

CRM-M-33687-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33687-2023
Reserved on: 06.12.2023
Pronounced on: 19.12.2023

Harjit Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
76	20.06.2023	Subhanpur, District Kapurthala	222, 166-A, 120-B IPC and Sections 7A & 13 of Prevention of Corruption Act 1988

1. The petitioner, who is a Sub Inspector in Punjab Police, apprehending arrest in the FIR captioned above, on the allegations of letting off a drug peddler by receiving a bribe of Rs. Twenty lacs had come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 12.07.2023.
2. Facts of the case are that one Gujral Singh was arrested on June 12, 2023, in another FIR for possessing 6 kg of heroin. In paragraph 4 of the reply dated 31.7.2023 filed by way of affidavit of Superintendent of Police, Kapurthala, it is mentioned that accused Gujral Singh @ Joga and Joginder Singh @ Bhai, during the investigation in the said case disclosed that on 12.3.2023, Gujral Singh was apprehended by the police of Police Post Badshahpur, Police Station Kotwali and at that time, the petitioner who was posted as SHO of Police Station Sultanpur Lodhi, also reached there because Gujral Singh was also wanted in FIR No.23 dated February 11, 2022, under Section 21-B and 29 of the NDPS Act in Police Station, Sultanpur Lodhi. It is further stated in the reply that to ensure that Gujral Singh is not arrested, the petitioner, who was posted as SHO, Police Station, Sultanpur Lodhi, received a sum of Rs.20 lakhs, whereas ASI Paramjit Singh, who was posted as in-charge, PP Badshahpur, received a sum of Rs.1 lakh, as bribe money. All these transactions occurred in the presence of Joginder Singh and Omkar Singh. When the matter came to the notice of SSP, Jalandhar, he informed the DIG Jalandhar Range,

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Jalandhar, vide a letter dated 19.6.23, informing him about the aforesaid illicit money transactions. Based on this, the present FIR was registered.

3. The facts mentioned in paragraph 8 of the above-captioned reply state that when SHO Harjit Singh reached the police post, the petitioner proclaimed that Gujral Singh @ Joga was also needed in FIR no.23 dated February 11, 2022, under Sections 21-B and 29 NDPS registered at Police Station, Sultanpur, Lodhi. On this, one lady, Jagjit Kaur alias Mandy Grewal (dancer), talked to the police officers to strike a deal to let Gujral Singh free. Consequently, Rs.20 Lacs were paid to the petitioner, SHO, Harjit Singh, and rupees one lakh were paid to the other police officer. After receiving money, Gujral Singh was handed over to his father, Joginder Singh, and Omkar Singh. Later on, in the present FIR, Gujral Singh @ Joga and Joginder Singh @ Bhai were also nominated as accused of committing offences under Section 166A IPC, and subsequently, Sections 7A and 13 of the Prevention of Corruption Act, 1988, were also added in the original FIR.

4. Vide order dated 17.07.2023, the Coordinate Bench of this Court had issued notice but did not grant any interim protection to the petitioner. When the matter was listed before this Court on 31.08.2023, this Court had granted interim bail subject to compliance with some conditions, including the declaration of assets as mentioned in para 16 of the said order. On 11.09.2023, the petitioner's counsel stated that they had voluntarily complied with all the directions mentioned in the order dated 31.08.2023, and on 13.09.2023, after hearing counsel for the parties, this Court reserved the order. After that, while dictating the order, this Court felt a requirement for further information and, as such, had passed the detailed order in this regard and asked for additional information by passing the order on 19.09.2023 and the said required information is as follows: -

"To consider the serious nature of the allegations, this Court directs the State to file a fresh affidavit, giving the following clarification: -

- (i) How did Jagjit Kaur alias Mandy procure Rs.21,00,000/-?
- (ii) How much time did Jagjit Kaur alias Mandy take to bring this money and what were her sources of income?
- (iii) Under which circumstances Joginder Singh and Onkar Singh were present at the time when Jagjit Kaur alias Mandy handed over Rs.20 lakhs to the petitioner and one lakh to Paramjit Singh?
- (iv) State to verify the statement of HDFC bank account of the petitioner and correlate the entries same made with the alleged date of acceptance of bribe.

In addition to this, in case the SP feels it appropriate, he may also

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place on record additional information, if any, positively before the next date.”

5. In compliance with the said order, the concerned Superintendent of Police, Investigator Kapurthala, has filed an affidavit dated 06.12.2023. Regarding the above-said question No. (i) it has been mentioned that it was wrongly mentioned that money was paid by Jagjit Kaur, and in fact, money was paid by Joginder Singh, and they tendered an unconditional apology for incorrectly mentioning this fact. It is apparent that there is no malafide intention of the concerned official by mentioning wrong facts; as such, no adverse inference would be drawn for filing a previous affidavit. In para 4 of the latest reply dated 06.12.2023, it has been mentioned that out of Rs. Twenty-one lacs, a sum of Rs. One lac was received by the petitioner, when Jagjit Kaur had settled the deal, and the remaining amount of Rs. Twenty Lacs was given by accused Joginder Singh, out of which, Rs. Nineteen lacs were given to petitioner and Rs. One lac to ASI Paramjit Singh in the presence of accused Onkar Singh. Regarding the bank statement, it has been accepted that transactions in HDFC bank were done from a salary account.

6. In a nutshell, the reply dated 06.12.2023 reiterates that since the petitioner had received a sum of Rs. Twenty lacs in cash and, as such, he had laundered the said money or misappropriated the same, and the absence of a bank would not weaken their case.

7. I have heard counsel for the parties and reviewed the record.

8. Mr. P.S. Ahluwalia, counsel for the petitioner, submits that regarding the procurement of Rs.20,00,000/-, they initially stated that Jagir Kaur paid money, and now they have changed Jagir Kaur to Joginder Singh, and this is a significant improvement. He further submits that initially, the prosecution's case was that deposits in the HDFC bank account of the petitioner have no legal source, and now even that stand has been changed, and it is stated that it was a salary account. Ld. Counsel also submits that all these tampering in investigation show the malicious intent of the Superintendent of Police and other officers for falsely roping the petitioner in one way or another. He submits that there is no legal evidence to rope the petitioner and he is entitled to bail.

9. On the contrary, the State has seriously opposed the bail, and they seek custodial interrogation. State counsel further submits that money was paid by Joginder Singh, wherein the wrong name was mentioned, and it was not with malicious intent. It happened because the petitioner was influencing the witnesses. He further stated that on instructions received from time to time from previous investigators, they needed

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custodial interrogation to unearth the entire racket.

10. The allegations of receiving bribe, which led to the registration of this FIR, trace its roots to another FIR no. 51, dated 12-06-23, registered under section 21(c) of the NDPS Act, which was registered for recovery of a massive quantity of heroin weighed 6 kgs from Gujral Singh alias Joga, who was arrested by the Police. Before that, on March 12, 2023, the said Police had apprehended Gujral Singh alias Joga posted at Police Post Badshahpur, Police Station Kotwali. At that time, the petitioner, who was posted as SHO of Police Station Kotwali, also reached the police post. The Petitioner, being SHO, knew that the said Gujral Singh had already been nominated as an accused in another FIR No. 23, dated 11-02-2022, registered in Police Station Sultanpur Lodhi, on recovery of 50 grams of heroin from one Jaswant Singh. After the arrest, Jaswant Singh had named Gujral Singh alias Joga as the supplier/seller of the heroin, and based on such investigation, the Police also nominated Gujral Singh alias Joga as an accused with the aid of Section 29 of the NDPS Act, but he was not traceable and a proclaimed offender. When the petitioner, who was posted as SHO, came to know about such detention, the petitioner struck a deal and received an amount of Rs. Twenty-one lacs not to arrest Gujral Singh alias Joga so that he could continue to deal in drugs, and did not arrest him, and sent him with his father, Sh. Joginder Singh. It was later on, while trafficking 6 kgs of heroin, the said Gujral Singh alias Joga was arrested. Later on, the Senior Superintendent of Police, Jalandhar sent a complaint to the DIG Jalandhar range, informing them about the receipt of the bribe, which led to the registration of the present FIR.

11. The victims categorically made their statement to police about extortion of bribe by the petitioner. An analysis of the investigation, which is undergoing prima facie evidence connecting the petitioner, and the petitioner is not entitled to anticipatory bail. Further, the petitioner's custodial interrogation is also required to recover the bribe money and to unearth involvement of other corrupt police officials.

12. In *Sumitha Pradeep v Arun Kumar CK*, 2022 SCC OnLine SC 1529, Supreme Court holds,

[16]. ... 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 anticipatory bail.

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

13. 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....."

14. 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.

15. 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].

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16. 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.

17. 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.

18. 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

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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.

19. In the background of the allegations and the light of the judicial precedents mentioned above, and given the nature of the allegations, custodial interrogation is required, and in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail. Further, an analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

20. 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. Interim orders, if any, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

19.12.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES