

CRM-M-53188-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53188-2023
Reserved on: 20.11.2023
Pronounced on: 02.12.2023

Mahbub Ali ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhilaksh Grover, Advocate and
Mr. Sahdev Nehra, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
19	28.09.2023	Anti Corruption Bureau, Sector 17, Panchkula	7, 7A, 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988 (Amended by 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 13.10.2023.
2. Vide order dated 19.10.2023, petitioner was granted interim bail which is continuing till date.
3. Facts of the case are being taken from para 2 of the reply dated 07.11.2023 filed by the concerned DySP which reads as follows:-

“2. That the instant case was registered on the complaint of Bilal to the effect that on 21.09.2023, 4/5 police officials had come to his house in his absence. On inquiry by his mother, they told that they had arrested one person named Sabir in NDPS Act and name of her son Bilal (complainant) had surfaced in his disclosure statement. They asked her to send her son Bilal to Narcotic Cell, Yamuna Nagar. While leaving, two officials told their names as ASI Pawan Kumar (petitioner) and Mahbub Ali. ESI Mahbub Ali gave his mobile No. 8708749106 and 8818000248 for contacting him. On 22.09.2023, his uncle Sajid visited police station alongwith respectable

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persons and met Mahbub Ali. Mahbub Ali told that the case is being looked after by ASI Pawan (petitioner) and he will get the matter settled for Rs. 2,50,000/-. He further told that they should further contact in this regard with his brother Islam, who is resident of village Jadoli near village Gheed, District Karnal. He also gave mobile number of Islam i.e. 9671414528. On the asking of Mahbub Ali, the complainant along with his mother Imrana reached village Jadoli and met Islam, who took them to the house of Mahbub Ali at village Raipur, District Yamuna Nagar. Mahbub Ali demanded Rs. 2,50,000/- from them and after bargaining, matter was settled for Rs. 1,50,000/-. He further averred that on 27.09.2023, he talked with Islam from his mobile No. 7060111007 and requested for taking less amount, on which Islam told that they will have to pay at least Rs. 1,40,000/-. The complainant requested for one day time from Islam. He stated that on 27.09.2023, he had recorded conversation in his mobile. It was further averred that he wanted to get caught him red handed while paying Rs. 1,40,000/-. In addition to it, complainant made him to hear one audio recording. Statement under section 164 Cr.P.C dated 29.09.2023 of complainant, Arshad Chaudary uncle of complainant and statement of shopkeeper Pritam are annexed as Annexure R-1 (Colly)."

4. I have heard counsel for the parties, gone through the petition and the response as well.

5. Petitioner's counsel seeks bail on the grounds that even if his brother has misused his position and demanded money then it would not mean that the petitioner is also involved. The petitioner further submits that he had voluntarily declared his assets which shows their bona fide and innocence. Next argument is that the complainant is criminal and a large number of FIRs are pending against him and as such the complainant cannot be termed as a credible witness and no reliance should be placed on his allegations which have no sanctity considering his criminal past.

6. On the contrary, State counsel seeks custodial interrogation and submits that they have collected sufficient evidence, which points out towards petitioner's involvement. He further submits that simply because the petitioner has declared all his assets, would not prove that such declaration is truthful and they deserve their right to investigate on that part and on that ground petitioner is not entitled to bail.

7. On analysis of arguments addressed by the parties and the bail petition as well as response, would lead to the following conclusion.

8. It remains undisputed that police had recovered Rs.1,47,000/- from Islam who is brother of the petitioner. Islam was not working in the police but petitioner was posted as Sub Inspector in Haryana Police and was currently posted in NCB, Yamunanagar. Although ASI Pawan Kumar was also roped in, but analysis of investigation points out that investigation has already been transferred to some other officer from ASI Pawan

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Kumar at the time when allegations were made they got the matter settled through ASI Pawan Kumar. As such evidence collected against ASI Pawan Kumar was different from the evidence which was collected against Islam and the petitioner who is his brother. In addition to the recovery of money from brother of petitioner, police had also placed on record telephonic conversation between Islam and Bilal (complainant), which has been annexed as Annexure R-3. Although in such phone calls, Islam is pointing out towards ASI Pawan Kumar but it cannot be said that ASI Pawan Kumar was aware of such dealing and that is subject to investigation. As such outcome of the bail of ASI Pawan Kumar would have no bearing in the present bail petition.

9. A perusal of the transcript clearly points out that the complainant was praying before Islam that money would be arranged and they are making all their efforts to arrange money from commission agents in Karnal. Petitioner's brother Islam explicitly mentions Mahbub Ali (present petitioner) as one, who has to settle the matter. Petitioner was named for extracting money or it was genuine, that is subject of investigation. Perusal of the transcript clearly points out towards the petitioner's involvement along with his brother and he is not entitled to bail. The petitioner, whose brother was demanding money in acting association and also involvement of the petitioner. Although the State seeks rejection of bail on ground that the petitioner was involved in an FIR, under 307 IPC & NDPS Act. But as per para 10 of the reply that petitioner was acquitted in that case, as such criminal history would not be a ground for cancellation of bail. Further considering the evidence collected in the present case petitioner's custodial interrogation is required to find the involvement of other people and even otherwise petitioner is not entitled to anticipatory bail given the facts and circumstances.

10. Given the nature of allegations, 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 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.

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 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].

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.

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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

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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: **YES.**