

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4184-2024
Reserved on: 12.03.2024
Pronounced on: 21.03.2024

Satpal Chaudhary ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Balvinder Sangwan, Advocate
for the petitioner.

Mr. Kanav Bansal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
08	08.06.2022	Vigilance Bureau, Mohali	420, 465, 467, 471, 120-B IPC and Sections 7, 7A, 13(1)(a) r/w 13(2) of Prevention of Corruption Act 1988

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 8 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	80	06.09.2017	420, 468, 471, 201 & 34 IPC	Parwanoo, District Solan, Himachal Pradesh

3. Prosecution’s case is being taken from preliminary submissions of reply dated 05.02.2024, which reads as follows: -

“6. That a brief gist of the allegations leveled against the petitioner are relevant in order to decide the present bail application. During investigation, co-accused Sandeep Kumar disclosed that fake software link was provided tohim by Satpal Chaudhary (petitioner). Thereafter, it was found that the petitoner is running a Khokha on rent for issuing tax receipts outside the petrol pump at Village Dhantori Shahbad, District Kurukshetra,

Haryana. Regarding Rent of this 'khokha' the photo copy of petrol pump ledger book produced by the petrol pump manager sunil pandit is annexed herewith as ANNEXURE R-1 for kind persusal of this Hon'ble Court.

7. The co-accused of the petitioner were posted at the tax collection centre, and have been instrumental in the preparation and issuance of forged and fabricated receipts of the tax pertaining to the vehicles entering the state of Punjab from the other states. The tax amount that was supposedly to be deposited with the state treasury, was being credited by the co-accused in their favors, who in return would issue tax receipts, similar to the original receipts and would retain the cash with themselves. The co-accused have been doing so for a long time and have been thus causing wrongful gain to themselves and wrongful loss to the state exchequer.

8. That the modus operandi adopted by the accused persons in the commission of the offense is that, the accused had illegally procured fake software and fake link under the name and style of Pbvahan.000webhostapp.com with the user name as "admin" and password as "babu".

It is apposite to mention here that whenever any person/driver/conductor of any vehicle would approach the accused for the payment of tax, the accused would use the aforementioned fake link, instead of the original/genuine and issue a receipt from the same. The said receipt was similar looking to the original."

4. I have heard counsel for the parties and gone through the record.

5. Petitioner's counsel seeks bail on the ground that the FIR was registered on 08.06.2022, the investigation was completed qua co-accused, and the challan was presented way back on 02.09.2022. After that, the investigator wants to arrest the petitioner without any explanation to justify the delay.

6. Counsel for the State submits that the challan was filed against the co-accused; on this ground, the petitioner is not entitled to bail, and it was clarified while filing the challan against the co-accused that the investigation is going on. He further submits that investigation in these cybercrime matters takes longer given the challenges involved, and as such, on this ground, the petitioner is not entitled to bail.

7. An analysis of these submissions leads to the outcome that simply because the petitioner was initially not arrested and not named in the FIR does not mean that the crime which he committed, also eclipsed. It needs no saying that cyber law is an emerging field and even the investigators are neither well skilled nor possess the requisite educational qualifications required to tackle cyber crimes; thus, if they take

more than usual time to complete the investigation, it cannot be taken against the investigator as a deliberate attempt to delay the investigation. Therefore, the petitioner is not entitled to bail for the delay in investigation.

8. The next argument of the petitioner's counsel is that the petitioner has been prosecuted as an accused on the disclosure statement of Harpal Singh and Salinder Singh, who were found with fake software. He further submits that the FIR mentioned that employees at the check post had prepared fake software, and the petitioner was not an employee posted at the check post. Further, Sandeep Kumar's disclosure statement that he got the link from the petitioner is inadmissible because it did not lead to any discovery. Later, the State improved its case and stated that the petitioner was the leading software supplier for issuing fake tax collection receipts. The petitioner's next contention is that the petitioner is illiterate and does not know how to use software.

9. The State's counsel submitted that analyzing the above disclosures led the investigator to collect sufficient evidence to connect the petitioner with the software supplied to the other accused. In addition, there is evidence that the investigator has collected further evidence, which shows that petitioner Satpal Chaudhary is a member of the mafia who used to issue fake tax deposit receipts using the software.

10. An analysis of these submissions do not entitle petitioner for bail for the reasons that the investigator has collected other evidence pointing towards the petitioner's involvement.

11. The petitioner's next ground is that he is illiterate and does not know how to use software. State counsel submits that during the investigation, they gathered information that the petitioner knows how to use computers and mobile phones. Further, he was found issuing tax receipts to people, which also shows that he has knowledge of computers and can also write and read. The investigator ascertained such facts during the investigation, and as such, they contradict the above-said arguments made by the petitioner.

12. State counsel opposes the petition and argues that the petitioner is the supplier of the fake software link and supplied it to Sandeep Kumar, which was later on used by him in committing the offense of forgery and cheating, in connivance with the other co-accused. During the investigation, co-accused Sandeep Kumar disclosed that Satpal Chaudhary (petitioner) provided him with a fake software link. After that, it was found that the petitioner was running a Khokha on rent to issue tax receipts outside the petrol pump at Village Dhantori Shahbad, District Kurukshetra, Haryana. Regarding the Rent of

this 'khokha,' the photocopy of the petrol pump ledger book has been produced by the petrol pump manager, Sunil Pandit. After that, State counsel submitted that the co-accused of the petitioner were posted at the tax collection center and had been instrumental in preparing and issuing forged and fabricated tax receipts about the vehicles entering the state of Punjab from other states. The tax amount supposed to be deposited with the state treasury was credited by the co-accused in their favor, who in return would issue tax receipts similar to the original receipts and would retain the cash with themselves. The co-accused have been doing so for a long time and have been thus causing wrongful gain to themselves and wrongful loss to the state exchequer. It was further argued that the modus operandi adopted by the accused persons in the commission of the offense is that the petitioner accused had illegally procured fake software and a fake link under the name and style of Pbvahan.000webhostapp.com with the user name "admin" and password as "babu." It is apposite to mention here that whenever any person/driver/conductor of any vehicle would approach the accused for the payment of tax, the accused would use the aforementioned fake link instead of the original/genuine and issue a receipt from the same and the said receipt was similar looking to the original. State further submits that petitioner/accused Satpal Chaudhary is part of an interstate racket that spread throughout the state of Punjab and Haryana and is indulging in illegal activities by forging the tax receipts on behalf of the Government and thus instrumental in causing financial loss to the tune of lakhs of rupees to the state exchequer and thus are indulging into corruption and have rendered themselves liable for the offenses committed by them in the present FIR. After the arrest of the co-accused, a chargesheet U/s 173 Cr.P.C. was filed before the competent court of law on 02.09.2022, and accused Satpal Chaudhary joined the investigation on 30.01.2024 and 11.03.2024 but he has not cooperated in the investigation, and he is not ready to disclose about the leading supplier of this software link. The petitioner's custody is required to unearth the actual supplier and source of preparation of the fake software. State counsel seeks custodial interrogation to get information about the phone numbers that the petitioner was using so that they also know how many people throughout India have used this fake software and caused a massive amount of loss to the exchequer throughout India.

13. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal

or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

14. This Court did not refer to the inadmissible statements of Harpal Singh, Salinder Singh, and Sandeep Kumar made under Section 27 of the Indian Evidence Act. In addition, there is other evidence pointing towards the petitioner's involvement. The petitioner's previous criminal history for similar offenses corroborates the petitioner's involvement. The evidence collected so far points towards his involvement in supplying fake software to the other accused, Harpal Singh and Sandeep Kumar. Therefore, the petitioner is not entitled to anticipatory bail.

15. 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.

16. 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.

17. 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....."

18. 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.

19. 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].

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

21.03.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.