

CRM-M-55825-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55825-2023
Reserved on: 22.11.2023
Pronounced on: 05.12.2023

Hemant Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Ms. Geeta Sharma, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0354	22.06.2022	Faridabad Kotwali, District Faridabad	120-B, 406, 420, 506 IPC (Sections 7, 7A, 8, 13(1)(B), 13(2) of Prevention of Corruption Act 1988 added later on)

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 02.11.2023.
2. Vide order dated 06.11.2023, this Court had granted interim bail to the petitioner, which is continuing till date.
3. Facts of the case are being extracted from para Nos.1 to 3 of the reply dated 18.11.2023 filed by Assistant Commissioner of Police, Sarai, Faridabad, which reads as under:-

“1. That the present case bearing FIR No.354 dated 22.06.2022 u/s 120-B, 406, 420, 506 IPC (section 7, 7A, 8, 13(1)(b), 13(2) of Prevention of Corruption Act, 1988 added later on) was registered at Police Station, Kotwali, Faridabad on the basis of a complaint made by the Lalit Mittal son of D.R. Mittal.

Lalit Mittal lodged a complaint to police that he is running a construction firm namely M/s Harchand Das Gupta. Sh. Pankaj Garg of Sector-15, Faridabad supplies RCM to the firm of Lalit Mittal. Sh. Pankaj Gorg got

CRM-M-55825-2023

introduced Lalit Mittal to Rambir Sharma. Rambir Sharma and his son Kuldeep Sharma assured Lalit Mittal regarding enhancement of tender amount and also to provide large scale work.

Lalit Mittal alongwith his known persons Rajesh and Bheem Sain went to Delight hotel, NIT, Faridabad where J.K. Bhatia @ Bunty, Pankaj Garg, Rambir Sharma and Kuldeep Sharma were already present. Lalit Mittal on their demand gave Rs.1,11,00,000/- to Rambir Sharma. Rambir Sharma stated that he shall pay the said amount to Senior Officers. Hence, the present case was registered as Annexure P-1.

2. That during investigation Rambir Sharma (co-accused) was arrested on 22.06.2022. Rambir Sharma during interrogation suffered his disclosure statement, (Annexure R-1) that he paid Rs.1,00,00,000/- to the then Commissioner, MC, Sonapat namely Sh. Dharmender, Ashok Rawat, SE, Hemant, XEN, (Petitioner), SDO and two JEs to revise estimate (enhancement). As per whatsapp recording between Rambir and Dharmender Singh, (IAS) Commissioner, MC, Sonapat, the transaction of bribe amount was admitted by co-accused Dharmender Singh (IAS) and the involvement of petitioner/accused is also proved in this recording. (Annexure R-2).

3. That during investigation the relevant record from MC, Sonapat was obtained. A team was got constituted by Director General Police, Vigilance Bureau, Haryana, Panchkula. Sh. Deepak Goyal SE, Head of technical team prepared a report No.121/SE/SVB(H) dated 13.02.2023 and found irregularities by the office of Commissioner MC, Sonapat and its officials. It revealed that the then Commissioner Dharmender Singh (IAS) MC, Sonapat, Ashok Rawat, SE, Hemant XEN (petitioner), and subordinate officials were found involved in this matter, thereby the enhancement case of Rs.52.70 Crores was prepared to Rs.87.85 Crores and sent the same for administrative approval to Director Urban Local Bodies Haryana, Panchkula to give undue benefits to the contractor and violated/ignored the guidelines/instructions of letter dated 11.12.2018.”

4. Mr. R.S. Rai, Sr. Advocate submits that initially a contract was awarded for a sum of Rs.52.70 crores and later on building was to be made as a green building and as such contract was re-scheduled for Rs. 87.85 crores, but in fact no money was paid. He further submits that valuation was checked by Chief Engineer and there is no allegation that the said conversion would have caused any loss to the exchequer. He further submits that the matter is still pending with the government. Petitioner's next contention is that in fact the entire matter pertains to contract of Charkhi Dadri where the petitioner was never posted at that period of time and as such he was falsely roped in.

5. On the contrary, State counsel submits that the petitioner is involved and as per the investigation, he has received bribe of Rs.20 lacs from the complainant for getting favourable order. He further submits that the bail filed by the similarly placed co-accused/Lalit Mittal, was dismissed by this Court. Rather case of the petitioner is on

CRM-M-55825-2023

worst footing in comparison to Lalit Mittal and as such this Court cannot pass contradictory order in case of the present petitioner.

6. In nutshell, prosecution's case is that proposal for enhancement of the tender amount was not made according to the guidelines by the Competent Authority in such type of matters.

7. I have heard counsel for the parties and also gone through the petition as well as the reply. Based on such analysis outcome is as follows.

8. Complainant-Lalit Mittal had alleged that he owns a construction company named M/s Harchand Das Gupta. To procure the government contracts they came to know about one tout Mr. Rambir Sharma. After that, the complainant intended to contact them and the said agency would keep on introducing him with government officials. Later on, in one such meeting, had taken place in Faridabad, Mr. Rambir Sharma had asked the complainant to bring cash and in the said meeting one J.K. Bhatia @ Bunty, Pankaj Garg, Rambir Sharma and his son Kuldeep Sharma, were also present. The complainant was accompanied by Rajesh and Bheem Sain. The said persons told the complainant that they need to pay sum of Rs.1,11,00,000/ to Rambir Sharma for getting the contract. In fact the contract was to convert the building into a green building without any necessary approval which would give massive profits to the contractor. The enhancement which was proposed, was prepared to Rs.87.85 crores. As per para 4 of the reply, police had arrested Sh. Dharmender Singh (IAS) and during his investigation, he had confessed about taking bribe and had also made disclosure statement that even petitioner had obtained bribe amount in addition to other officials. However the disclosure statement of Shri Dharmender Singh, in which he had mentioned that bribe was also paid to Hemant (present petitioner) and that it would be hit by Sections 25 & 26 of Indian Evidence Act for the reason that no discovery of fact had taken place. Furthermore such disclosure was not a confession under Section 30 of Indian Evidence Act or 164 CrPC, but a confession before police, as such this Court is not relying upon the disclosure made by Shri Dharmender Singh (IAS) and is relying upon the other evidence.

9. In Para 7 of the reply, it has been mentioned that sanction has been allowed to investigate Hemant Kumar XEN, for enhancement of the amount from Rs. 52.70 crores to Rs. 87.85 crores. Although the money was not paid by the exchequer but to do that illegally, the contractor had paid a sum of Rs.1,11,00,000/- to the person who was supposed to get contract for him and as per the investigation the petitioner had received a sum of Rs. 20 lacs. Needless to say that in case government had released money to the contractor Lalit Mittal then he had no problem with the payment of bribe.

CRM-M-55825-2023

It was unethical for the complainant to get enhancement without inviting a tender at the rates of his choice without any competition and for that he had paid a sum of Rs.1,11,00,000/-. Needless to say that while awarding contracts to such a corrupt contractors, who admitted in his complaint regarding payment of money for Rs. 1,11,00,000/-. It is for the government departments to see that such unscrupulous people do not get any government tender but simply because the money was not paid by the government, would not imply that the petitioner did not cheat the complainant. The investigator has been able to collect evidence about the petitioner's role in enhancement of contract in lieu of payment of Rs. 20 lacs to him as bribe.

10. Because of the unethical conduct of the complainant, petitioner who was discharging official functions and holding a high post of Executive Engineer, indulged in corrupt criminal practices and enriched himself knowingly that even if the money is not paid to the contractor he has nothing to loose. In this manner he infact acted as a cheat and it is also for this reason that an offence under Section 420 IPC read with 120 B IPC had already been incorporated in the FIR

11. 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.

12. 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....."

13. 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

CRM-M-55825-2023

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.

14. 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].

15. 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.

16. 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.

CRM-M-55825-2023

17. 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.

18. 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.

19. 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, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

05.12.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.