

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44315-2023
Reserved on: 04.12.2023
Pronounced on: 19.12.2023

Danesh Kumar...Petitioner

Versus

State of Punjab...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harneet Singh Oberoi, Advocate for the petitioner.

 Mr. Luvinder Sofat, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
16	02.05.2023	Vigilance Bureau, Flying Squad-I, Mohali, SAS Nagar, Punjab	409, 420, 465, 466, 468, 471, 120-B IPC and 13(1) (a) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended by Prevention of Corruption (Amendment) Act, 2018

1. Apprehending arrest in the FIR captioned above, the petitioner, who is Deputy Director of Horticulture, had come up before this Court seeking anticipatory bail, by filing the present petition on 02.09.2023 under Section 438 Cr.P.C.
2. Vide order dated 05.09.2023, this Court had granted interim anticipatory bail to the petitioner subject to stringent conditions, i.e., declaration of assets as per format mentioned in paragraph 17 of the said order. On 11.09.2023, counsel stated that the petitioner had voluntarily complied with the previous order and had handed over his affidavit and his wife’s affidavit to the State counsel declaring their assets. The interim bail is continuing to date.
3. As per the reply dated 11.09.2023 filed by the concerned Deputy Superintendent of Police, the prosecution’s case is that an inquiry was initiated based on a source report. The background of such inquiry was that in 2016-2017, the Greater Mohali Area Development Authority (now called GMADA) started acquiring land for public purposes, i.e., the Aerotropolis Residential Project near IT City and the Aero City scheme. Social Impact Assessment (SIA) notification under Section 4 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (from now on referred to as RFCTLARRA, Act 2013) was issued. While acquiring the land of the landowners, certain

landowners claimed compensation for fruit trees standing on their land. The compensation for fruit-bearing trees is assessed separately from the value of the land acquired, and the controversy is focused on the compensation that was given for guava fruit trees. The allegations are that the guava orchards were shown on the acquired land; however, there were no such trees. Furthermore, the age of guava trees was shown as 04 years, so those are considered fruit-yielding, whereas, in some areas, the trees were recently planted or otherwise were not fruit-yielding. As per paragraph 5 of the reply, in the entire fraud, initially, 18 persons were nominated; however, during the investigation, 81 more have been arraigned as accused, and 20 stand arrested.

4. I have heard counsel for the parties and gone through the pleadings.

5. The petitioner's counsel submits that a writ petition, i.e., CWP-9090-2022, was filed in which a co-ordinate Bench of this Court directed the Principal Court of District and Sessions Judge, SAS Nagar, to decide the issue regarding compensation qua guava orchard following law. As such, the issue is civil in nature, and it is not a case for pre-trial incarceration or custodial interrogation. The petitioner's next stand is that when he was promoted to Joint Director of horticulture, he had initiated a file for having a proper assessment with an upper cap; as such, the petitioner was a whistleblower and wanted the responsibility fixed. In a nutshell, the petitioner claims he wanted to clean the system, which has loopholes. The petitioner's claim is that the entire controversy is about how many trees can be planted on an acre of land. There cannot be any set formula in this regard because it would depend upon the scientific and systematic planning, the variety of guava trees, the quality of land, and the dynamism of the farmer. It cannot be said that simply because in some land, the trees for which the compensation awarded was more, were never in existence. All this is a matter of trial to be proved by the prosecution by leading the evidence.

6. To clarify the stand of the State, it would be relevant to refer to paragraph no.8 of the reply dated 21.09.2023 filed by the concerned Dy. Superintendent of Police, which read as follows:

"8. Department of Horticulture, Punjab has formulated a formula for calculation of the compensation to be paid in respect of fruit trees standing on the acquired land. This formula is known as 'Evaluation of Fruit Trees Formula' and it was 1st evolved in 1954, which was revised in 1966 and then in 1985. Further, almost 2 decades later, a committee was appointed by the Punjab Government to revise the old formula and the committee devised a new formula dated 21.06.2004 for calculating the compensation to be paid to the Orchardists. It is pertinent to mention here that, the definition of orchard was not mentioned in earlier formulas and all the calculated factors were implemented on the scattered plants. However,

in the formula dated 21.06.2004, it was categorically mentioned that a half acre unit (except grapes) will be considered as an orchard on which all the factors of evaluation will be applicable. Scattered plants will be considered as non-commercial and during assessment they will be kept in 'D' class and mortality factor will not be applicable on such plants. It is pertinent to mention here that in the present case, the evaluation of fruit (Guava) trees was calculated in accordance with formula dated 21.06.2004 and the maximum number of trees per acre to be considered for assessment was not mentioned in this formula. However, after completion of the evaluation of the fruit trees standing on the land acquired for Aerotropolis scheme in January, 2022 on the basis of formula dated 21.06.2004, later in the same year 2022 the Department of Horticulture initiated process to revise this formula and a committee was appointed by the Punjab Government for the same. Subsequently, a new formula dated 07.10.2022 for Evaluation of Fruit Trees was devised for calculating the compensation to be paid for the fruit trees and the estimated non-recurring expenditure and recurring expenditure were revised per plant. Moreover, maximum number of plants per acre to be considered for assessment of various fruit trees was fixed in this new formula and for Guava Trees, the maximum number of plants per acre is categorically fixed as 110, if plants are planted at a distance of 20 feet x 20 feet and 132, if plants are planted in high density/closer that is at a distance of 20 feet x 17 feet."

7. In paragraph 9 of the reply, a detailed formula has been given for calculation i.e. how the calculations are to be done and how the difference will come up.

8. As per the prosecution's case on 11.11.2020, the petitioner, who was Deputy Director, Horticulture was nominated to determine the market value of the fruit trees situated in a particular pocket, as mentioned in paragraph 11 of the reply on 13.11.2020. He directed the co-accused Jaspreet Singh Sidhu, Horticulture Development Officer to prepare and submit assessment report of fruit trees. Subsequently, the investigation revealed that some farmers claimed extra payment and had to refund the said amount, and they are also criminally liable for malicious intent and for showing the existence of guava trees or by showing the age of guava trees as fruit-bearing orchards that were not.

9. The State has also referred to paragraph 24 of the reply, stating that they have found sufficient evidence that a massive amount has been released based on the assessment report prepared by the petitioner and his co-accused. It is mentioned explicitly that the guilt of the petitioner is established from the fact that he has countersigned both the reports of the co-accused Jaspreet Singh Sidhu, SDO, and Vishali, SDO, in a mechanical manner without applying his mind.

10. This Court is dealing with the petition for anticipatory bail and not a criminal trial. The prosecution has been able to gather some evidence that some farmers claimed extra payment regarding guava trees. State counsel states that many farmers have refunded the entire compensation amount; some have refunded 50% of the compensation amount received for guava trees. Further, the farmers have sufficient assets. Further, his desire to clean the system and initiate a change in this regard would make out a case by a preponderance of probabilities.

11. Allegations of the State are that calculations were made in three sets and there are contradictions in the third set. Petitioner's response to the same is that the petitioner had denied his signatures before the investigator and as per him, even on the face of it, the signatures appear to be different. Counsel for the petitioner has submitted that the petitioner is voluntarily ready to give his hand writing to the hand writing expert. He further submitted that there was no error on his part and if somebody has done any tampering without his knowledge, he cannot be blamed for the same. Thus, in absence of any report, as on date and petitioner's conduct in improving the system, as mentioned above, coupled with the specific stand of the petitioner that his signatures on the third report do not belong to him and somebody else might tampered it, with a clarification that in case such signatures are found to be made by the petitioner by a hand writing expert, the State may file cancellation of bail, this Court is granting bail on such concession.

12. Given above, the prosecution is not going to achieve anything from custodial interrogation of the petitioner, and it is case for pre-trial incarceration. The present petition is allowed, and interim order dated 05.09.2023 made absolute.

(ANOOP CHITKARA)

JUDGE

December 19, 2023

Jyoti-II/AK

Whether speaking/reasoned: Yes

Whether reportable: NO.