

CRM-M-46421-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46421-2023
Reserved on: 21.11.2023
Pronounced on: 05.12.2023

Gautam Majithia ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.B.S. Dhillon, Advocate and
Mr. Rahul Rampal, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
19	04.07.2023	Vigilance Bureau, Range Amritsar, District Amritsar	7 of Prevention of Corruption Act 1988, as amended by PC (Amendment) Act 2018

1. The petitioner, who is a practising advocate at District Court, Amritsar, apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 12.09.2023.
2. Vide interim order dated 15.09.2023, this Court had granted interim bail to the petitioner, subject to disclosure of assets as mentioned in para 17 of the said order. On 22.09.2023, the petitioner’s counsel stated that they had voluntarily complied with previous order. On 17.10.2023, State had handed over the reply and the petitioner had sought adjournment to go through the same. Matter was finally heard on 21.11.2023 and order was reserved.
3. Facts of the case are being extracted from the reply dated 10.10.2023, filed by the concerned DySP, which reads as follows:-

“3. That the brief and the relevant facts of the case are that aforesaid FIR No. 19 dated 04.07.2023 was registered as per the direction of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar after obtaining a legal opinion from the Deputy District Attorney (Legal), Amritsar, after the submission of a detailed report dated 28.06.2023 in his office by the deponent, after the verification of the allegations made by the complainant/co-accused Jatinder Singh son of Amrik Singh

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resident of House No. 22-23, Partal Avenue, Amritsar made by him in the complaint No. 152399 dated 18.05.2023 lodged on Anti-corruption Helpline of the Vigilance Bureau, Punjab. The complainant had alleged that the petitioner, being a Law Officer of the Amritsar Improvement Trust, has demanded 20 lakh from him as bribe for the release of compensation amount to be paid by the Improvement Trust, Amritsar for the acquisition of his land and received Rs. 7 lakh from him as per his demand. He has also produced a video recording showing the petitioner receiving of Rs. 07 lakh in cash from him. The detailed facts alleged by the complainant and mentioned in the aforesaid FIR No. 19 dated 04.07.2023 have been reproduced in its true translation attached with the petition as Annexure P-1, which may kindly be read as a part of this paragraph please as same are not repeated for the sake of brevity.

4. That during the enquiry proceedings, the statement of the complainant Jatinder Singh was recorded, who alleged he had contacted the petitioner and a private Advocate for the payment of the aforesaid compensation amount, they both have assured about the payment of the aforesaid compensation amount without any obstruction by the Improvement Trust, Amritsar by demanding Rs. 20 lakh from him and he had paid Rs. 20 lakh to both of them on different dates as per their demand for the release of compensation amount to be paid by the Improvement Trust, Amritsar for the acquisition of his 20 bighe land, which has been enhanced by this Hon'ble Court on the appeal filed by him."

4. Petitioner seeks bail on the ground that entire FIR is a result of malicious intent. Petitioner's counsel has referred to paras 3 to 5 of the bail petition and it would be appropriate to extract such paragraphs and the same are as follows:-

"3. That the registration of present FIR is a classic case of witch-hunting. The petitioner has been instrumental in unearthing the biggest scam being orchestrated by the Ex. Chairman of Amritsar Improvement Trust along with his associates by lodging a complaint in writing, which resulted into registration of FIR No 09, dated 06 07 2022, by Police Station "Vigilance Bureau, Range Amritsar U/s.409, 420, 120-B, 201 IPC and Section 13(2) & 7(a) of the Prevention of Corruption Act, 1988. Copy of the FIR is annexed herewith as Annexure P-2.

4 That it is further submitted here that petitioner was actively following up and pursuing the said cause to protect the interest of the state government and the petitioner further brought into light matter pertaining to illegally and unlawfully enlistment of 68 firms in fraudulent manner. It is also worthwhile to mention over here that the sphere of investigation of the matter arising after the registration of the aforesaid FIR bearing No.09 dated 06.07.2022, has broadened accordingly, which led to provoke various individuals who are likely to be effected therewith, and therefore, consequent reactions and conspiracies started against the present petitioner with an ulterior motive to harass and notoriously drag him in some false, baseless and concocted accusations.

5. That the petitioner was being put under threat and everything inconvenient started happening to the petitioner since the Ex-Chairman of Amritsar Improvement Trust was released on bail in the month of February by this Hon'ble Court in the above mentioned FIR. The present

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petitioner moved written applications, in this regard, to the higher officials and authorities. A copy of communication dated 05.04.2023 wrong written in the annexure as 05.04 2022 sent to the Commissioner of Police and an email dated 10.04 2023 sent to Chief Director Vigilance Bureau, Punjab is annexed herewith as Annexure P-3 & P-4.”

5. I have heard counsel for the parties and also gone through the petition as well as status report.

6. State has also placed on record the photographs of the petitioner accepting cash, one time in the office and second time in the car.

7. Perusal of the said photographs clearly reveal that the petitioner is accepting the cash. In addition to that, State has also appended a pen drive containing the recording of handing over the cash. I have seen all the four videos in the pen drive in the electronic device of my Research Associate. Apparently, the videos have clear edges, no interruptions and do not point out any possibility of any tampering or editing in it. Furthermore, State contended that requisite certificate under Section 65-B of Indian Evidence Act was obtained for such electronic evidence.

8. I have also gone through the transcript of the video which has been annexed as Annexure A-1 of the reply.

9. After watching the photographs and seeing the video dialects of which is in Gurumukhi, I can fully understand, as well as the transcript, it is clear that the petitioner had accepted bribe in cash and currency notes have been counted by the petitioner with his own hands.

10. State counsel submits that the investigator duly gave an opportunity to the petitioner to explain and rebut the allegations but he did not appear. Further, during the investigation, the petitioner could not point out any other reason for such money. Thus, an analysis of the petition, response filed by the State and arguments addressed by counsel, leads to an outcome that the petitioner who is an advocate and was appointed as Law Officer of Amritsar Improvement Trust in the year 2019, took a sum of Rs.75 lacs as bribe, out of which videography of Rs. 20 lacs was done which includes Rs. 50 lacs in cash and Rs. 25 lacs through different cheques to the petitioner, which were encashed in different bank accounts. Simply because Chairman of Amritsar Improvement Trust was pointed out towards involvement of a massive amount, is no ground for bail in the absence of any evidence of false implication. The petitioner in the video is himself counting the currency notes very happily. Granting anticipatory bail to the petitioner could hamper the investigation, send a negative message to society and

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potentially increase corruption. Simply because petitioner is an advocate, it is not mean that he has not committed any offence.

11. Considering the nature of allegations and for the reason that petitioner was law officer of Amritsar Improvement Trust and as such prima facie is a public servant and also the evidence collected, does not warrant the grant of bail to the petitioner.

12. 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....."

13. 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 ensconded 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 insulted 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.

14. 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].

15. 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.

16. 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.

17. 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.

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[31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious 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.

18. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

19. 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, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

05.12.2023

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Whether speaking/reasoned: Yes

Whether reportable: No.