

**108(2) IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM M-33212-2023 (O&M)
Date of Decision: 06.10.2023**

Sanjay Sharma

.....Petitioner

Versus

U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. P.K. Chugh, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, APP UT Chandigarh
assisted by Inspector Kirpal Singh.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure (for short “Cr.P.C”) for grant of bail pending trial in FIR No. 24 dated 18.02.2023 under Sections 420, 467, 468, 471 & 120-B of Indian Penal Code, registered at Police Station Central, Sector 17, Chandigarh.

2. Above FIR was registered on the basis of written complaint made by Sh. Sunil Dutt, Superintendent Parking, Municipal Corporation, Chandigarh (for short ‘Corporation’) with the allegations that M/s Pashchatya Entertainment Pvt. Ltd., 2533, Punjabi Basti, Old Subzimandi, Delhi 110009 (for short ‘Company’) had been allocated tender on 23.01.2020 for Operation & Management of 57 paid parking sites in Chandigarh for a period of three years.

As per the terms & conditions of the contract, three bank guarantees from Syndicate Bank (Now Canara Bank) amounting to Rs.1,65,33,333/- (Rs.55,11,111/- each) were furnished by the Company. Apart that, the

Company deposited 36 post-dated cheques for recovery of penalty amount in

case of any default. On 28.01.2020, the Corporation sent a letter to the Branch Manager of the Bank at Delhi for verification of the above bank guarantees. In response thereto, a communication dated 15.02.2020 was received from the Bank, confirming that all three Bank Guarantees were duly issued by their Branch.

On account of failure to pay the monthly instalments running into about Rs.7 crore, the bank guarantees were presented for encashment by the Corporation on 03.02.2023, but on verification of the records, the Bank, vide email dated 17.02.2023, intimated that no such bank Guarantees have been issued by their Branch and declined to honour the same.

Even the Cheque No. 207039 presented by the Corporation for recovery of penalty amount was returned by the Punjab National Bank on 15.02.2023 with the remarks that “*Bank Merged*”.

CONTENTIONS

3. On behalf of Petitioner

3.1 Contended that petitioner is one of the Directors of the Company. In the month of October, 2019 one person, namely, Mr. Anil Kumar Sharma pretending to be an Advocate allured the petitioner that he is having close contacts with the Commissioner of Corporation and believing the same to be true, he entered into a Memorandum of Understanding with M/s Tenaga Parking Services Pvt. Ltd for participating in the tender.

3.2 While referring to complaint dated 07.01.2022 (P-2) made against aforesaid Anil Kumar Sharma to Director General of Police, Chandigarh, contended that in fact, petitioner himself is a victim, but till date, no action has been taken in the matter.

3.3 Also contended that said Anil Kumar Sharma was authorised to sign as well as operate the Current Bank Account No. 90451410000014 on

behalf of the Company and he was given a free hand to employ the requisite staff.

3.4 Also contended that petitioner was surprised to know that Anil Kumar Sharma along with directors of M/s Tenaga Parking Services (India) Pvt. Ltd., namely, Amarjit Singh, Maninder Singh Sawhney, Ajit Chahal & other persons had hatched a conspiracy by forming a new company in the name of M/s Pashchatya Entertainment Parking Services Pvt. Ltd. Even a new bank Account No. 50200056243822 was also opened with HDFC Bank, Gulabi Bagh, Delhi having no concern with the Company.

3.5 Further contended that Corporation was well informed by the petitioner about the fraudulent and mischievous acts of said Anil Kumar Sharma by way of an email dated 16.05.2022 (P-1), but no action was taken by the quarter concerned.

3.6 Again contended that report under Section 173 of Cr.P.C, has already been presented before the Court of competent jurisdiction; petitioner is in custody since 07.03.2023; thus, no useful purpose would be served by keeping him behind the bars in a case, which is triable by the Magistrate.

4. On Behalf Of U.T

4.1 While opposing the prayer of the petitioner learned counsel for U.T contended that petitioner being Director of the Company was managing its affairs; but with pre-conceived intention played a fraud with the Corporation while furnishing three forged bank guarantees to the tune of Rs.1,65,33,333/- (Rs.55,11,111/- each).

4.2 Also contended that on the basis of complaint received from the petitioner, SIT, headed by Ms. Niyati Mittal, DSP (Economic Offences Wing) has already been constituted on 17.08.2023 and matter is still under investigation.

4.3 Also contended that although, the Police have collected sufficient material for complicity of the petitioner; but in view of the gravity of offence, now the Central Bureau of Investigation (for short “CBI”) has taken over the matter and investigation is going on. Thus, releasing the petitioner on bail, at this stage, would certainly hamper the prosecution case as well as fair investigation.

4.4 As the bank account of the Company has already been declared as NPA and its financial condition is very poor, having no fixed assets for recovery of the alleged amount of Rs.7 crore. Thus, in these circumstances, it is a matter of thorough investigation as to how the Company managed to secure the Solvency Certificate, which was the very basis for awarding the Contract.

4.5 Also contended that the Company was having no experience for maintaining the parking sites, but just to swindle the parking fee worth crores of rupees collected from the general public, managed to procure the Contract and all these material facts are to be properly investigated by the Central Agency.

5. Heard learned counsel for the parties and perused the paper book.

6. As per prosecution case, contract for Operation & Management of 57 parking sites in Chandigarh was awarded to the Company on 23.01.2020 for a period of three years. In pursuance of the terms & conditions of contract, the Company furnished three bank guarantees for an amount of Rs.1,65,33,333/- (Rs.55,11,111/- each). The period of contract started w.e.f. 23.01.2020. It was agreed between the parties that monthly fee of Rs.45,92,592/- shall be paid by 7th day of every month. Initially, the Corporation through letter dated 28.01.2020 sought verification of the three bank guarantees from the Bank at New Delhi, which were confirmed by the Branch vide letter dated 15.02.2020.

However, consequent upon default of the Company in making the monthly instalment, all three bank guarantees were presented for encashment by

the Corporation; but the Bank, vide communication dated 14.02.2023, informed that no such bank guarantees were ever issued by their Branch and relevant part of the letter reads as under:-

*“To
The Commissioner,
Municipal Corporation
Chandigarh*

Dear Sir/Madam

We are in receipt of your request for invocation of Bank Guarantees of M/s Paschatya Entertainment Pvt. Ltd. As mentioned below.

<i>Bank Guarantee No.</i>	<i>Amount (In Rs.)</i>	<i>Date of Issuance</i>
<i>13/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>
<i>14/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>
<i>15/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>

On verification of records, it has been observed that no such bank guarantee has been issued from our Branch. Hence, we will not be in a position to honour your request for invocation.”

7. On 01.08.2023, this Court, after hearing the matter for some time, asked the Senior Superintendent of Police, Chandigarh to consider for deputing some senior officer to investigate the matter, but the same was not adhered to for the reasons best known to them.

8. After going through the Police file, *prima-facie*, it appears that financial condition of the Company is very poor. As on today, the Company has no liquidity; rather its bank account has already been declared as NPA. The Company is having no fixed assets even for recovery of the alleged amount of Rs.7 crore.

9. Thus, present case seems to be a pre-planned conspiracy hatched by the petitioner with other co-accused to defraud the Corporation worth crores of rupees and same deserves to be thoroughly investigated by the CBI.

10. In view of the above discussion, releasing the petitioner on bail, at this stage, shall hamper the fair investigation; therefore, this Court is not inclined to accept the prayer of petitioner.

11. Consequently, there is no option except to dismiss the present petition.

12. Ordered accordingly.

13. Needless to say that observations made above shall not be construed as an expression of opinion on merits of the case in any manner; rather confined only to decide the present bail matter.

14. Also clarified that interim bail granted to the petitioner and extended subsequently shall come to an end.

15. Pending application(s), if any, shall also stand disposed off.

06.10.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No