

CRM-M-47420-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47420-2023
Reserved on: 20.11.2023
Pronounced on: 02.12.2023

Malwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
11	07.08.2023	EO Wing Punjab Vigilance Bureau, Ludhiana, District Ludhiana	7 of Prevention of Corruption Act 1988 as amended by the Amendment Act 2018

1. The petitioner 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 11.09.2023.
2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents except one FIR, which is appended as Annexure P-1. In the reply dated 10.10.2023, one FIR is also mentioned, which is pending against the petitioner. Details of the above said FIRs are as follows:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	137	08.08.2023	Bhawanigarh, District Sangrur	15, 18 (Act No.61) of Narcotic Drugs and Psychotropic Substances Act 1985
2	123	19.05.2023	City I, Malerkotla	406, 420, 120-B & 506 IPC

3. Vide order dated 20.09.2023, this Court had granted interim anticipatory bail subject to compliance of various conditions including declaration of assets as mentioned in para 19 of the said order. On 11.10.2023, petitioner’s counsel submitted that they had voluntarily complied with the previous order dated 20.09.2023. On 30.10.2023, petitioner’s counsel again submitted that they had voluntarily declared their assets and complied with the previous order to prove their bona fide and honest conduct and

CRM-M-47420-2023

further stated that they would not claim such declaration as self incrimination, violence of Article 20/21 of Constitution of India of any other fundamental right/law.

4. However, State counsel had opposed the present petition and extension of bail on the ground that they had no information about such compliance and the petitioner has not at all cooperated with the investigator. He further contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

5. Facts of the case are being extracted from reply dated 10.10.2023 filed by the concerned Deputy Superintendent of Police, which reads as under:-

“ (i) The present FIR was registered against the petitioner as per the statements of complainant Jagtar Singh. He stated that on FIR No.123 dated 19.05.2023 u/s 406, 420, 120-B & 506 IPC at Police Station City 1, Malerkotla, was registered against him and his son Pawanpreet Singh. They both were on bail in above said FIR. The petitioner Asi Malwinder Singh was Investigation Officer of above said FIR. He went to Police Station-1 Malerkotla On 05.08.2023 as he was called by ASI Malwinder Singh. During meeting with ASI Malwinder Singh, bribe of Rs 10,000 was demanded from him by said ASI for producing challan in the Hon'ble court and to discharge his son Pawanpreet Singh from above said FIR. He did not want to give bribe for this. So, he came to Economic Offences Wing, Vigilance Bureau, Punjab, Ludhiana office and produced audio CD of conversation between him and petitioner ASI Malwinder Singh. (Copy of transcript Annexure R-1 is enclosed herewith.

(ii) As per, the Statement of complainant FIR no.11 dated 07.08.2023 u/s 7 Prevention of Corruption Act 1988 as Amended by Amendment Act 2018 was registered against ASI Malwinder Singh no. 264 Patiala, Police Station City-1, Malerkotla at Police Station Economic Offences Wing, Vigilance Bureau, Punjab, Ludhiana.

(iii) Trap was laid by Inspector Yogesh Kumar no.304/PAP Vigilance Bureau, Ludhiana in the presence of Government officials namely Satwinder Singh cycling coach DSO Office Ludhiana and Sh. Vinod Kumar Labour Enforcement Officer.

(iv). The petitioner received bribe money of Rs 10,000/- from the Complainant outside the Police Station City-1 Malerkotla while sitting in his own car Maruti Dezire PB11BK 7042 which was witnessed by shadow witness namely Satwinder Singh cycling Coach DSO Ludhiana.

(v) As the petitioner obtained bribe money, the shadow witness gave prefixed Signal to trap team.

(vi). When trap team was approaching towards the petitioner to nab him, he quickly fled away from the spot in his car.

(vii). The petitioner's car was followed by Investigation Officer along with complainant, Govt. officials and trap team in the private vehicles and said car of petitioner was found at Bhawanigarh being stucked in mud and the

CRM-M-47420-2023

petitioner has already fled from the spot along with the key of car. The said car was taken into possession.

(viii). During search of the car of petitioner trap money of Rs. 10,000 and Case FIR no. 123 dated 19.05.2023 u/s 406, 420, 120-B and 506 IPC Police station City 1 Malerkotla was recovered from the said car in the presence of Govt. Officials. (Copy of memo Recovery Record Annexure R-2 is enclosed herewith)

(ix). While searching the dicky of the car of petitioner Poppy Husk weighing 460gm and Opium weighing 9gm along with electronic weighing scale were recovered in the presence of Government Official witnesses. A separate FIR No. 137 dated 08.08.2023 u/s 15,18/61/85 NDPS Act was registered against accused Asi Malwinder Singh by Investigating officer Inspector Yogesh Kumar with SI Balwant Singh Incharge Police Post Chaunki Kala Jhar Police Station Bhawanigarh City. (Copy of FIR is attached here with as Annexure R-3).

6. I have heard counsel for the parties and gone through the petition as well as response of the State and the grounds taken therein.

7. Petitioner's counsel seeks bail on the ground that the alleged amount of Rs.10,000/- was never recovered from the petitioner and it has been shown to have been recovered from the car. There was a plan to involve him in a false case. He further submits that on coming to know about the conspiracy and a plan to involve him in a false case, petitioner had no option but to save himself and his job from such false implication by setting away from law enforcement agencies and as such allegations of his abstaining are also fabricated and wrong.

8. On the other hand, State has opposed the present petition on the ground that after receiving a bribe of Rs.10,000/-, petitioner somehow got wind of a hint and by taking advantage of the moment, fled from the spot, but the police chased him and recovered not only Rs.10,000/- from car but in addition to that. also recovered 460 grams of poppy husk and 09 gram of opium, for which a separate FIR was registered.

9. Analysis of the complaint and the evidence collected so far, point out that after demanding the bribe when the complainant had informed the Vigilance Bureau and had paid the bribe to the petitioner, somehow he got to know about the trap either because of his own hunch or may be somebody present at the spot had given a hint. On coming to know that he has already received the trotted currency notes, he step away in his car and later on when his vehicle struck off in the mud he abandoned the vehicle and fled on foot, but the investigator recovered not only the trotted currency notes of Rs.10,000/- but also recovered narcotic substance. The petitioner was working on a highly sensitive post of investigator and was appointed and posted to maintain rule of

CRM-M-47420-2023

law and to stop illicit activities in total violation of such requirements of service but the petitioner not only demanded money but was also found possessing narcotic drugs, which would fall under small quantity and probably for personal consumption.

10. Be that as it may and evidence collected so far, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

11. 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....."

12. 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.

13. 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 enroled 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.

CRM-M-47420-2023

Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

14. 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.

15. 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.

16. 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 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.

17. 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.

18. 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

02.12.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.