

CRM-M-57612-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57612-2023
Reserved on: 23.11.2023
Pronounced on: 05.12.2023

Vijay Kumar Dogra ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate
Mr. Sahdev, Advocate and
Mr. Kunal Jindia, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
11	05.03.2023	ACB, Gurugram, District Gurugram	7(C), 13(1)(A) & 13(2) of Prevention of Corruption Act 1988 and Sections 409, 418, 420, 467, 468, 120-B IPC

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 14.11.2023.
2. Vide order dated 16.11.2023, this Court had granted interim anticipatory bail to the petitioner subject to compliance of some conditions and the said order is continuing till date.
3. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
4. Facts of the case are being extracted from reply dated 22.11.2023 filed by the Deputy Superintendent of Police, which reads as follows:-

“That, brief facts of the case are that, an Enquiry No. 07 dated 10.05.2019, Gurugram was registered after due permission of the State Govt. u/s 17A of PC Act vide letter No. 58/52/2018-1V(1) dated 03.05.2019 conveyed through Additional Chief Secretary, Haryana Government, Vigilance Department and office Endst. No. 7767/1-2/SVB(H) dated 10.05.2019 of Director General, State Vigilance Bureau,

Haryana, Panchkula against petitioner/accused Mukesh Kumar Solanki and Rishi Raj, Director M/s R.R. Foundation Engineering Private Limited.

3. That the petitioner is not entitled to anticipatory bail as he had acted with dishonest intension by way of preparing forged GPA in collation with co accused Amit Kumar and Ravi abrole which is the main document to cause huge loss to the government exchequer. The investigation of the present case is pending and is being conducted fairly, properly, impartially, transparently, meticulously and expeditiously. To unearth the criminal conspiracy, the custodial interrogation of the accused/petitioner Vijay Kumar Dogra is necessary. Therefore, anticipatory bail application of the accused/petitioner u/s 438 Cr.PC may kindly be dismissed in the interest of justice.

4. That, during the course of enquiry, it was revealed that M/s R.R. Construction Pvt. Ltd. had submitted applications to HUDA Department, Sector 14, Gurugram for participation in open auction of S.C.O. No. 13, Sector 23/23A, Gurugram. Thereafter, due to highest bid of R.R. Construction Pvt. Ltd. S.C.O. No. 13, Sector 23,23A, Gurugram was allotted to him on 18.12.1997 and further due to highest bid of R.R. Construction S.C.O. No. 13, Sector 23,23A, Gurugram was allotted to him. 10% cost of the total cost was deposited from the above mentioned firm at the spot. Thereafter, 15% amount was to be deposited within one month from the date of issuance of allotment letter of HUDA Department. In this regard, HUDA, Gurugram had sent registered letter No. 285 dated 18.12.1997 to M/s R.R. Construction Pvt. Ltd but that letter was received back at HUDA office from the postal department with the remarks that "undelivered-return to sender" and there was no other address of said company in HUDA office record. Whereas even at present, the office of the above mentioned company is located at the same address. Above mentioned company did not deposit 15% amount within stipulated period. Thereafter, Estate Officer 1, HUDA, Sector-14, Gurugram vide letter No. 1957 dated 10.04.1998 cancelled the allotment order of S.C.O. No. 13 Sector 23/23A, Gurugram on 10.04.1998 and forfeited 10% deposited amount. The above mentioned order/notice was sent at the same address of R.R. Constructions Pvt. Ltd. which has been received by the company. Thereafter, on 20.04.1998 the owner of R.R. Constructions Pvt. Ltd. had visited the office of Estate officer-1 HUDA Sector-14, Gurugram and submitted his application against the cancellation of allotment. Thereafter applications were filed before the Estate Officer, HUDA, Gurugram and Administrator, HUDA, Gurugram for re-allotment of the SCO and all were dismissed. Thereafter, appeal was filed before Chief Administrator, HUDA, Haryana, Panchkula. The appeal was also dismissed by the Administrator, HUDA on 16.04.1999.

5. That, thereafter, a G.P.A was executed by the Ravi Abrol, Director of R.R. Construction in collusion with petitioner Vijay Kumar Dogra in favour of Amit Kumar with respect to the S.C.O. No. 13 on 09.07.2018 and the same was registered at Gautam Budh Nagar Uttar Pradesh.

6. That it is pertinent to mention here that due to cancellation of the above SCO Ravi Abrol was no more the owner of the above mentioned SCO. He in connivance with Amit Kumar and petitioner Vijay Kumar Dogra fraudulently prepared forged documents and executed G.P.A. of the above mentioned S.C.O. in favour of Amit kumar. Thereafter, in regard to S.C.O. No. 13 Sector 23/23A, Gurugram, G.P.A holder Amit Kumar on 07.03.2018, has filed a representation before the Government citing SCO

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No. 8 and 30, which, in general procedure, was sent reference of the office of Chief Administrator, HUDA, Haryana, Panchkula. The Chief Administrator, HUDA, Panchkula has down marked the same to Administrator, HUDA, Panchkula for further action. Thereafter, Bharat Bhushan Taneja, the then Superintendent in the office of Chief Administrator, HUDA, upon receipt of the said representation, without bringing it to the notice of the Chief Administrator, sent an email on 27.07.2018 to Administrator HUDA and Estate Officer HUDA Gurugram in which detailed comments on the said representation of M/s R. R. construction Pvt. Ltd. was desired by verifying the facts with regard to non delivery of the allotment letter of SCO No. 13 to the allottee. Further it was instructed that if the said fact is correct, you are requested to take necessary action regarding issuance of allotment letter under information to this office within two days positively. Thereafter, Mukesh Kumar Solanki the then Estate Officer-1, HUDA, Sector-14, Gurugram has issued re-allotment letter to M/s R.R. Construction Pvt. Ltd. vide his office letter No. 5536 dated 02.08.2018 with regard to S.C.O. No. 13. Whereas, as per rules, it was necessary that Sh. Mukesh Kumar Solanki, Estate Officer-1, HUDA, Gurugram prior to re-allotment of S.C.O No. 13 in favour of the firm, should verify complete facts about cancellation of allotment by the then Estate Officer in the year 1998 and resumption of the plot by the then Administrator, HUDA. The accused Mukesh Kumar Solanki, Estate Officer-1 should have given his comments by citing these facts while preparing his report in this regard. But the aforesaid officer by abusing his official position and violating the rules, had allotted the above mentioned S.C.O, after 21 years on the rate and cost of the year 1997 to give the undue advantage to the firm by causing loss to the government exchequer.

5. Mr. Bipan Ghai, Sr. Advocate, argued that the petitioner is only a witness to the general power of attorney and as such he was not at all beneficiary, however no loss has been caused because allotment was cancelled. In addition to that he seeks bail on parity with co-accused Sajjan Singh Yadav and Mukesh Kumar. Petitioner's counsel also referred to the grounds of the bail petition and seeks bail on such grounds, in addition to the arguments captioned above.

6. On the other hand, State counsel argued that the petitioner is not entitled to bail on parity for the reason that Co-ordinate Bench of this Court had granted bail to Sajjan Singh Yadav, who was Section Officer and was given additional charge of Accountant and in that capacity, he had signed revenue documents regarding allotment and he did not play any role in the entire process of the allotment prior to 07.06.2018.

7. Perusal of the common order dated 28.03.2023 passed in CRM-M-61162-2022 and connected case CRM-M-7872-2023, reveals that Coordinate Bench of this Court had granted bail to Sajjan Singh Yadav on the reason of his role but had dismissed the bail of Sanjay Kumar, who was posted as Clerk. Since Sajjan Yadav was granted bail for the reason that his role is not at all similar to that of Sajjan Kumar Yadav and the present

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petitioner is not entitled to bail on parity with Sajjan Singh Yadav as petitioner's role is different.

8. Regarding bail on parity with co-accused Mukesh to whom Coordinate Bench of this Court had granted bail vide order dated 07.06.2023 passed in CRM-M-29871-2023. The said order was interim order and this Court cannot rely upon an interim order to decide a case finally.

9. Analysis of the investigation conducted till date and the fact that anticipatory bail filed by one of the co-accused-Sanjay Kumar, State counsel submits that Coordinate Bench of this Court had dismissed the bail of Sanjay Kumar who was a clerk and he had challenged the dismissal order in the Supreme Court of India and vide order dated 28.04.2023 passed in SLP-5236-2023, Supreme Court had dismissed the said anticipatory bail. He further submits that the petitioner's role is much more graver than that of Sanjay Kumar and this Court must dismiss the bail of the petitioner. Analysis of the evidence collected upto date, the nature of allegations and role of the petitioner would lead to the following inference.

10. It has come in the evidence that after cancellation of SCO's for non-deposit of 15% amount by one Rishi Raj who was owner of RR Foundation Private Limited. Even the said Rishi Raj received refund from HUDA which he deposited initially. The said Rishi Raj had executed the General Power of Attorney. In the said power of attorney the petitioner purposely showed himself as a witness. Furthermore in the said power of attorney, it was intentionally mentioned that Rishi Raj was owner of SCO and had taken possession but reality is that the allotment of R.R. Foundation has already stood cancelled. The investigation further revealed that Rishi Raj had received a sum of RS.7,80,000/- and co-accused Mukesh Solanki had received bribe of Rs. 2,00,000/-, Sanjay Kumar-Clerk had received bribe of Rs.75,000/-. The investigation further points out that in fact Rishi Raj had never gone to Mahendergarh for executing his general power of attorney and in fact the petitioner identified a impersonated as Rishi Raj and he himself became witness on forged general power of attorney in Mahendergarh. The investigation further reveals that modus operandi opted by the petitioner was that the petitioner would take half of the amount from Rishi Raj and subsequently handed over Rs.5.5 lacs to Rishi Raj and convinced him to handover documents of SCO Nos.8-30. The investigation further point out that the petitioner got some signatures of Rishi Raj on blank papers. Perusal of the aforesaid investigation points out that iota of re-allocation by taking bribe is planned by the petitioner and he is one of the main accused. Custodial investigation is required to find out that in fact which person had impersonated as Rishi Raj. Considering the fact that bail petition filed by Sajay Kumar, who had main role and

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was a clerk, was dismissed by the trial Court as well as by this Court and the SLP filed by him was also dismissed by the Supreme Court, as such, how this Court can over-reach the orders passed by the Hon'ble Supreme Court which were passed against the co-accused, who was at a lesser footing.

11. Be that as it may and evidence collected so far, 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 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.

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 enroled in the

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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.

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: No.