

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1) **CRM-M-56954-2022 (O&M)**

Rakhwinder Kumar	Versus	...Petitioner
State of Punjab and another		...Respondents

(2) **CRM-M-59662-2022 (O&M)**

Vijay Kumar	Versus	...Petitioner
State of Punjab and another		...Respondents

Date of Decision:-30.1.2023

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vipul Aggarwal, Advocate for the petitioner
in CRM-M-56954-2022.

Mr. Keshav Pratap Singh, Advocate for the petitioner
in CRM-M-59662-2022.

Mr. Siddharth Attri, AAG, Punjab
assisted by Inspector Satavtar Singh.

Mr. Narinder K. Banka, Advocate,
for the respondent-Municipal Council, Banga.

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions wherein Rakhwinder Kumar and Vijay Kumar seek anticipatory bail in a case registered against them vide FIR No. 21 dated 14.11.2022 under Sections 13(1)(A) read with Section 13(2) of the Prevention of Corruption Act, 1988

and Sections 409, 420/120-B IPC at Police Station Vigilance Bureau, Range Jalandhar, District Jalandhar (Punjab).

2. The facts, in nutshell, are that in the year 2016 the residents of Sagar Gate, Banga represented to the then Chief Minister, Punjab that they have two acres of vacant land suitable for developing parks/stadium. The said matter was considered and an estimate of Rs.92,28,000/- was prepared for construction of mini-stadium which was sent to Technical Adviser, Local Government, Punjab for vetting. Upon vetting, the estimate was reduced to Rs. 87,45,000/-. The Technical Adviser to the then Chief Minister, Punjab, while vetting the estimate imposed the following two conditions :-

“(a) The estimate has not been technically sanctioned by the competent authority.

(b) Before starting the construction work, the soil bearing capacity of the land may be got tested from National Accreditation Board for testing and celebration laboratory (NABL Laboratory), Engineering College under intimation to us (Annexure R-1).”

3. A tender for the job work was floated. Only one offer was received from Rakhwinder Kumar, Contractor, who had offered to undertake the proposed construction/development work at 0.13% less than the approved cost of Rs.87,45,000/-. Upon negotiation, the same was reduced to 0.20%. Pursuant to allotment of work/contract to Rakhwinder Kumar, construction commenced for the same. An amount of Rs. 39.74 lacs was released to aforesaid Rakhwinder Singh.

4. However, subsequently, one Manish Bhardwaj made a complaint that 'high level corruption' has been committed in the construction of mini-stadium at Banga. Upon receipt of said complaint, a vigilance probe was initiated by the Vigilance Bureau and the technical team and some other officials of the government department inspected the mini-stadium in the presence of Vijay Kumar, J.E. Municipal Council, Banga, Contractor Rakhwinder Kumar and Manish Bhardwaj. Samples of cement plaster, bricks, cement mortar and cement concrete were collected from various parts of said stadium and were got analyzed. As per the analysis report received from the Irrigation and Power Research Institution, Amritsar, the cement used for plastering was found to be less by 14% from the prescribed specification. The cement used in cement mortar was found to be less by 12% from the specified quantity and the cement used in cement concrete was found to be less by 21.89% from the specified standards.
5. It is further the case of prosecution that while the estimate for the work of Rs. 87.45 lacs was approved technically by the Municipal Engineer whereas the same was required to be approved by Supervisory Engineer in accordance with the instructions of Government of Punjab issued vide memo bearing No. 5/2028/2013-4 LG 4/117640/1-7 dated 31.10.2013. It is further the case of prosecution that the allotment of tender was not even got vetted from the Chief Engineer, as is required and was approved by the Executive Officer, Assistant Municipal Engineer and the Junior Engineer at their own level. It is also alleged that since the site was a low lying area and had previously been a pond, the load bearing capacity of the land was required to be checked before undertaking construction and to design and

cast the foundations accordingly as well as to construct requisite retaining wall etc. to ensure the structure stability and strength but the needful was not done and that the Contractor and the officials were conniving and payments had been released without checking the quality of work and thus, intentionally caused loss to the Municipal Council funds.

6. The learned counsel for the petitioner-Rakhwinder Kumar has submitted that he had executed the work at the spot and accordingly had been released payments in respect of the work done by him and it is not the case of the complainant/State that no work had been done at the spot. The learned counsel has further submitted that admittedly the site was a pond previously and as such, it was for the Government/Municipal Council to have got the requisite opinion obtained from the experts beforehand and to have furnished requisite structural drawings in respect of the foundations and the building in case some reinforced foundation was to be laid and that the petitioner Rakhwinder Kumar-Contractor had got the work executed as per the plans. The learned counsel has further submitted that the alleged deficiency of cement in the plaster, cement mortar and cement concrete is marginal deficiency and had apparently occurred on account of the fact that the site is a low-lying area and gets waterlogged. The learned counsel has further submitted that the petitioner, in any case, is willing to undertake the remaining construction and also to undertake necessary repairs.

7. The learned counsel representing the petitioner Vijay Kumar, Junior Engineer has submitted that he had no role to play either in the allotment of the contract in favour of Rakhwinder Kumar or in the matter of release of payments and that his job was mainly to conduct measurements and that the

payments had been released to Rakhwinder Kumar in accordance with the work done by him and in case Rakhwinder Kumar had used any sub-standard material or had not used the right quality or quantity of cement, the petitioner-Vijay Kumar cannot be held responsible for the same. The learned counsel has further submitted that the petitioner came to be posted in the Municipal Council, Banga only on 4.1.2017 and had no role to play in the matter of allotment of contract.

8. Opposing the petitions, the learned State counsel has submitted that the manner in which the contract for construction work had been allotted to the petitioner-Rakhwinder Kumar clearly shows that the petitioner-Rakhwinder Kumar, Contractor as well as the officials of Municipal Council were conniving with each other. It has been submitted that it is a case where only one quotation i.e. of the petitioner - Rakhwinder Kumar had been received and the contract was allotted to him without getting the same vetted from the Chief Engineer. It has further been submitted that the petitioner Rakhwinder Kumar, Contractor ought to have got the soil bearing capacity of the land tested from some accredited laboratory before undertaking construction so as to get the foundation/building designed accordingly to ensure that the same is structurally sound and safe whereas no such thing was done. The learned State counsel has submitted that the petitioner Rakhwinder Kumar had not used the prescribed quantity of cement as was required to be there in plaster, mortar and concrete, apparently to save on the cost at the risk of making the building weak and unsafe. It has further been submitted that on account of the petitioner Rakhwinder Kumar, not having used proper quantity of cement in construction of the building and not

having taken necessary steps for making it structurally safe, apparently for saving on the cost, had ultimately caused loss to the State on account of an unsafe building whereas he had received a substantial amount of Rs.39.74 lacs for the same and had, thus, held himself liable for the offences alleged against him.

9. The learned State counsel, while opposing the petition on behalf of Vijay Kumar, J.E., has submitted that the petitioner Vijay Kumar, being Junior Engineer was supposed to supervise the entire construction work and to ensure that the Contractor does not use sub-standard material and undertakes construction as per the conditions of the contract. It has further been submitted that it is only pursuant to a report made by the Junior Engineer as regards the quality of construction completed that payments are released to the Contractor. It has been submitted that since Vijay Kumar, Junior Engineer did not apprise his superiors about the correct position at the spot as regards the poor quality of work, the payments were released to the Contractor-Rakhwinder Kumar, which ought to have been stopped.
10. This Court has considered the rival submissions.
11. It is apparent from the record that the decisions pertaining to construction of a mini-stadium and also the allotment of work had been taken in haste. While it was vide letter dated 3.11.2016 that the Technical Adviser, Local Government, Department of Punjab had vetted the estimate for construction of mini-stadium, the tender inviting bids was floated immediately which was supposed to be opened on 8.11.2016 but since no quotations were received, the same was recalled on 11.11.2016 and was floated again and was opened on 26.11.2016 and petitioner-Rakhwinder Kumar, being the only person who

had submitted the quotation/bid, was allotted work order on 9.12.2016. As per affidavit of the Executive Officer, Municipal Council, Banga, the technical permission for construction to be carried out was to be granted by the Superintending Engineer but in the present case it is only the Municipal Engineer, who accorded the same. Similarly, the tender comparative was required to be vetted by the Engineer-in-Chief but the same was also not done. Rakhwinder Kumar did not get the load bearing capacity of the soil checked, knowing fully well that the site was low-lying area and was a pond and started the construction straight away. The petitioner-Rakhwinder Kumar compromised on the quality inasmuch as he did not even use the requisite quantity of cement in the plaster, mortar and concrete, which ultimately led to developing of cracks. However, despite the same, the petitioner-Rakhwinder Kumar with the help and in connivance with the officials of the Department managed to get the payments released. As such, the complicity of the petitioner-Rakhwinder Kumar, who had received huge payments in respect of sub-standard work executed by him, is clearly evident and thus, he does not deserve the concession of anticipatory bail.

12. As far as the petitioner Vijay Kumar, J.E. is concerned, he is an official from the Municipal Council who works at the ground level, who is supposed to visit the site and to physically check and inspect the construction undertaken thereupon. It is the job of the Junior Engineer to check the quality of construction work from time to time which would include ensuring that the requisite quantity of cement is used for construction. Even if, for any reason, the Junior Engineer is not present when the mixture of sand and cement to be used for plastering or the sand, cement and gravel is prepared,

still the same can always be checked by simple means when such mixture is being used by Masons by taking a sample from the same and by getting it tested. Apart from a proper chemical analysis of the same, some simple tests which can be conducted at the spot are also available. However, the petitioner Vijay Kumar, J.E. apparently turned a blind eye to the same for extending undue benefit to co-accused Rakhwinder Kumar. It was only on the basis of report regarding quality of construction and the quantity of construction that the payments were to be released to co-accused Rakhwinder Kumar. The contention of the petitioner that he joined the office of Municipal Council, Banga on 4.1.2017 will not be of much avail to the petitioner inasmuch as his role was certainly not there at the time of allotment but his role was material only after the construction commenced somewhere in the beginning of year 2017. As such, the complicity of the petitioner Vijay Kumar, Junior Engineer is also clearly evident and thus, he also does not deserve to be released on anticipatory bail.

13. In view of the aforesaid discussion, both the petitions are sans merit and are hereby dismissed.

14. A photocopy of this order be placed on the file of connected case.

30.1.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No