

CRM-M-54725-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54725-2023
Reserved on: 15.12.2023
Pronounced on: 19.12.2023

Shri Krishan Dalal ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. GautamDutt, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
007	11.02.2023	State Vigilance Bureau, Gurgaon, District State Vigilance Bureau	7, 7A, 8, 13(1)B, 13(2) of Prevention of Corruption Act 1988 and 201, 120-B IPC

1. The petitioner, posted as Transport Inspector in RTO, Rewari, apprehending his arrest in the FIR captioned above, had come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 25.10.2023.
2. Facts of the case are being taken from para 3 of the reply dated 10.11.2023, filed by the concerned DySP, Anti-Corruption Bureau, Gurugram, which reads as follows:-

“That the facts giving rise to the registration of the present FIR are that a complaint was made by Surender Singh wherein he alleged that he is a transporter and his vehicles transports pebbles, gravels and dust from Rajasthan to Gurugram. Regional Transport Officer (RTO) used to challan his vehicles. Therefore, he disclosed this matter to other transporters and they gave him cell phone number 9992332986 of one person named as Kalu. Thereafter, he had contacted Kalu on his cell phone and disclosed his problem to him. It was further averred that the said Kalu told him that to resolve his problem, he has to pay Rs. 11,000/- per month per vehicle to RTO staff, Rewari. The complainant told Kalu that he is plying four vehicles, upon which Kalu asked him to come to Dharuhera along with Rs. 44,000/- and he will manage the entries of his vehicles in RTO staff's list and thereafter his vehicles will not be stopped from 8.00 pm to 4.00 am by RTO staff, Rewari. It was further alleged that the said Kalu was working as an agent of RTO staff, Rewari and was collecting money on their behalf.

CRM-M-54725-2023

The complainant further alleged that on 11.2.2023, he had agreed to pay Rs. 44000/- to Kalu for exempting his vehicles without challan by RTO Staff and that he produced a recording of his conversation with Kalu and he further stated that he did not want to pay any bribe to anyone and legal action was sought. Accordingly the captioned FIR was registered and investigation was started in the matter."

3. Vide order dated 02.11.2023, the petitioner was granted interim bail, which is continuing till date. On 28.11.2023, the petitioner's counsel, on realizing that the Hon'ble Supreme Court has dismissed the bail of co-accused/Bharat Bhushan, stated that interim be extended, and they would voluntarily comply with any stringent condition, including the declaration of assets, to prove their honesty. Consequently, the interim was extended subject to a declaration of assets as per the format mentioned in the order dated 28.11.2023. In addition, on 28.11.2023, the investigator was questioned about the mobile number which the petitioner was allegedly using for illicit transactions, and in whose name this sim card was registered. On 05.12.2023, the petitioner's counsel submitted that they had voluntarily complied with the previous order dated 28.11.2023 of declaring assets and would not claim such declaration as self-incrimination, violation of Article 20/21 of the Constitution of India, or any other fundamental right/law.

4. State counsel submitted that to verify about SIM card, a person, Poonam, had joined the investigation, and she had disclosed that no such sim card bearing mobile number 7496882125 was taken by her, which is shown to be in her name. On this, the investigator sought further time to conduct an investigation.

5. On 14.12.2023, the investigator pointed out that he had procured documents from the Airtel service provider, as per which Poonam had taken a SIM card, and she had made a wrong statement that the sim card was not issued to her or in her name. It was this SIM that she had handed over to the petitioner, Krishan Dalal. He had put this SIM card in a different mobile phone from where he was talking about the bribes from transport vehicles that would ply the Jaipur Delhi Highway through Rewari, where he was posted. He was part of a mafia of other transport officers who had engaged various private persons as their cohorts. The investigator also handed over the documents to establish that the petitioner used the above-mentioned mobile number, obtained from or in the name of Poonam, and had booked at the Radisson Blu Hotel, Jaipur, through the Make My Trip Application. After that, he and his wife stayed in the hotel on 20.01.2023, and from there, they were able to procure the identity documents they had given to the hotel.

CRM-M-54725-2023

6. I have heard Mr. R.S. Rai, Sr. Advocate, Mr. Gautam Dutt, Advocate, and Mr. Rajat Gautam, Addl. AG, Haryana, on various dates, and I have also heard arguments in detail today. Analysis of the pleadings and the arguments would lead to the following outcome.

7. Reply dated 10.11.2023 reveals that Raj Kumar @ Kalu was apprehended with tainted currency notes amounting to Rs.44,000/- and when interrogated, he disclosed that he was paying a share of the bribe to Sudhir Narwal (a tout of RTO officials) for further payment to RTO officials. Subsequently, police conducted the investigation and found the involvement of the petitioner and Bharat Bhushan, another RTO official, whose bail petition has already been dismissed by this Court and the Hon'ble Supreme Court. Paragraph 6 of the reply points out that the investigation has revealed that the petitioner had received bribe money of approximately Rs.17 lacs in installments, other staff is involved, and his custodial interrogation is required to unearth the scam. After getting this evidence, the investigator wanted to arrest the petitioner, but he became a fugitive, and on 28.07.2023, police declared a reward of Rs.50,000/- on him.

8. Counsel for the State further submits that the modus operandi was that transport vehicles that ply on Delhi-Jaipur road passing through Rewari were part of this particular racket, and they take illicit money from the transport vehicles and, in turn, they do not check them and ignore their deficiencies and let them also carry illicit goods. Further, they made a list of vehicles which had already paid the bribes, and whenever these transport vehicles would cross the district of Gurgaon or Rewari, they would check the registration number of the said vehicle in their list and let it go. Such mention of transport vehicles in the list shows that money has been received. State counsel further submits that one of the RTO Officers, Bharat Bhushan, who was similarly placed accused, had filed anticipatory bail before this Court, and the said petition was dismissed, and now even the SLP filed by him before the Hon'ble Supreme Court has also been dismissed.

9. Mr. R.S. Rai, Sr. counsel, in continuation of his arguments, submitted that the police had made changes in the disclosure statement and increased the bribe amount; however, this Court is not going into such details because the evidence is not just of disclosure but of his using the mobile phone which he had taken in the name of Poonam and put the said number in different mobile sets, from where he was doing corrupt acts.

10. The investigator found sufficient evidence to connect the sim card that the petitioner was using in the name of Poonam, and there is no explanation for such

CRM-M-54725-2023

dubious and discreet conduct by government officials posted on sensitive posts, where he is supposed to check and stop evasion of duties. In addition to the evidence of the petitioner being connected through a SIM card (mobile phone No. 7496882125), which was issued to Poonam, the petitioner was using it, another reason is that the bail filed by a similarly placed accused, Bharat Bhushan, has already been dismissed.

11. The Investigator has collected clinching evidence that the petitioner was using a mobile number he had taken in the name of another lady, Poonam. The Investigator has collected sufficient evidence connecting the petitioner with an illicit collection of money from the transporters. This would justify the custodial interrogation and lead to an inference that the petitioner is not entitled to interim bail.

12. Further, the petitioner's case is identical to the case of Bharat Bhushan, whose bail has been dismissed. The petitioner is a similarly placed accused, and this Court cannot take a contrary stand and cannot pass an order granting him bail for the reason that the Supreme Court has upheld the order refusing all the similarly placed accused. If this Court grants bail to the petitioner, it would amount to passing an order contradicting the previous order but the same which was upheld, which had attained finality.

13. Given the nature of allegations, custodial interrogation is required and an analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

14. In Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529, Supreme Court holds,

[16]. ... We have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

15. In State of Gujarat v. Mohanlal Jitamalji 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....."

16. 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 ensconced 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 insulated 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.

17. 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].

18. 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.

CRM-M-54725-2023

[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.

19. 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.

20. 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.

CRM-M-54725-2023

21. 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.

22. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. Interim orders, if any, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

19.12.2023
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.