

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54531-2023
Reserved on: 20.11.2023
Pronounced on: 24.11.2023

Gurtej Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jaspreet Singh Brar, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
311	02.10.2021	City Faridkot, District Faridkot	7 & 13(1)(A) of Prevention of Corruption Act, 1988 (Amendment Act 2018) and 42 of Prisons Act

1. The petitioner, who was posted as jail warden, apprehending arrest in the FIR captioned above for helping the prisoners, has come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 25.10.2023.
2. Vide order dated 30.10.2023, this Court had granted interim bail to the petitioner, subject to compliance to some conditions and the said order is continuing till date.
3. Facts of the case are being taken from the reply dated 18.11.2023 filed by the State, which reads as under:-

“4 That the brief facts of case FIR No. 311 (supra) are that one prisoner Vishal Kumar son of Charanjit Singh R/o Chand Chahal, Mansa was convict in case FIR No. 135 dated: 24.07.2012 u/s 22 NDPS Act P.S. City Mansa and was sentenced with imprisonment for 10 years and fine, besides various other FIRs in which said Vishal Kumar was confined in Faridkot Jail as under trial. Jail record transpired that on 20.01.2020, said prisoner Vishal Singh was involved in case FIR No. 23 dated 20.01.2020 under section 294/186/353 IPC and 42/52 Jail Act PS City Faridkot. During interrogation, accused-prisoner Vishal Kumar revealed various facts and made accusation against another prisoner Sarpanch, Village Mangewala who was serving sentence in a murder case, and had allegedly received from Vishal Kumar a sum of Rs. 10,000/- with a false promise to get him release on parole. Thereafter, prisoner Sarpanch Mangewala allegedly

received from him ransom of Rs. 1,50,000/- by putting him in fear of death. As per Vishal Kumar, said prisoner also caused injuries to jail inmate Avtar Singh @ Tara Dosanjh but due to intervention of Asst. Jail Superintendent Jugraj Singh, no criminal action was taken against him.

It was further disclosed by prisoner Vishal Kumar that said Mangewala Sarpanch was hands in glove with Assistant Superintendent Tarsem Singh, and was carrying his illegal activities of collecting money in Jail and received payments through online method in PAYTM account of petitioner-Gurtej Singh **In year 2019, on three occasions, he made payments of Rs 35,000/-, 5,000/- and 5,000/- respectively to the petitioner on his PAYTM number 81950-83146.** Once in D-Addiction compound, Tarsem Singh, Asstt. Superintendent had given him one smart phone and three keypad phones and various mobile accessories. He was once harassed with the pretext of shifting him to another block where his rival gang members were detained and thereby, he paid bribe of Rs 50,000/- to Tarsem Singh, Asstt. Superintendent through his wife Baljit Kaur.

5. The during the course of enquiry, incumbent officer-cum-DSP(D) obtained report of Technical Cell as to the PAYTM UPI No 81950- 83146, which revealed that on 19.09.2019 a sum of Rs. 35,000/- was transferred to this number. Further payment of Rs 3,000/- and 5,000/- were transferred to this UPI number on 05.11 2019 and 14 11.2019 respectively. The amount was transferred by Sukhvir Singh R/o Partap Nagar, Bathinda from his PAYTM UPI number 85280-63630 (Paytm ID-7420803) to UPI no 81950-83146, which belongs to Gursimran Singh s/o Gurnam Singh r/o Near Bus Stand, Village Dhilwan Kalan who was running Common service Centre and Business Corporate Point at Village Dhab Guru ki. **Said Gursimran Singh disclosed that his friend Jaskaran Singh son of Gurtej Singh (petitioner) used his UPI number to receive the above mentioned payments from Sukhvir Singh and payment was withdrawn by Jaskaran Singh.** When Gurtej Singh was enquired about the payments received on the UPI of Gursimran Singh, petitioner admitted that in the year 2019 he was in-charge of Block-F,G,H,J,K-05. Vishal Kumar-complainant was detained in Block-H. Fighting broke out between Vishal and other inmates of his block. Vishal was produced before Gurjit Singh Brar, Deputy Superintendent of Jail and he was shifted in D-Addiction Centre. **Gurjit Singh Brar and Tarsem Singh, Assistant Superintendent asked petitioner to take UPI-Paytm number of some other person so that amount can be received from Vishal Kumar.** Petitioner informed them about his son Jaskaran Singh. Then the UPI number of Gursimran Singh (friend of Jaskaran Singh) was provided and payment was transferred by Vishal Kumar to this UPI. **Petitioner received payment from Gursimran Singh and handed over to Tarsem Pal Singh, Assistant Superintendent in his office.**

6. That the allegations of Vishal Kumar that his wife Baljit Kaur paid a cash amount of Rs.70,000/- as bribe to Tarsem Pal Singh, Assistant Superintendent in November, 2019 outside of Central Jail and further another cash of Rs.50,000/- paid to said Tarsem Pal Singh in the last

month of December, 2019 also appeared correct from the verification of mobile number of 62847-23885 belonging to Baljit Kaur w/o Vishal Kumar and mobile number 94173-10254 of Tarsem Pal Singh. The Call details of these mobile number transpired that Tarsem Pal Singh took mobile call to Baljit Kaur on 23-12-2019, 28-12-2019 and 21-01-2020 as the mobile call of an Assistant Superintendent to the wife of a Jail Inmate is unusual.

7. The video uploaded by Vishal Kumar on Social media and facts surfaced during his interrogation in case FIR No. 23 (supra) prima facie established the allegations of receiving bribe of Rs. 1,20,000/- in cash and Rs. 43,000/- through online transfer mode from Vishal Kumar and his wife Baljit Kaur which are very serious offence and involvement of Tarsem Pal Singh (Assistant Superintendent), Gurjit Singh Brar (Deputy Superintendent) and petitioner Warden Gurtej Singh is evident and finding the commission of offence under section 7, 13 of Prevention of Corruption Act r/w 42 of Jail Act made out against above said officials, the Deputy Superintendent of Police (D) Faridkot vide his report dated 03.06.2020 recommended to launch investigation for the offence mentioned above.

8. That the fact finding report was forwarded by Deputy Inspector General of Police, Ferozepur to the Government of Punjab, Department of Jails with comments that initially offence u/s 7/13 of PC Act and 42 Jails Act made out against present petitioner-Gurtej Singh along with Gurjit Singh Brar, Deputy Superintendent of Jail and Tarsem Pal Singh, Assistant Superintendent Jail whereas involvement of any other Authority/ official or Jail Inmate may surface and then action will be taken against any such offender accordingly. Thereupon the Principal Secretary, Jails, Punjab Government Jail Department, Chandigarh vide his order no. 01/26/2020-04J-261 dated 27-08-2021 has given statutory approval to the recommendations and directed investigation in this case. Consequent thereto, FIR No.311 (supra) has registered at P.S. City Faridkot."

4. Petitioner claims bail on the ground that there is no evidence which connects him to the amount involved in the present case i.e. Rs.35,000/- and he had no role in such payment. Next argument on behalf of the petitioner is that the alleged video which got viral on the social media in the year 2020 and FIR was registered in 2021 and all the allegations made in such video, are by a convict who is a habitual offender.

5. Arguments on behalf of the State are that said video points towards nexus of jail officials with the criminals and it is an evidence against the petitioner. However State further submits that they need custodial interrogation to unearth the modus operandi and to find out how many officials of the police department, jail and how many other persons are involved in such acts and. On instructions State counsel submits that in case, this Court dismisses the bail petition, they would arrest the petitioner.

6. I have gone through the bail petition and in para 4, it has been mentioned that the

Superintendent Jail and similarly wife of the convict had also levelled the same allegations. In para 5 of the bail petition, it has been mentioned that the petitioner is being implicated falsely because he was Incharge of the Block in which Vishal Kumar was lodged and during the search, mobile phones were recovered from him and he was keeping grudge against the petitioner. In para 7 of the bail petition, it has been mentioned that a sum of Rs.35,000/- was transferred into Paytm account of the petitioner by one Sukhvir Singh and the said amount was handed over to the Jail Superintendent by the petitioner but the said Sukhvir Singh is not traceable, as such there is no evidence to connect the petitioner from this amount. It is relevant to extract para 9 of the bail petition, which reads as under:-

“9. That the petitioner is only the rank employee and he only followed the order or direction of his senior officials who asked him to give some Paytm Number and except this, no other allegations of demanding the bribe or receiving the bribe are levelled against him.”

7. Analysis of the investigation, which is undergoing and prima facie evidence connecting the petitioner, is sufficient for requiring his custodial interrogation to unearth the entire modus operandi of supplying mobile phones etc., in the jail. Needless to say that the investigation has been done by the Senior Superintendent of Police who is senior officer and it has been specifically mentioned in the reply that the petitioner was playing a key link in their unlawful monetary dealings.

8. 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....."

9. 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.

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

11. 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.

12. 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.

13. 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.

14. Given above, the petitioner fails to make out a case for bail. Consequently, **Petition is dismissed. Interim orders stand vacated.** All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

24.11.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.