sodium carbonate was prepared. When in the said mixture, fingers of both the Government witnesses got washed turn by turn, then colour of mixture did not change. In this mixture, fingers of Rashim Garg were got washed turn by turn, then the colour of the mixture turned light pink. The mixture was put in a quarter bottle by the DSP and sealed with his seal and the mixture was taken into police possession. The witnesses also signed the same. Thereafter, DSP along with Rashim Garg and Government witnesses reached near the Creta Car and in front of the witnesses, Rashim Garg took out the bribed amount from the driver side window from the place meant for keeping water bottles. Since there was rush of people, therefore, faced with the difficulty, matching of notes could not be done there and they went inside the room of circuit house for doing the needful.”

[3]. Learned Senior counsel for the petitioner submitted that Section 7 of the Prevention of Corruption Act is not attracted qua the petitioner and the involvement of the petitioner on the basis of Section 7-A of the Act would remain debatable. The petitioner was arrested on the date of registration of the FIR on 16.02.2023. The challan has already been submitted on 10.04.2023, however the charges have not been framed so far.

[4]. With reference to the recovery, learned Senior counsel for the petitioner submitted that the petitioner was not PA of the MLA and this fact has come on record in the statement of Amit Rattan. As per prosecution case, the car was stopped outside the circuit house and thereafter some security personnels were deputed to guard the vehicle in question. Sub-Inspector Varun Yadav along with Constable Mehma Singh and Constable Gurmeet Singh were deputed to guard the vehicle when the raiding party went inside the circuit house. Perusal of challan would indicate that Mehma Singh has not been cited as prosecution witness. The statement of SI Varun Yadav recorded under Section 161 Cr.P.C. would give the following reading:-

“Bian SI Varun Yadav office daily Bathinda, Mb. No.9464303908 Mutalka Suit No.01 dated 16.02.23 No.7A PC Act 1988 as amended by PC (Amendment) Act 2018 against Ramish Garg son of Ashok Kumar resident of Samana District Patiala No.161 Cr.P.C.

Stated that I am stationed at the office, Raj Bathinda. Today, Jasbir Singh, Panchayat Secretary, Block Sangat came to the office and gave you a photo of the certified document regarding the payment of Rs. Copies of 36 pages and Cheque No.304867 dated 10.02.2023 amounting to Rs.52,500/- to Sukhmani Enterprises and Bank for payment made for renovation of saline well of Gram Panchayat Ghuda, repair of water tank and main iron gate of Community Setter No.304874 dated 10.02.2023

amount Rs.63,395/- which G.S. 8 pages including photocopies of attested documents issued to the Agri Works Firm and the attested account of Panchayat Ghuda's HDFC Bank account number 50100328308856 out of which the said amount of Rs.7,82,178/- was paid. The statement presented a total of 2 pages, a total of 46 pages, which was taken into custody by the police through the record of the payment made by Fard Peshkardag' village Ghuda development works. I have written a statement to you. I have read and heard it correctly.

*Deputy Captain
Police Vigilance Bureau, Punjab
Bathinda Range, Bathinda
Dated 17.02.23"*

[6]. Statement of Gurmeet Singh recorded under Section 161 Cr.P.C. would remain debatable as has been observed in the order dated 22.05.2023 also. After getting the hand wash done in the circuit house, the raiding party came out of the circuit house and thereafter proceeded to recover the tainted money from the car itself at the instance of the petitioner. As against the offer of Rs.2 lakhs by the complainant, an amount of Rs.4 lakhs has been recovered from the petitioner.

[7]. Learned State counsel on instructions from SI Varun Yadav opposed the bail on the ground that the ingredients of the offence under Section 7-A of the P.C. Act are fully satisfied. The recovery has been effected from the car. Admittedly the petitioner was driving the car and his voice

sample has the matching configuration on being subjected to the FSL.

[8]. At this stage, the complicity of the petitioner would remain debatable and the same can only be tested on the basis of quality of evidence to be produced by the parties during trial. The petitioner is in custody for the last about more than 3½ months. The challan has already been submitted. The charges have not been framed so far. The trial of the case may take some time in its culmination.

[9]. Taking into entirety of the facts and circumstances of the case and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

[10]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/CJM/concerned Duty Magistrate.

[11]. Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

June 02, 2023

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No