

**108(4) IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CRM M-49047-2023 (O&M)
Date of Decision: 06.10.2023**

Vikas Pandey

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHUPresent: Mr. K.K. Saini, Advocate
for the petitioner.Mr.Amit Kumar Goyal, APP UT Chandigarh
assisted by Inspector Kirpal Singh.**MAHABIR SINGH SINDHU. J.**

Present petition has been filed under Section 439 of the Code of Criminal Procedure (for short “Cr.P.C”) for grant of bail pending trial in FIR No. 24 dated 18.02.2023 under Sections 420, 467, 468, 471 & 120-B of Indian Penal Code, registered at Police Station Sector 17, Chandigarh.

2. Above FIR was registered on the basis of written complaint made by Sh. Sunil Dutt, Superintendent Parking, Municipal Corporation, Chandigarh (for short ‘Corporation’) with the allegations that M/s Pashchatya Entertainment Pvt. Ltd., 2533, Punjabi Basti, Old Subzimandi, Delhi 110009 (for short ‘Company’) had been allocated tender on 23.01.2020 for Operation & Management of 57 paid parking sites in Chandigarh for a period of three years.

As per the terms & conditions of the contract, three bank guarantees from Syndicate Bank (Now Canara Bank) amounting to Rs.1,65,33,333/- (Rs.55,11,111/- each) were furnished by the Company. Apart that, the Company deposited 36 post-dated cheques for recovery of penalty amount in

case of any default. On 28.01.2020, the Corporation sent a letter to the Branch Manager of the Bank at Delhi for verification of the above bank guarantees. In response thereto, a communication dated 15.02.2020 was received from the Bank, confirming that all three Bank Guarantees were duly issued by their Branch.

On account of failure to pay the monthly instalments running into about Rs.7 crore, the bank guarantees were presented for encashment by the Corporation on 03.02.2023, but on verification of the records, the Bank, vide email dated 17.02.2023, intimated that no such bank Guarantees have been issued by their Branch and declined to honour the same.

Even the Cheque No. 207039 presented by the Corporation for recovery of penalty amount was returned by the Punjab National Bank on 15.02.2023 with the remarks that “*Bank Merged*”.

CONTENTIONS

3. On behalf of Petitioner

3.1 Contended that co-accused Anil Kumar Sharma and Sanjay Sharma are the mastermind of the entire conspiracy and petitioner has nothing to do with the same.

3.2 Petitioner joined office of Anil Sharma in the month of August, 2017. Anil Sharma approached Sanjay Kumar Director of the Company for participating in tender and upon their mutual understanding, the Company entered into Memorandum of Understanding with M/s Tenaga Parking Services Ltd., for taking part in the tender.

3.3 Sh. Sanjay Kumar Sharma duly authorised the petitioner to execute documents and attend meeting on behalf of the Company. Petitioner made

correspondence with the Corporation on only two occasions and as such he is not liable for any bank guarantees which were submitted by the Company.

3.4 Also submitted that petitioner is not the signatory before the Bank; nor with the Registrar of Companies and he was just an employee of the Company.

3.5 Still further contended that co-accused Ajay Kumar Singh & Karan Sharma with similar allegations have already been granted the concession of regular bail by learned Additional Sessions Judge and Chief Judicial Magistrate, Chandigarh on 20.04.2023 & 01.05.2023, respectively; hence he be granted the similar benefit being a poor person.

4. On Behalf Of UT

4.1 While opposing the prayer, learned counsel for the U.T. submitted that petitioner is the Director of the Company along with co-accused Anshul Mishra. Co-accused Anshul Mishra along with petitioner also opened bank account with HDFC Bank, Delhi in the name of Company and an amount of Rs.5,48,95,480/- has been transferred in that account.

4.2 Also contends that petitioner in connivance with other co-accused had forged three bank guarantees to the tune of Rs.1,65,33,333/- (Rs.55,11,111/- each) and defrauded the Corporation.

5. Heard learned counsel for the parties and perused the paper book.

6. As per prosecution case, contract for Operation & Management of 57 parking sites in Chandigarh was awarded to the Company on 23.01.2020 for a period of three years. In pursuance of the terms & conditions of contract, the Company furnished three bank guarantees for an amount of Rs.1,65,33,333/- (Rs.55,11,111/- each). The period of contract started w.e.f. 23.01.2020. It was agreed between the parties that monthly fee of Rs.45,92,592/- shall be paid by 7th day of every month. Initially, the Corporation through letter dated

28.01.2020 sought verification of the three bank guarantees from the Bank at New Delhi, which were duly confirmed by the Branch vide letter dated 15.02.2020.

However, consequent upon default of the Company in making the monthly instalment, all three bank guarantees were presented for encashment by the Corporation; but the Bank, vide communication dated 14.02.2023, informed that no such bank guarantees were ever issued by their Branch and relevant part of the letter reads as under:-

*“To
The Commissioner,
Municipal Corporation
Chandigarh*

Dear Sir/Madam

We are in receipt of your request for invocation of Bank Guarantees of M/s Paschatya Entertainment Pvt. Ltd. As mentioned below.

<i>Bank Guarantee No.</i>	<i>Amount (In Rs.)</i>	<i>Date of Issuance</i>
<i>13/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>
<i>14/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>
<i>15/2020</i>	<i>55,11,111/-</i>	<i>18-01-2020</i>

On verification of records, it has been observed that no such bank guarantee has been issued from our Branch. Hence, we will not be in a position to honour your request for invocation.”

7. On 01.08.2023, this Court, after hearing the matter for some time, asked the Senior Superintendent of Police, Chandigarh to consider for deputing some senior officer to investigate the matter, but the same was not adhered to for the reasons best known to them.

8. After going through the Police file, *prima-facie*, it appears that financial condition of the Company is very poor. As on today, the Company has no liquidity; rather its bank account has already been declared as NPA. The

Company is having no fixed assets even for recovery of the alleged amount of Rs.7 crore.

9. Thus, present case seems to be a pre-planned conspiracy hatched by all the accused including, the petitioner as he is also the beneficiary being an employee of the Company. Petitioner was well aware about the credentials of the Company and has received money purported to be the salary, which in fact, is the misappropriation of parking fee collected by the main accused while defrauding the Corporation.

10. In view of the above discussion, releasing the petitioner on bail, at this stage, shall hamper the fair investigation; therefore, this Court is not inclined to accept the prayer of petitioner.

11. Taking into consideration the seriousness of allegations, this Court is not subscribing the view taken by learned Additional Sessions Judge as well as learned Chief Judicial Magistrate, Chandigarh while granting bail to co-accused Ajay Kumar and Karan Sharma, respectively; nor the same can be treated as a binding precedent while deciding the present petition.

12. Consequently, there is no option except to dismiss the present petition.

13. Ordered accordingly.

14. Needless to say that observations made above shall not be construed as an expression of opinion on merits of the case in any manner; rather confined only to decide the present bail matter.

15. Pending application(s), if any, shall also stand disposed off.

06.10.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No