

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-35158-2023(O&M)

Date of decision : 04.08.2023

Kushaldeep Singh Dhillon

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Randeep S. Rai, Senior Advocate with
Mr.Sangram S. Saron, Advocate,
Ms.Sukriti Rai, Advocate, Ms.Shubreet Kaur, Advocate,
Mr.Farhad Kohli, Advocate and
Mr.Madhavrao B. Rajwade, Advocate for the petitioner.

Mr.J.S.Mehndiratta, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.13 dated 16.05.2023 registered under Sections 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") as amended by the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as "2018 Amendment") and Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

FACTUAL BACKGROUND:-

2. Brief facts of the present case are that FIR no.13 dated 16.05.2023 (Annexure P-1) under Sections 13(1)(b) read with 13(2) of the PC Act as amended by the 2018 Amendment and Section 120-B of IPC was registered against three accused namely Kushaldeep Singh Dhillon i.e, present petitioner, Gursewak Singh and Rajwinder Singh on the allegations

that in the vigilance enquiry no.06/Ferozepur dated 30.11.2022 it was found

that the petitioner, who was the Ex-MLA Faridkot, had acquired assets more than his source of income and an enquiry was conducted for the “check period” from 01.04.2017 to 31.03.2022 during which, the petitioner served as a Member of the Legislative Assembly. It was alleged in the FIR that the petitioner earned Rs.3,07,17,600.78 from his declared sources and on the beginning date of check period, had balance amount of Rs.11,80,127.18 in his account and his total income amounted to Rs.3,18,97,727.96 and that during the check period the petitioner had spent an amount of Rs.10,39,18,228.71 and since on the last date of check period, an amount of Rs.32,97,386.27 was the balance in his account, thus, after adding the said amount to the expenditure incurred, it was found that total expenditure of the petitioner amounted to Rs.10,72,15,614.98 and thus, the petitioner had spent Rs.7,53,17,887.02/- more than his known sources of income which comes to 245.19% of the amount of Rs.3,07,17,600.78 which was the income received from his declared sources. It was further alleged that the petitioner had purchased benami property in village Mumara, Sub Tehsil Sadiq, District Faridkot in the name of Gursewak Singh (co-accused) and Rajwinder Singh (co-accused) and by doing the said act, the petitioner along with Gursewak Singh and Rajwinder Singh, committed the offences under Sections 13(1)(b) read with 13(2) of the PC Act as amended by the 2018 Amendment and Section 120-B of IPC. The petitioner was arrested on 16.05.2023 and was produced in the Court of JMIC, Faridkot on 17.05.2023 and he was remanded to police custody for 5 days and thereafter on 22.05.2023, the petitioner was further remanded to police custody for 2 days and thereafter on 24.05.2023, was remanded to judicial custody. After completion of the investigation, challan under Section 173 Cr.P.C. was filed

R1/T by the State along with their status report filed by way of affidavit of Raj Kumar, PPS, Deputy Superintendent of Police, Vigilance Bureau, Range Ferozepur on 02.08.2023. As per the said challan, the details of the assets possessed by the petitioner on the starting date of the check period i.e., 01.04.2017 have been given under Form 'A' and total amount with respect to the same has been mentioned as Rs.11,89,985.65. The value of the assets possessed by the petitioner on the last date of his tenure i.e., 31.03.2022 has been given in Form B and the same totals to Rs.33,00,576.70 and income earned by the petitioner during the tenure period mentioned in proforma C was stated to be Rs.3,06,73,660.34. It was further found that the amount spent by the petitioner during the said tenure period as detailed in proforma D was Rs.1,02,11,414.59 and thus, it was found that an amount of Rs.7,43,48,345.30 was unexplained and to the said extent was disproportionate to his known sources of income. The supplementary challan under Section 173 (8) Cr.P.C. dated 28.07.2023 has also been presented in the Court. In the said supplementary challan, the original prosecution sanction dated 26.07.2023 signed by the Deputy Secretary, Punjab Government, Department of Parliamentary Affairs has been annexed and the statement of Manjinder Kaur under Section 161 Cr.P.C. proving the signature of the Deputy Secretary has been attached.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

3. Learned senior counsel for the petitioner has submitted that the petitioner has strong roots in society and he has been elected twice as Member of Legislative Assembly from the Faridkot Vidhan Sabha and is also the former Vice President of the Punjab Pradesh Congress Committee, which is the prominent opposition party in the State of Punjab. It is

the father of the petitioner had also served as the Chairman of the Punjab State Cooperative Bank and was elected as MLA from Faridkot in 1980 and that even the mother of the petitioner was elected as Member of Legislative Assembly from Faridkot in 1982. It is submitted that the FIR in the present case has been registered after undue, unexplained and inordinate delay on 16.05.2023 even though the petitioner's tenure as an MLA had finished on 31.03.2022. It is submitted that as per the investigating agency, the check period started from 01.04.2017 and thus, the alleged offences were committed prior to the amendment in the PC Act whereas the FIR has been registered in the present case under Sections 13(1)(b) read with 13(2) of the PC Act as amended by the 2018 Amendment and Section 120-B of the IPC and that several heads under which the petitioner received income during the check period have not been taken into consideration by the investigating agency and several items of expenditure which have not been incurred by the petitioner have been added to his expenditure and in case the entire said amount is taken into consideration, then there would be no difference in the income earned and the amount spent. To demonstrate the same, learned senior counsel for the petitioner has handed over a note which has been prepared in a tabular form so as to indicate the heading, amount and the referral page with respect to the income which has not been taken into consideration and also with respect to the expenditure which though not incurred by the petitioner has been added in his expenditure. A copy of the said note was handed over to the learned State counsel on 02.08.2023. It is argued that allowances to the extent of Rs. 47,44,349/- which is paid to the petitioner in the capacity of Member of Legislative Assembly and is also reflected in the ITR as non taxable income, has not been taken into

consideration and in case the said allowance is also taken into consideration, then the total gross salary would amount to Rs.97,16,131/- for the check period. In support of his arguments, reference has been made to the income tax returns of 2018-19 to 2022-23 along with their computations and the chart prepared (Annexure P-13). It is submitted that merely because the said allowances are non taxable income, the same would not mean that the petitioner has actually not received the same and since the petitioner has received the said amount of Rs.47,44,349/- thus, it necessarily needs to be counted as his income. It is further submitted that a loan amount of Rs.22,54,000/- was taken by Mohinder Grewal from the present petitioner on 29.10.2016 i.e., prior to the check date i.e, 01.04.2017 and was returned to the petitioner in 2021. In support of the same, reference has been made to the election affidavit filed in the year 2017 at page 96-B of the paper book and also the ledger, receipt, bank statement and ITR (Annexure P-15 from page 117 to page 121). It is next submitted that the amount Rs.1,96,08,758/- were personal loans received by the petitioner during the check period and the said amount has been declared by the petitioner in his election affidavit dated 24.01.2022 (P-20 page-170) and that the said election affidavit is prior to the date on which the vigilance inquiry no.6 was initiated which was on 30.11.2022. Further reference has been made to the income tax returns for the year 2021-22 (Annexure P-44) in which unsecured loan of an amount of Rs.1,35,79,768/- was declared and the ITR for the year 2022-23, in which, the unsecured loan of the amount of Rs.1,96,08,758/- has been declared and thus, the said loan is also stated to be reflected in the Income Tax Returns also. Learned senior counsel for the petitioner has submitted that the tax of Rs.10,53,860 paid by the petitioner's

calculating the expenditure of the petitioner but the business income of the petitioner's wife during the said check period amounting to Rs.50,42,825/- has not been taken into consideration. It is submitted that the said income is duly reflected in the Income Tax Returns by the petitioner's wife from 2018-19 to 2022-23 (Annexure P-18) and also in the election affidavit filed in the year 2022 (Page 166). It is further submitted that the petitioner's wife has been paying taxes from 2012-13, as she has been running a boutique and it is not open to the respondent authorities to not take into consideration the income regarding which even the income tax has been paid during the check period which is much prior to the initiation of the vigilance inquiry on 30.11.2022. Learned Senior counsel has submitted that an amount of Rs.15,86,960/- which is income from the sale of dogs (Tibetan Mastiff Breed) has also not been taken into consideration in spite of the fact that the statements of the purchasers have been recorded during investigation and a reference to the said statements has been made in the report under Section 173 Cr.P.C. and for the said purpose, reference has been made to running Page 16 of the status report filed by the State in which, it has been recorded in the challan that the statements of Preetpal Singh, Gurtej Singh, Yadwinder Singh, Parvinder Singh, Avtar Singh, Guntas Barah and Rupinderjit Singh with respect to the sale of puppies by the petitioner has been recorded under Section 161 Cr.P.C. and in the said statements, it is stated by the said persons that the purchase amount of the puppies has been given to the petitioner in cash. It is also submitted that an amount of Rs.6,65,222/- was further required to be added in the income of the petitioner as the life insurance policy of petitioner's wife had matured and the maturity amount was of Rs.16,65,222/-, whereas an amount of Rs.10,00,000/- was paid in installments and thus, the balance amount of Rs.

6,65,222/- came into the account of the wife of the petitioner. Reference has been made to Annexure P-17 in support of the said arguments. It is submitted that in the year 2019 and 2022, an amount of Rs.6,60,000/- which was invested by the petitioner in Green Roadways, was withdrawn and the said aspect is apparent from the balance sheet, as a perusal of the same would show that an amount of Rs.2,50,000/- was received in the bank account of the petitioner on 31.08.2019 and Rs.4,10,000/- was received in bank account on 07.03.2022 and the said amount was thus received during the check period, but has not been taken into consideration by the respondent-agency. It is submitted that a payment of Rs. 7,00,000/- has been made by the petitioner's brother for wood/timber for construction of the house from Canara Bank Account No.2441101000200, which fact is fortified from the invoice dated 20.01.2021 (Annexure P-14) and even the mother of the petitioner had made a direct payment for construction of the house amounting to Rs.5,69,121/- which fact would also prima facie stand established from the invoice dated 18.12.2021 and ledger dated 18.01.2022 (Annexure P-19) and it is submitted that both the said amounts have been taken by the investigating agency as the expenditure of the petitioner, whereas the same were never spent by the petitioner. Learned senior counsel has further referred to the election affidavit (Annexure P-20 at Page 170) to show that an amount of Rs. 2,50,000/-was received by the petitioner's wife as personal loan. It is further submitted that another amount of Rs.1,29,600/- also deserves to be added in the income of the petitioner on account of being rental income. In this regard, while referring to the Income Tax Returns (Annexure P-13) from 2019-20 to 2022-23 it has been stated that the total rental income has been shown to be Rs. 6,00,000/-,

Rs.4,70,400/- and thus, an amount of Rs.1,29,600/- also deserves to be added in the rental income. It is submitted that in case, all the above said figures are added in the income of the petitioner, then the income of the petitioner from known sources would increase by an amount of Rs.3,62,10,835/-.

4. Learned senior counsel for the petitioner has further submitted that certain amounts have been shown as the expenditure incurred by the petitioner which actually have either not been spent by the petitioner or have been mentioned twice and thus, the same also deserve to be deducted from the total expenditure of the petitioner. It is submitted that an amount of Rs.74,41,457/- has been taken to be expenditure incurred by the petitioner for paying rent. It is submitted that the said money has been paid as rent to the owner of house no.1250, Sector 8 C, Chandigarh, in pursuance of lease deed dated 18.08.2017 which had been entered into between the owner of the house i.e., Hakam Singh Virk, being the first party and the brother, sister-in-law and the petitioner's wife jointly being the second party and the entire amount has been paid from their joint bank account which is in the name of the brother of the petitioner, sister-in-law and the petitioner's wife. Reference in this regard has been made to the lease deed (Annexure P-9) (page 61 of the paper book) and the joint account in the name of Jasonpreet Singh Dhillon (brother of the petitioner), Navjot Kaur (sister-in-law of the petitioner) and Ms.Amanjyot Kaur (wife of the petitioner) (Annexure P-10). It is submitted that at best, only 1/3rd of the said rent paid could have been taken to be the expenditure of the petitioner and his wife and thus, an amount of Rs.49,60,972/- which constituted 2/3rd of the total amount, with respect to the share of rental of the brother and sister-in-law of the petitioner, paid from the said joint account, cannot be treated to be an

expenditure of the petitioner and thus, the said amount has to be deducted from the petitioner's expenditure. It is further submitted that the fee paid to GMADA for drawing/issuing map/ site plan of the house has been counted twice inasmuch as Rs.4,37,430/- was already included in the list of expenditure which was provided by the petitioner for the construction of the house to the respondent authorities but however, the same has been added separately also as an individual expense incurred by the petitioner. Reference in this regard is made to page 35 of the affidavit dated 02.08.2023 filed by the State by way of status report, and as per the challan annexed with the same, the entry with respect to the amount spent on the construction of the Farm house has been shown to be Rs.1,08,11,680/- at serial no.11 and an amount of Rs.4,37,430/- has been shown at serial no.10 and the said amount was already included in the amount mentioned at serial no.11 and thus, an amount of Rs.4,37,430/- also deserves to be excluded.

5. It is submitted that further, an amount of Rs.45,043/- is also to be excluded from the expenditure of the petitioner inasmuch as the authorities have counted one EMI towards Toyota car twice inspite of the fact that one of the cheques was dishonoured and for the said purpose, reference has been made to Annexure P-12 at page 83 to show that cheque dated 02.03.2018 was dishonoured and amount of Rs.500/- was recovered by the bank as an amount of penalty and subsequently on 03.03.2018, another cheque for the same amount of Rs.45,043/- was given but however, the authorities have considered the said amount twice while calculating the expenditure of the petitioner. With respect to 6 registered sale deeds in which, the purchasers are co-accused Rajwinder Singh and Gursewak Singh and regarding which it has been alleged that the same is benami property of

Rs.3,27,67,280/- which is the total sale consideration of all the said sale deeds, has been wrongly shown to be the expenditure incurred by the petitioner whereas the petitioner has no link to any of the said sale deeds as he is neither the purchaser nor the seller of the said property nor even a party to the said transaction. It is further submitted that even as per the case of the prosecution, the amount of said sale consideration which has primarily been paid via RTGS and cheque, has not been credited into the account of the petitioner nor any said cheques / RTGS has been issued from the account of the petitioner or his family members. It is submitted that it is not even remotely shown from the material collected by the investigating agency that the petitioner or his family members have paid the said sale consideration to the purchasers either through cheque/ RTGS or by cash. It has been argued that no proceedings under the Prohibition of Benami Property Act 1988 (as amended on 01.11.2016 and omitted w.e.f. 01.07.2021) (hereinafter referred to as the "Act of 1988") have been initiated in the present case inspite of the fact that the provisions of the said Act specifically provide for confiscation of the benami property in addition to penalty which could include rigorous imprisonment for a term not less than 1 year which could extend up to 7 years alongwith fine. It is submitted that the same has not been done because under the Act there is an adjudicating authority which would, after considering the entire material, pass an order and since the respondent agency does not have material to show that the present property is a benami property, instead of initiating proceedings under the said Act, they have chosen to proceed against the petitioner under the PC Act, by illegally adding the said amount in the expenditure of the petitioner. It is submitted that the Act of 1988 is a

which is alleged to be benami property. Specific reference has been made to Section 3 of the Act which provides for Prohibition of Benami Transaction, Section 5 which specifically states that a property held benami would be liable to be confiscated by the Central Government, Section 7 provides for the constitution of the adjudicating authority. Reference has also been made to Section 24 which provides for notice of attachment of property involved in benami transaction. It is submitted that procedure for adjudication is mentioned in Section 26 and after following the said procedure, the order of confiscation of benami property is to be passed under Section 27. It is stated that against the said order, appeal lies to the Appellate Tribunal under Section 46 of the Act and second appeal lies to the High Court under Section 49 of the Act. It is stated that Section 53 provides for penalty for benami transaction and in case the person is found guilty regarding the same then the same person would be punished with rigorous imprisonment for a term which shall not be less than 1 year but may extend to 7 years and would also liable to pay fine which may extend to 25% of the fair market value of the property. It is submitted that since the respondent State/agency is well aware that the material gathered by them would not meet judicial scrutiny under the Act of 1988, thus, they have not chosen to proceed under the said Act. It is submitted that in case the abovesaid amounts which have been illegally added to the petitioner's expenditure are excluded, then the total amount of Rs.3,57,30,240/- would stand reduced from the expenditure of the petitioner and thus, a total amount of Rs.7,19,46,975/- (Rs.3,62,10,835/- + Rs.3,57,36,140/-) would stand explained. It is submitted that the associates of the petitioner were able to find out the said entries and on further detailed perusal of the entire record, which is very voluminous,

entire amount of Rs.7,43,48,345/- which is stated to be disproportionate is explained. It is further submitted that it is a matter of settled law that in case the difference between the known source of income and the expenditure is upto 10%, then the person cannot be held guilty for having disproportionate income and for the said proposition, reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Krishnanand Agnihotri vs. The State of Madhya Pradesh*** reported as (1977)1 SCC 816 as well as the judgment of High Court of Gujarat at Ahmedbad titled as "***Bhayabhai Gigabhai Sutreja vs. State of Gujrat***" R/Criminal Misc. Application no.15407 of 2020 decided on 04.12.2020. The relevant portion of ***Krishnanand Agnihotri's*** case (supra) which has been highlighted by the learned senior counsel for the petitioner is reproduced hereinbelow:-

"33. It will, therefore, be seen that as against an aggregate surplus income of Rs. 44,383.59 which was available to the appellant during the period in question, the appellant possessed total assets worth Rs. 55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him. but since the excess is comparatively small - it is less than ten per cent of the total income of Rs. 1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under Sub-section (3) of Section 5. We are of the view that, on the facts of the present case the High Court as well as the Special Judge were in error in raising the presumption contained in Sub-section (3) of Section 5 and convicting the appellant on the basis of such presumption."

6. Learned senior counsel for the petitioner has further submitted that even during the course of preliminary enquiry prior to the arrest of the petitioner, the petitioner had fully cooperated with the investigation and in pursuance of the notices which were issued between 10.02.2023 to 19.04.2023, the petitioner had personally visited the office of the Vigilance Bureau on 3 occasions and once, a counsel on behalf of the petitioner had

also visited the office. It is submitted that every show cause notice issued to

the petitioner was responded to and every information sought was provided by the petitioner. It is stated that on 04.01.2023, statement of moveable and immovable property (Annexure P-21) was submitted by the petitioner to the Vigilance Bureau. On 25.04.2023, an e-mail (Annexure P-28) was sent by the petitioner giving details of all the documents which have been submitted by him. It is further pointed out that the respondent agency was granted police custody of the petitioner for 7 days and since the petitioner was arrested on 16.05.2023 and was produced before the Illaqa Magistrate on 17.05.2023 and thus, even for the said one day, the petitioner was in police custody and thus, the total police custody of the petitioner was 8 days and thereafter the petitioner has been in judicial custody and all the documents which were sought to be taken from the petitioner, have been taken and the final report/challan dated 13.07.2023 has been filed by the SHO/SSP, Vigilance Bureau Range, Ferozepur before the Special Judge and even the supplementary challan dated 26.07.2023 under Section 173(8) Cr.P.C. has also been filed on 28.07.2023 and no useful purpose would be served by keeping the petitioner in further incarceration. It is submitted that although as per the stand of the State, two co-accused of the petitioner have not been arrested but it is also the stand of the State that investigation qua the petitioner is complete. Learned senior counsel for the petitioner has further argued that in the present case, the arrest memo (Annexure P-29) is in violation of Section 41 of the Cr.P.C. and also the law laid down by the Hon'ble Supreme Court of India in ***D.K. Basu Vs State of W. B.*** reported as ***(1997) 1 SCC 416*** as no ground of arrest or reasons have been mentioned in the arrest memo and the same is in violation of Article 22(1) of the Constitution of India. It is submitted that the medical condition of the petitioner is not good inasmuch as he had suffered whiplash injury of spine

in 2016 in a road side accident leading to multi disc prolapse L4-5, L5-S1 and has been suffering from severe back pain and is unable to squat and the petitioner is unable to use Indian seat in toilet as well as is unable to sleep on a hard bed. It is further submitted that the petitioner also suffered a tennis elbow injury in 2020 due to which the movement in his right arm is restricted and in the same year the petitioner had also suffered from severe Covid 19 for which he had to be admitted to PGI Chandigarh also and since the lungs of the petitioner were infected, the petitioner has breathing problems. It is submitted that the petitioner also has high sugar levels and had also undergone throat operation on 07.12.2021 and in support of the same, the petitioner has referred to medical reports/documents Annexures P-34 and P-35. Learned senior counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court dated 31.05.2022 passed in *Special Leave to Appeal no.5273/2022* titled as "*State of Chhattisgarh vs. Gurjinder Pal Singh*" in which the State had filed SLP against the grant of regular bail by the High Court in a case of disproportion assets registered under the Prevention of Corruption Act, 1988. The High Court while granting bail had observed that the said petition was nothing but totally unwarranted exercise on behalf of the petitioner-State (therein) and that in a case of disproportionate assets, most of the evidence is documentary evidence and therefore, there is no question of tampering such an evidence in spite of the man being a senior police official and the said petition filed by the State was dismissed. Learned senior counsel for the petitioner has, on the basis of above facts and circumstances, prayed that the petition be allowed and the petitioner be released on regular bail.

ARGUMENTS ON BEHALF OF RESPONDENT-STATE:-

present petition for grant of regular bail to the petitioner and has submitted that the petitioner has disproportionate assets to the extent of Rs.7,43,48,345/- in the check period starting from 01.04.2017 to 31.03.2022 when the petitioner was an MLA. It is submitted that six sale deeds have been executed in favour of co-accused Gursewak Singh and Rajwinder Singh and same are benami transactions and the consideration for the same amounting to Rs.3,27,67,280/- was actually paid by the petitioner and thus, have been rightly added as an expense of the petitioner. It is submitted by the State Counsel that the said Gursewak Singh and Rajwinder Singh are tenants of the mother of the petitioner on agricultural land and they have been paying rent to the mother of the petitioner in her bank account and a perusal of the said rent paid from the year 2017 to 2021 would show that there has been a steady increase in the payment of the rent and the said increase is to cover the amount earned by the said co-accused by tilling the land which has been purchased by the petitioner (benami) in the name of said Gursewak Singh and Rajwinder Singh and the possession of which is with them. In support of the said arguments, reference has been made to the bank entries of the mother of the petitioner detailed in para 2 of the reply dated 02.08.2023 which has been filed by the State in addition to the affidavit dated 02.08.2023 filed as a status report. It is submitted that first sale deed i.e., sale deed dated 18.12.2017 with respect to land measuring 53 kanals 11.33 marlas in which the consideration is Rs.27,79,780/-, it was recorded that the said consideration has been paid in cash and cheque but there is no record found that the amount was transferred to the vendor by cheque. It is submitted that in second sale deed dated 30.12.2019, amount is stated to have been transferred through RTGS but during the course of investigation, no RTGS transaction was verified which was made in favour

of the vendors. It is further submitted that with respect to sale deed dated 27.05.2020, sale consideration has been paid by cheque No.4 dated 22.05.2020 but the investigation revealed that the said cheque was not used till the date of filing of the reply. It is submitted that regarding sale deed dated 09.02.2021, it has been stated that cheque No.13 dated 09.02.2021 which was for payment of sale consideration has already been used by Rajwinder Singh on 08.01.2018 to withdraw a sum of Rs.60,000/- as self-cheque. Regarding sale deed dated 30.12.2019, it is submitted that the sale consideration of the said sale deed mentions that RTGS for an amount of Rs.56,00,000/- has been made by Rajwinder Singh but during investigation, no such payment was verified in favour of the vendors through bank transactions rather there was insufficient balance in the account of both the co-accused at the time of registration of the sale deed.

8. With respect to lease deed dated 18.08.2017, learned State counsel has submitted that total amount of Rs.74,41,457/- was paid from the joint account in which the petitioner's wife was also a joint holder. Regarding the amount of Rs.4,37,460/-, paid to GMADA, it is submitted that the said fact has been recorded in the expenses Chart-D at Sr. No.10 and in support of the same, statement of Namandeep Kumar, Senior Assistant (Building) Office Estate Officer, GMADA, Mohali has been recorded under Section 161 Cr.P.C. It is further submitted that the argument with respect to Rs.45,043/- having been counted twice as one of the cheques was dishonoured is not correct inasmuch as the said amount has been counted only once although the fact of dishonour is not disputed. With respect to an amount of Rs.1,29,600/- being claimed by the petitioner on account of rent, it is submitted that the said amount of Rs.1,29,600/- is a

is a statutory deduction, the Investigating Agency has gone on the presumption that the said amount would have necessarily been used for the purpose of repairs. With respect to the amount of Rs.7,00,000/- stated to be direct payment made by the petitioner's brother, it is submitted that it is the petitioner who had provided the details of month-wise expenditure incurred on the construction of the house under his own signatures and no invoice (Annexure P-14) was supplied to the agency which has now been referred to by the petitioner. With respect to the income stated by the petitioner to be from the sale of dogs, it is submitted that although, the statements of the purchasers have been recorded under Section 161 Cr.P.C. but the petitioner could not produce any documents to show that he was actually involved in the said business. It is argued that the benefit sought to be claimed by the petitioner on account of income of his wife-Amanjot Kaur amounting to Rs.50,42,825/- cannot also be granted as no document to show that the said business was actually been carried out has been given to the agency. It is submitted that even with respect to an amount of Rs.5,69,121/- which is now stated to be paid by the mother of the petitioner for construction of the house also cannot be deducted from the expenditure of the petitioner as it is the petitioner who had provided month-wise details of the expenditure for the construction of his house and the said amount was included in the same and it was never mentioned by the petitioner that the said amount has been paid by the mother directly and the invoice (Annexure P-19) was never produced before the authorities. With respect to personal loan of Rs.1,96,08,758/-, it is submitted that only an affidavit was submitted and not the income tax returns and even the Income Tax Return now sought to be produced for the year 2022-23 has been filed on 30.12.2022 which is

respect to an amount of Rs.2,50,000/- being personal loan received by the wife of the petitioner, no bona fide document was produced before the authorities. With respect to allowances of Rs.47,44,349/-, it is submitted that although, they were received by the petitioner but the said amount must have been spent by the petitioner for the purposes for which they were given and thus, percentage of the said amount earned has not been deducted as expenditure.

9. Learned State Counsel, however, fairly stated that after due inquiry, an amount of Rs.22,54,000/- stated by the petitioner to be loan returned by Mohinder Pal Grewal, into his account during the 'check period' has been found to be genuine. To a similar effect, is the statement with respect to Life Insurance Policy of the petitioner's wife in which the benefit claimed by the petitioner is to the extent of Rs.6,65,222/- and also with respect to the amount of Rs.6,60,000/- which as per the case of the petitioner was returned in the year 2019 and 2022 by Green Roadways. With respect to the lease amount, it has not been disputed that an amount of Rs.74,41,457/- was with respect to the lease dated 18.08.2017 which was executed by three persons i.e., the petitioner's wife, brother and sister-in-law of the petitioner and the said amount was paid from the joint account of all three and thus, only 1/3rd could be stated to be expenditure of the petitioner and his wife and thus, the benefit of Rs.49,60,972/- has been rightly claimed by the petitioner. It is submitted that even if some of the entries are taken to be genuine then also there is substantial amount of earnings/expenditure which has gone unexplained and thus, the petitioner does not deserve the concession of regular bail.

ARGUMENTS ON BEHALF OF PETITIONER IN REBUTTAL:-

10. Learned senior counsel for the petitioner, in rebuttal, has submitted that all the arguments raised on behalf of the State with respect to

consideration in the sale deed as well as with respect to the increase in rental paid to the mother of the petitioner are not a part of the challan and it is not permissible for the State to raise submissions beyond the challan. It is further submitted that the mother of the petitioner is a former MLA and is also a business woman and has her independent source of income and also has land in her own name. It is also submitted that before proceeding to register an FIR, it was incumbent upon the prosecution agency to have summoned the entire record more so, the income tax returns from the respective Department and only after considering all the ITR's, the agency should have proceeded further and should not have only considered one or two ITR's by pick and choose method but should have considered the ITRs for the entire check period.

FINDINGS:-

11. This Court has heard learned counsel for the parties and have perused the paper book.

12. In the present case, the petitioner is in custody since 16.05.2023 and after 8 days of police custody, has been in judicial custody. Investigation qua the petitioner has been completed and the challan dated 13.07.2023 has been filed. Even, the supplementary challan dated 26.07.2023 qua the petitioner has been submitted before the Court. The petitioner is admittedly not involved in any other case and is stated to be suffering from several health issues including Whiplash injury of spine which is stated to have been suffered by him in the year 2016 in a road side accident which led to multiple disc prolapse L4-5, L5-S1 and is also stated to have suffered a tennis elbow injury in the year 2020 and severe COVID-19 in the same year on account of which he was admitted in PGI and is also

cooperated with the investigating agency even prior to his arrest on 16.05.2023, during the preliminary enquiry and in response to the various notices issued from 10.02.2023 to 19.04.2023, it is not in dispute that the petitioner had appeared personally on three occasions before the Investigating Agency and once through his Advocate and had also supplied the statement of moveable and immoveable properties to the Vigilance Bureau on 04.05.2023 and had given all the other documents which were sought by the Vigilance Bureau and as per the case of the State, substantial part of the calculation made by the vigilance is on the basis of the documents supplied by the petitioner. The entire case is based on documents which are already with the Investigating Agency.

13. That as per the allegations in the report under Section 173 Cr.P.C., the petitioner is alleged to have disproportionate assets to the extent of Rs.7,43,48,345/-. Learned senior counsel for the petitioner had, on the basis of documents annexed along with the present petition/miscellaneous applications, handed over a detailed note, which includes the details of the income which as per the petitioner has not been taken into consideration by the investigating agency before calculating the total income from known sources of the petitioner and his wife. Similarly, the said note contains a detailed chart with respect to the various items of expenditure which have been taken as an expenditure of the petitioner but which, as per the petitioner was never incurred by him. The said note has been taken on record and marked as 'Mark A' and copy of the same had also been supplied to the learned State Counsel on 02.08.2023. It would also be relevant to note that the chart with respect to the petitioner's income which has not been taken into consideration has also been reproduced in paragraph

said tabular chart is reproduced hereinbelow:-

Additions in Petitioner’s income: (Income Chart)

Sr No.	Description	Amount Rs.	Annexure
1.	Allowances as MLA. Reflected in ITR as non-taxable income. The same are still to be counted towards income. Total Gross Salary including allowance is Rs. 97,16,131/- for the Check Period. Salary Rs. 49,71,962/- Allowance Rs. 47,44,349/-	47,44,349	Income Tax returns of 2018-19 to 2022-23 with computation P-13 Ref. Pg-96 (chart), 98, 101, 105, 109, 113 (computation).
2.	Loan taken by Sh. Mohinderpal Grewal was returned to the Petitioner’s bank account in 2021. This transaction is reflected in the Election Affidavit filed in 2017 (Pg-96B). Loan disbursed on 29.10.2016	22,54,000	Ledger, receipt, bank statement, and ITR P-15 Ref. Pg-117 to 121. @ Pg-5 P-38 (CRM-31799 of 2023)
3.	Personal loans <i>inter alia</i> received by Petitioner as declared in his election affidavit 24.01.2022 and ITR form 2022-23. In previous ITR of 2021-22 Rs. 1,35,79,758 unsecured loan declared.	1,96,08,758	Election Affidavit dt. 24.01.2022 P-20 Pg.170; ITR Form filed 2022-23 P-45 Pg.14 in CRM 32278/23; ITR form filed 2021-22 P-44 Pg.7.
4.	Business income of the Petitioner’s wife during the check period. Amount of Rs. 10,53,860/- Tax paid by his wife has been added to his expenditure. Petitioner’s wife been paying tax since 2012-13. Business income during check period is Rs. 50,42,825/-	50,42,825	Income tax returns with computation of the Petitioner’s wife from 2018-19 to 2022-23 P-18 . Election Affidavit 2022 (Pg-166).
5.	Income from sale of dogs Tibetan Mastiff breed	15,86,960	Statements of 7 purchasers recorded during investigation. P-36 Pg.32- CRM 30777/ 23
6.	Direct payment by the Petitioner’s brother for wood/timber for construction of the house. From Canara Bank Account No. 2441101000200.	7,00,000	Invoice dated 20.01.2021 P-14 Pg.116.
7.	Life insurance policy of Petitioner’s wife matured. In the check period Rs.10 lac of installments were paid and the amount at maturity was Rs.16,65,222.	6,65,222	Details of insurance from 2017-2022 with bank statement P-17 Pg.123, 130 entry dt.06.02.2021.
8.	Part of the amount invested by the Petitioner in Green Roadways was withdrawn in 2019 and 2022, while as on 31.03.2022 Rs. 8,32,030 is still invested. Reflected in Balance Sheet. - Rs 2,50,000/- received in the bank account of the Pet. On 31.08.2019 - Rs 4,10,000/- received in the bank account on 07.03.2022	6,60,000	Extract of statement of Green Roadways P-16 @ Pg-122. - 2015: Balance Sheet Rs. 14,92,030/- unsecured loan/investment in Green Roadways (@ Pg-18 P-39 CRM-31799 of 23) - 2017: Balance Sheet Rs. 14,92,030/- unsecured loan/investment in Green Roadways (@

			Pg-35 P-40 CRM-31799 of 23) - 2022: Balance Sheet Rs. 8,32,030/- (@ Pg-51 P-41).
9.	Direct payment by the Petitioner's mother for construction of the house.	5,69,121	Invoice dated 18.12.2021 and ledger dated 18.01.2022 P-19.
10.	Personal loans received by Petitioner's wife	2,50,000	Declared in Election Affidavit 2022 P-20 @ Pg-170
11.	Difference between the rental income of the Petitioner as the Vigilance Bureau only recorded the statement of the current tenant and not the previous one.	1,29,600	Reflected in ITRP-13 - 2019/20: Rs. 1,68,000/- @ Pg-101 - 2020/21: Rs. 1,44,000/- @ Pg-105 - 2021/22: Rs. 1,44,000/- @ Pg-109 - 2022/23: Rs. 1,44,000/- @ Pg-113 Total Rs. 6,00,000/- Expenditure shown in Challan Rs. 4,70,400/- @ Pg-49 P-36 CRM No. 30777/23.
A.	Total of above Additions	3,62,10,835	

1. Deductions liable to be made in the Petitioners expenditure: (Expenditure Chart)

Sr. No.	Description	Amount Rs.	Annexure/page
1.	Lease deed dated 18.08.2017 entered into between owner of H.No. 1250, Sec-8C, Chd (Lessor Hakam Singh Virk) and Petitioner's wife, brother and sister-in-law (Lessees) for H. No. 1250, Sector 8C, Chandigarh. Rent paid from their HDFC Bank, Sector 35, Chd. joint account as per bank statement.	74,41,457/- 1/3 rd =24,80,485 2/3 rd =49,60,972	Lease deed and bank statement P-9 and P-10 State's Response to Para 33-49: Pg.6 Paid by wife. Paid by brother & his wife.
2.	Fee paid to GMADA for map/site plan of house has been counted twice.	4,37,430/-	Statement of payment P-11 @ Pg.76
3.	One EMI of Toyota Car has been counted twice as one cheque was dishonoured	45,043/-	Statement of payment P-12 Pg.83 – 10 th entry from bottom
4.	Registered sale deeds and roznamcha wakiati involving the co-accused Rajwinder Singh and Gursewak Singh depict that Petitioner is neither the seller nor purchaser and not even a witness. Hence, he has no concern.	3,27,67,280/-	Sale deeds and roznamcha wakiati P-2 to P-8 Ref Pg No-56 of CRM 30777/23.
C.	Total of above heads	3,57,30,240	

A perusal of the above chart would show that a total amount of Rs.3,62,10,835/- which, as per the case of the petitioner is required to be

the investigating agency and an amount of Rs.3,57,30,240/- has been wrongly included in the expenditure of the petitioner and thus, the total amount which as per the petitioners have been fully explained by them comes to Rs.7,19,46,975/-. It is further the case of the petitioner that the entire record from the check period is very voluminous and after a careful scrutiny of the same, more entries to the benefit of the petitioner could be found which would show that the entire amount has been explained. From the arguments raised on behalf of the petitioner and the State, noticed hereinabove, it is apparent that item no.2 (income chart) with respect to the entry of an amount of Rs.22,54,000/-, item no.7 (income chart) with respect to the entry of an amount of Rs.6,65,222/-, item no.8 (income chart) with respect to an amount of Rs.6,60,000/- and item no.1 (expenditure chart) with respect to the amount of Rs.49,60,972/- is not in dispute and thus, the total amount of Rs.85,40,194/- stands explained. Even with respect to the other entries, the learned senior counsel for the petitioner has made specific reference to documents and to relevant portion of the report under Section 173 Cr.P.C. in support of the same and the detailed submissions in the said regard have been noticed in paragraphs 3 to 6 and paragraph 10 of the present order. To put it summarily, with respect to item no.1 (income chart), it is not disputed that Rs.47,44,349/- which are allowances received by the petitioner as MLA and have been duly reflected in the income tax returns {Annexure P-13 (Colly)} filed prior to the initiation of vigilance enquiry, the petitioner had received the said income in the 'check period'. The issue raised by the learned State counsel as has been noticed in his arguments hereinabove to the effect that the said allowances would have been spent for the purpose for which allowances were given, is a matter of debate and

said money having been received and not having been added in the income of the petitioner, is not disputed. With respect to item no.4 (income chart), the petitioner has stated that the petitioner's wife had earned Rs.50,42,825/- during the 5 years 'check period' and the tax on the said amount has been paid prior to the initiation of vigilance enquiry and the same has been duly reflected in the income tax returns for the years from 2018-19 to 2022-23 (Annexure P-18) but the same has not been taken into consideration. It is further the case of the petitioner, which aspect has not been disputed, that an amount of Rs.10,53,860/- paid as tax on the said income of the petitioner's wife has been taken as the petitioner's expenditure by the investigating agency, thus, although the income has not been taken into consideration but the tax paid on the same has been taken as expenditure of the petitioner. The objection as to whether the petitioner's wife was actually carrying out the business which as per the petitioner, she was carrying out since 2012-13, are all aspects which would be finally considered and adjudicated by the trial Court. With respect to item no.5 regarding the sale of dogs and earning of Rs.15,86,960/-, learned senior counsel for the petitioner has referred to page 16 of the status report dated 02.08.2023 submitted by the State which contains report under Section 173 Cr.P.C. and in the said report under Section 173 Cr.P.C. it has been specifically mentioned that the statements of Preetpal Singh, Gurtej Singh, Yadwinder Singh, Parvinder Singh, Avtar Singh, Guntas Barah and Rupinderjit Singh with respect to sale of puppies by the petitioner have been recorded under Section 161 Cr.P.C. and that the price of puppies were paid by cash. Even regarding the direct payment of Rs.7 lacs under item no.6 paid by the petitioner's brother, an invoice dated 20.01.2021 (Annexure P-14) has been produced and similarly for the

documents annexed as Annexure P-19 (at pages 153 and 156 of the paper book) in support of the arguments that the petitioner's mother had paid the said amount. For item no.10 i.e., personal loan received by the petitioner's wife for an amount of Rs.2,50,000/-, reference has been made to the election affidavit dated 24.01.2022 (Annexure P-20) (at page 170) filed by the petitioner prior to the initiation of the enquiry where the said amount is reflected. Similarly for item no.11, regarding rental income of Rs.1,29,600/-, income tax returns which have been annexed as Annexure P-13 show the total rental income of Rs.6 lacs whereas as per the stand of the State, only a benefit of Rs.4,70,400/- has been given after making the statutory 30% deduction. It is the case of the petitioner that any income received has to be taken into consideration while calculating the total income and the State while seeking criminal prosecution of the petitioner, cannot deduct a percentage of the amount on the presumption that the same must've been used for repairs without there being any material regarding the same. Regarding item no.3 (income chart) where reference has been made to personal loan of Rs.1,96,08,758/-, the said amount is referred to in the election affidavit dated 24.01.2022 (Annexure P-20) (page 170) and substantial part of the same is referred to in the income tax return for the year 2021-22 (Annexure P-44) and the entire amount is mentioned in the income tax return for the year 2022-23 (Annexure P-45). Even in case the arguments of learned State counsel to the effect that income tax return for the year 2022-23 has been filed on 30.12.2022 and is subsequent to the initiation of the vigilance enquiry is taken into consideration, then also there are documents to prima facie substantiate the said entry which would be finally considered by the trial Court. The said aspect along with other

this Court does not wish to give any final opinion lest the same would prejudice the case of either of the parties in the trial. Even with respect to item nos.2 and 3 (in the expenditure list), reference has been made to page 35 of the status report dated 02.08.2023 which contains the report under Section 173 Cr.P.C. and the same would show that at serial no.10, the amount of Rs.4,37,430/- has been shown to be the expenditure of the petitioner on the map approved by GMADA and then serial no.11 shows that an amount of Rs.1,08,11,680/- is stated to be the amount spent on the construction of the farm by the petitioner. It is the case of the petitioner that item no.11 already includes the said amount and thus, the amount has been charged twice.

14. One of the main issues which requires adjudication during the course of trial is with respect to the expenditure of Rs.3,27,67,280/- which has been added in the petitioner's expenditure by the State by stating that six sale deeds have been executed in the name of Rajwinder Singh and Gursewak Singh and the same are benami transactions and actually, it is the petitioner who has paid the consideration for the same. In the said regard, it is the argument on behalf of the petitioner that the petitioner is neither the vendor nor the seller nor a party to the said sale deeds nor any cheque/ RTGS has been paid from his or his families' account and even as per the challan, there is nothing to show that the said amount has been paid by the petitioner or his family members to the sellers in the said 6 sale deeds and that no proceeding under the Prohibition of Benami Property Act, 1988 which specifically provides for confiscation of benami property and also imprisonment for a minimum period of 1 year which may extend to 7 years, has been initiated, as the State is well aware that under the said Act, there is

and would adjudicate the matter on the basis of material on record and since the respondent state is aware that the material collected by them would not meet judicial scrutiny thus, the said amount by merely stating it to be a benami transaction has been added to the expenditure of the petitioner. The contrary argument of the State is to the effect that the said Gursewak and Rajwinder Singh are tenants of the mother of the petitioner and are known to the petitioner and the rentals paid by them to the mother have been regularly increasing and there are other circumstances which would also indicate that it is the petitioner who is the beneficiary of the said sales. The question as to whether there is sufficient evidence to complete the chain of events to show that the money has been sourced by the petitioner for the said transaction or not, is a moot issue for the trial Court to consider and this Court does not wish to give any final opinion on the same. The pleas raised by learned Senior Counsel as well as documents produced before this Court show that there are several arguable points which would be finally determined during the course of trial.

15. The Hon'ble Supreme Court in ***State of Chhattisgarh's*** case (supra) has observed as under:-

“Mr. Mukul Rohtgi, learned senior counsel submitted that the respondent is a very high ranking police officer being Additional Director General of Police and has indulged in tampering of evidence. He submits that all these aspects have been ignored by the High Court while granting bail to the respondent.

We find that the present petition is nothing but a totally unwarranted exercise on behalf of the petitioner- State. While considering the application for bail, the status of the applicant is not to be considered. As an ordinary citizen is entitled to his rights under the Constitution, equally a high ranking officer cannot be denied the right under the Constitution. In a case of disproportionate assets, most of the evidence is documentary evidence and therefore, there is no question of tampering such an evidence. Moreover, in any case the High Court has imposed stringent conditions to ensure the interest of the prosecution.

The present Special Leave Petition is without any merit and is accordingly dismissed.

Pending applications also stand disposed of.”

16. The present case is also based on documentary evidence and the said documents have already been submitted to the prosecution and the investigation qua the petitioner is complete and challan and supplementary challan qua the petitioner have been presented and thus, no purpose would be served in keeping the petitioner in further incarceration, rather refusal to grant bail would amount to restricting the personal liberty of the petitioner.
17. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case and subject to the condition that the petitioner would surrender his passport before the trial Court.
18. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.
19. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.
20. Pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

August 04, 2023

(VIKAS BAHL)
JUDGE

Davinder Kumar