

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.55326 of 2022 (O&M)
Date of Decision: 28.03.2023

SUNDER SHAM ARORAPetitioner
Vs
STATE OF PUNJABRespondent
CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.

CRM No.49740 of 2022

For the reasons mentioned in the application, the same is allowed. Annexures P-5 and P-6 are taken on record, subject to all just exceptions.

CRM-M No.55326 of 2022 (O&M)

[1]. The petitioner has preferred this petition for the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.19 dated 15.10.2022 registered under Section 8 of the Prevention of Corruption Act 1988 as amended P.C. (Amendment) Act, 2018 at Police Station Vigilance Bureau PH-1, Punjab at Mohali, District SAS Nagar.

[2]. The FIR was registered on the statement of Manmohan Kumar, PPS, Assistant Inspector General of Police, Vigilance

Bureau, Flying Squad-1, Punjab SAS Nagar. As per allegations on 14.10.2022 at about 6.15 P.M., the complainant got a mobilphone call and the caller disclosed his name as Sunder Sham Arora and further introduced himself as the former minister. He was talking to the complainant being his old known acquaintance. He asked the complainant to send location of his house. On the persistence of the accused, the complainant sent location of his house as he wanted to come to his house for sharing his grief on account of death of his wife. The accused came to the house of the complainant and started talking about his pending matter before the Vigilance Bureau. The accused asked the complainant to help him out and in lieu thereof, the accused offered bribe to the complainant in a sum of Rs.1 crore. The complainant was shocked. The accused further asked the complainant that he would give half of the amount in advance on 15.10.2022 and the remaining will be paid at later stage. Since the complainant was not expecting such a behaviour from the accused, therefore, he could not record the conversation. This was so because neither the complainant asked him for the bribe nor he wanted to get the same. The complainant remained quite at that time for taking lawful action against such person, who encourages bribery in the society. By making the aforesaid offer the accused left the house of the complainant. The complainant brought the matter to the notice of his superiors

that the accused will come on 15.10.2022 to give him the bribe of Rs.50 lakhs. The complainant further alleged that since the accused being a former minister has offered a bribe to a government officer in lieu of getting his work done in a wrongful manner, therefore, he has committed an offence and action be initiated against him. The FIR was registered with this background.

[3]. The complainant has further alleged that thereafter the officials of Vigilance Bureau including the Investigating Officer had formed a raiding party for the recovery of the bribe amount which would be paid by the accused to the complainant on 15.10.2022. The team departed for the appointed place and stationed their vehicles near Zirakpur Bridge. The accused made a whatsapp call to the complainant and told the complainant to meet him in the parking of the Cosmo Mall, Zirakpur. Thereafter the raiding party went to the parking of the Cosmo Mall, Zirakpur. After parking their vehicles, the Investigating Officer and members of the raiding party remained stationed in the parking in a scattered manner and waited for the signal of the shadow witness. The shadow witness was asked to remain present near the Innova vehicle as per the plan. Thereafter one Innova car bearing Regn. No.CH01-CK-0036 came in the parking lot and two persons having their hair

cut alighted from the Innova car which was being driven by one Sikh driver. Thereafter one of the aforesaid two persons, met the complainant and both of them sat in a white colour Innova car which was parked nearby. After sometime that person opened the window door of the Innova car and told his companion to hand over him one bag. Thereafter his companion handed over a bag after taking the same from the Innova car in which there had come.

[4]. After getting signal from the shadow witness, the police swung into action and went near the Innova car, wherein the complainant and the accused were sitting on the rear seat. The Investigating Officer introduced himself to the accused in respect of his name, rank and place of posting. On being asked, the accused told his name as Sunder Sham Arora former minister. Thereafter the complainant told that the bribe amount of Rs.50 lakhs which was paid to him by the accused was lying in the bag. The amount was recovered in the presence of the witnesses and the same was taken into police possession. The accused was accordingly arrested.

[5]. Learned Senior counsel for the petitioner submitted that no such incident had happened as alleged by the complainant. The mandatory provisions in terms of Section 41 Cr.P.C. have not been followed by the investigating agency as no notice was

issued to the petitioner to join the investigation and the arrest has been effected straightaway.

[6]. Learned Senior counsel further submitted that an inquiry was pending before the Vigilance Bureau, Mohali and the petitioner was summoned by the Deputy Superintendent of Police, Vigilance Bureau, Mohali vide letter No.1432 dated 13.09.2022 with a direction to appear on 21.09.2022. The reference of this inquiry finds mention in the FIR itself. The petitioner had appeared before the said Inquiry Officer and co-operated during the course of inquiry. The petitioner had also submitted documents before the Inquiry Officer and his statement was also recorded by the Inquiry Officer. The petitioner was again asked to appear on 12.10.2022. The petitioner had appeared on 12.10.2022 also and co-operated with the officials of the Vigilance Bureau. The said inquiry relates to case of some disproportionate assets and the petitioner has fully accounted for those allegations in respect of his properties as reflected in the affidavit filed by the petitioner before the Election Officer at the time of contesting election of as Member of Legislative Assembly. The details of the property have also been uploaded on the website of the Election Commission and there was no occasion for the petitioner to make contacts with the complainant in this regard.

[7]. Learned Senior counsel further submitted that S. Bir Devinder Singh also filed a complaint No.119 of 2021 against the petitioner and others before the Lokpal, Punjab with the allegations of adopting illegal means for his own benefit by giving industrial plots at Mohali to the beneficiaries. Some more allegations were also alleged in the complaint. The Hon'ble Lokpal after going through the material ultimately found that no evidence was available and, therefore, the complaint was dismissed on 03.12.2021 by endorsing the stand of the petitioner. A Civil Writ Petition is also pending in the context of termination of agreement.

[8]. Learned Senior counsel with reference to the additional documents viz. Annexures P-5 and P-6 submitted that the transcript of the complainant in view of interview with the News18, Punjab dated 16.10.2022 contains different allegations which do not correspond to the allegations in the FIR. With reference to said transcript, learned Senior counsel further submitted that the presence of Satinder Singh and Kamaljit Singh would remain debatable and in the manner in which the aforesaid persons could have been called at the Cosmo Mall, Zirakpur without fixing any venue in advance on 15.10.2022. The venue of trap was never fixed. It was the complainant, who told that he had come to the Cosmo Mall, Zirakpur and there

was no recording of 14.10.2022 in this trap case to corroborate the fact that the complainant had brought the incident to the notices of the high ups including the Hon'ble Chief Minister and the Director etc. The story as depicted in the transcript in respect of visit of the complainant to Cosmo Mall and visit of the petitioner to the house of the complainant and telling him to come to Cosmo Mall by the complainant is not part of the challan. With reference to the status report filed on record, learned Senior counsel further submitted that the status report is silent with regard to the alleged intervening stages. As per the transcript, on 15.10.2022, the petitioner called the complainant again around 7.30-8.00 hrs in the evening and told the complainant that he is outside the house of the complainant. The complainant told him that he was not at home. On being asked, the complainant told the petitioner that he has come to the Cosmo Mall. On this the petitioner replied the complainant that he will also come to the Mall. The alleged presence of the petitioner outside the house of the complainant and thereafter proceeding to Cosmo Mall on finding that the complainant is present in the Cosmo Mall is also not part of the statements of Mani Sidhu, P.A. of the petitioner and Dharam Singh, Driver of the car belonging to Mr. Deepak Garg owner of Marvella Tower. Mr. Deepak Garg, owner of Marvella Tower is owner of car bearing Regn. No.CH01-CK-0036 which is the case property

and Mr. Deepak Garg has not been arrayed as accused, rather he is being treated as witness.

[9]. Learned Senior counsel further submitted that at the most, Mr. Deepak Garg owner of car bearing Regn.No.CH01-CK-0036 could have been made approver in the present case. The recovery was effected from the car of the complainant and the car of the complainant was never searched. The PA of the petitioner was carrying money and he has been cited as witness. In these circumstances, he could have been made approver and not the witness. Similarly, the driver of Mr. Deepak Garg namely Dharam Singh has also been treated as witness. The Innova car bearing Regn. No.CH01-CK-0036 was searched from where documents in respect of the case/complaint filed before the Lokpal were recovered in which the petitioner was found innocent. At one point of time, Mr. Deepak Garg and another filed CRM-M No.49431 of 2022 on account of their apprehension of arrest. Vide order dated 21.10.2022, they were relegated to approach the Court of Sessions at the first instance for the relief in question. Thereafter the owner of Marvella Tower and others were not sought to be arrested in the present case, rather they have been cited as witnesses.

[10]. Learned Senior counsel for the petitioner further submitted that as per recovery memo, PA of the petitioner has

not signed the same, rather the complainant himself produced a bag from his car and the car was not searched. The PA of the petitioner was allegedly carrying bag and he handed over the same to the complainant on the asking of the petitioner. The PA of the petitioner has not been arrayed as accused nor has been made an approver, therefore, the provisions of Section 306 Cr.P.C. have been flouted.

[11]. Learned Senior counsel also by making reference to the powers and duties of the Vigilance Bureau and the Manual of Department of Vigilance, Government of Punjab submitted that the Vigilance Bureau has been empowered to enquire into allegations against all the public servants as defined under the Prevention of Corruption Act, 1988. The jurisdiction of Vigilance Bureau was originally restricted to Punjab Government employees and members of All India Services according to instructions dated 15.09.1967. However, it was extended vide instructions dated 15.10.1979 so as to cover the employees of autonomous and statutory Boards/Corporations and Improvement Trusts. At present all the public servants are covered under the Prevention of Corruption Act, 1988 subject to its jurisdiction. The cases registered under the Prevention of Corruption Act, 1988 were previously being investigated by the Gazetted Police Officers only. On the proposal of the Vigilance

Bureau, Punjab, the Government of Punjab, (Department of Vigilance) vide its Notification dated 20.09.2012 in exercise of the powers conferred by the first proviso to Section 17 of the Prevention of Corruption Act, 1988 has authorized Inspectors of Police, for the time being, serving in the Vigilance Bureau, Punjab and has entrusted all powers to them to investigate under the above said Act. The main functions of the Vigilance Bureau have also been defined in the said notification.

[12]. Learned Senior counsel further submitted that the petitioner is in custody since 15.10.2022. The challan has already been submitted to the competent Court on 12.12.2022. The petitioner is in judicial custody for the last more than 5½ months and is not required for any further investigation in the case.

[13]. Per contra, learned State counsel opposed the bail on the ground that the defence as projected by the petitioner would be considered by the competent Court at the relevant stage. The petitioner has attempted to give bribe to the complainant. The allegations are different than the one in which the Lokpal vide order dated 13.12.2021 had exonerated the petitioner. In view of position of the petitioner being that of a former minister, he may influence the witnesses during trial.

[14]. Learned State counsel also pointed out that the

petitioner has also been arrested in FIR No.1 dated 05.01.2023 under Sections 409, 420, 465, 467, 468, 471, 120-B IPC and Section 13(1)(A), 7, 13(2) of the Prevention of Corruption Act, 1988 as amended by the PC (Amendment) Act, 2018, Police Station Vigilance Bureau, Flying Squad-I, Punjab at Mohali and he is in custody in that case also.

[15]. After hearing learned counsel for the parties, I am of the view that the grounds taken by the petitioner with reference to competence of the Vigilance Bureau to investigate is not the subject matter of appreciation in these proceedings. The exoneration by the Hon'ble Lokpal in a complaint can only be appreciated by the Court on the basis of material to be adduced by the petitioner at the relevant stage. The pleas taken by the petitioner on merits of the case would always be subject to the nature of evidence to be produced by the prosecution and in defence of the petitioner. The contents of the transcript would also be gone into by the Court in accordance with law at an appropriate stage.

[16]. There is no denial to the fact that the petitioner was arrested on 15.10.2022 and challan has been submitted to the competent Court on 12.12.2022. The only apprehension of learned State counsel is that the petitioner being a former minister may influence the prosecution witnesses during trial,

therefore, the bail cannot be granted to him. It has also been brought to the notice of the Court that the challan has also been filed in the second case bearing FIR No.1 dated 05.01.2023 under Sections 409, 420, 465, 467, 468, 471, 120-B IPC and Section 13(1)(A), 7, 13(2) of the Prevention of Corruption Act, 1988 as amended by the PC (Amendment) Act, 2018, Police Station Vigilance Bureau, Flying Squad-I, Punjab at Mohali on 22.03.2023.

[17]. Taking into consideration the facts and circumstance of the case and without meaning anything on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

[18]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[19]. This Court has not expressed any opinion in the merits of the case and nothing expressed hereinabove shall be construed to be an expression of any type on the merits of the case. All pending applications are also disposed of.

(RAJ MOHAN SINGH)
JUDGE

March 28, 2023

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No