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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-5761-2024

Decided on: 21.02.2024

ASI Balwinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashit Malik, Advocate for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

Ms. Himani Anand, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
30	12.12.2023	Anti Corruption Bureau, Ambala, District Ambala	384 & 120B IPC and Sections 7, 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988

1. The petitioner, who is posted as ASI in Haryana Police, having been arrested in the FIR captioned above for accepting bribe money in connivance with ESI Harpal Singh to drop the name of complainant's mother from a criminal case, had come up before this Court under Section 439 CrPC seeking regular bail.

2. On 08.02.2024, when the matter was listed for first time, this Court asked the State to file response. Thereafter on 15.02.2024, when reply was filed on behalf of the State, then after considering the factors, this Court granted interim bail and one of the reason of granting bail was that the petitioner had voluntarily agreed to declare his as well as assets of his wife, which was mentioned in para 14 (page 4) of the bail order.

3. Petitioner's counsel submits that they had voluntarily complied with the order of declaring assets and it is submitted that they shall not claim such declaration as self incrimination, violation of Article 20/21 of Constitution of India or any other fundamental right/law. The investigator may verify such assets if required and proceed in accordance with law, if any anomalies found. The concerned investigator is further directed to forward one original copy of the affidavit to the petitioner's employer within two weeks from today. Counsel further submits that the custodial investigation would

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serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. State has opposed the bail by referring to preliminary submission of the reply dated 13.02.2024, which reads as under:-

“That the present petition has been filed by the petitioner under section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner in Case FIR No. 30 dated 12.12.2023 under Section 7, 13 (1) (b) read with section 13 (2) of the Prevention of Corruption Act, 1988 and Section 384, 120-B of IPC, Police Station, Anti Corruption Bureau, Ambala Range Ambala. The same is now listed before this Hon'ble Court for 15.02.2024.

2. That the petitioner has been arrested red handed in a trap case under the Prevention of Corruption Act, 1988. There are several evidences against him which inter alia include recorded conversation for demand of illegal gratification.

3. That the accused-petitioner has concealed material facts from the knowledge of this Hon'ble High Court. The true facts of the case, in brief, are that on 12.12.2023 the complainant Sh. Sandeep Kumar s/o Sh. Karam Singh r/o Village Bhagal, Cheeka, District Kaithal presented a complaint to Inspector Ram Phal, Anti corruption Bureau, Kurukshetra Unit to the effect that on 14.10.2023, a quarrel had taken place with Sh. Mahabir and father of the complainant Sh. Karam Singh, residents of village Bhagal and Mahabir had got FIR No.284/2023 lodged in Police Station Cheeka against him, his mother Krishna Devi, his neighbour Jaipal alias Pola and his sons Shekhar and Aman. It was further alleged in the complaint dated 12.12.2023 that on asking of Incharge ASI Balwinder, the complainant alongwith his brother-in-law Sh. Satish Kumar son of Ganga Bishan had visited Police Post Bhagal about 4- 5 days ago and at that time ESI Harpal Singh was also sitting there. It was further alleged in the complaint that ASI Balwinder (accused-petitioner) and ESI Harpal had threatened him that his mother could be arrested in FIR No.284/2023 and in order to remove her name from the case, they demanded 60,000/-. The complainant and his brother-in-law Sh. Satish Kumar brought 60000/- from his house and contacted the aforesaid persons in the police post, upon which ASI Balwinder and ESI Harpal Singh asked him to step out of the police post and asked his brother-in-law Sh. Satish Kumar to stay in the office. After sometime Sh. Satish Kumar came out of the police post and informed the complainant that sum of 50,000/- had

been kept by ASI Balwinder and 10,000/- had been taken by SI Harpal. It was further alleged in the complaint that on 07.12.2023, when he went to the police post, ASI Balwinder (accused-petitioner) again demanded 250 / per person for removing his name and the names of his neighbours Aman and Shekhar, whereas they were totally innocent and also demanded affidavits of neighbours and respectables regarding their innocence.

The complainant further alleged in the complaint that on 09.12.2023, he again went to police post Bhagal and ASI Balwinder alongwith SI Harpal were present in the police post. ASI Balwinder demanded 10,000/- alongwith the affidavits and agreed to take the remaining money after dropping the name of Aman and Shekhar. He did not wish to pay the bribe to ASI Balwinder and SI Harpal. Since the complainant did not wish to pay the said amount of bribe, he reported the matter to the Anti Corruption Bureau. On the basis of complaint, initially FIR No. 30 dated 12.12.2023 under Section 7 of the Prevention of Corruption Act and Section 384 of IPC was registered against the accused- petitioner and co-accused in the Police Station, AntiCorruption Bureau, Ambala Range Ambala. Subsequently, during the course of investigation section 13 (1) (b) read with section 13 (2) of the Prevention of Corruption Act and Section 120-B of IPC have been added.

4. That thereafter, sum of ₹10,000/-i.e. 20 currency notes of 500/- each and four affidavits of Sh. Parveen Kumar son of Sh. Amarnath, Sh. Ram Chander son of Sh. Ram Singh, Sh. Satpal son of Sh. Ram Kishan and Sh. Jangsher son of Sh. Ram Singh were handed over by the complainant, which were taken into police possession vide separate recovery memo in which the details of the number of the currency notes were also mentioned.

5. That thereafter, raiding party was constituted and Sh. Gaurav Kansal XEN, Public Health Department, Kaithal and Sh. Nitin Sharma, SDC, were joined in the raiding team as Gazetted officer and shadow witness respectively. The shadow witness was instructed to see and hear the conversation between the complainant and the accused- petitioner and was further directed to give the appointed signal to the raiding team on accepting the bribe money handed over to the accused by the complainant on his demand. Thereafter, a trap was laid and upon receiving the appointed signal from the shadow witness the accused-petitioner ASI Balwinder, Incharge Police Post Bhagal was apprehended red handed while demanding and accepting 10,000/- as illegal

gratification from the complainant in presence of Gazetted officer and shadow witness. The bribe money of 10,000/- was also recovered on the spot in presence of independent Gazetted officer and shadow witness. The statements of witnesses were separately recorded under section 161 Cr.P.C.

6. That during investigation, Sh. Gaurav Kansal XEN, Public Health Department, Kaithal, Gazetted officer alongwith Inspector Ram Phal tallied the currency notes with the list already prepared and the numbers of the said recovered currency notes were found as same as mentioned in the already prepared list. The recovered 20 currency notes of denomination of 500/- each and four affidavits were taken into police possession vide recovery memo which was signed by the witnesses and the accused-petitioner ASI Balwinder Singh. The currency notes were put in a yellow envelope which was converted into a parcel. Thereafter, the hands of accused-petitioner ASI Balwinder Singh, were washed with clean water mixed with Sodium Carbonate upon which the water turned light pink. A sample of the water was drawn which was kept in a glass bottle and was converted into a parcel. The separate sealed parcels of recovered currency notes and hand washes were taken into police possession. Thereafter, by taking fresh water in the jug sodium carbonate powder was again mixed in the water in the jug and the hands of the complainant were washed and the water again turned light pink. A sample of the water was drawn which was kept in a glass bottle and was converted into a separate parcel. The mobile phones make OPPO F-11 and Samsung Galaxy A-13 having sim card numbers 7015016906 (Jio) and 9416420103 (BSNL) of the accused-petitioner were also taken into police possession and were converted into a separate parcel. Later on the samples of hand wash of complainant and co-accused along with recovered currency notes were sent to FSL, Madhuban, Karnal. The statements of witnesses were separately recorded under section 161 Cr.P.C.

7. That thereafter, the accused-petitioner ASI Balwinder Singh was formally arrested on 12.12.2023 and during interrogation he suffered disclosure statements voluntarily in presence of Sh. Gaurav Kansal XEN, Public Health Department, Kaithal, Gazetted officer and shadow witness in which he admitted his guilt and involvement in the present case but refused to sign the same. On the same day i.e. 12.12.2023 the co-accused ESI Harpal Singh was also arrested and during interrogation he also suffered disclosure statements voluntarily in presence of Gazetted

officer and shadow witness in which he admitted guilt and involvement of the accused-petitioner in the present case but refused to sign the same.

8. That during interrogation on 13.12.2023 accused-petitioner ASI Balwinder Singh suffered another disclosure statement voluntarily in presence of witnesses in which he again admitted the fact of demand and acceptance of illegal gratification and his involvement in the present case and duly signed the disclosure statement.

9. That on 14.12.2023 the co-accused ESI Harpal Singh also suffered another disclosure statement voluntarily in presence of witnesses in which he again admitted guilt and involvement of the accused-petitioner in the present case and duly signed the same disclosure statement.

10. That during investigation, on 14.12.2023 statement of the complainant Sh. Sandeep Kumar and Sh. Satish Kumar eye witness was recorded under Section 164 Cr.P.C. by the Hon'ble Court of Sh. Ms. Amudeep Kaur Bhatti, Learned Additional Chief Judicial Magistrate, Kaithal in which they reasserted the fact of demand and acceptance of illegal gratification by the accused-petitioner and co-accused. The statements of witnesses in this regard were separately recorded under section 161 Cr.P.C.

11. That on 03.01.2024 the complainant handed over the two set of three DVDs wherein conversation for demand of illegal gratification between the accused-petitioner ASI Balwinder Singh and the complainant and conversation between co-accused ESI Harpal Singh and the complainant were copied. Transcript of recorded conversation was prepared by HC Rajeev with the help of complainant and in presence of Investigation Officer. The DVDs and its transcript, was taken into possession. The certificates, under section 65-B Evidence Act, of the complainant and HC Rajeev were also taken into possession. The statements of the witnesses were also recorded under section 161 Cr.P.C. The true translation of the transcript of recorded conversation between the accused-petitioner and the complainant is annexed herewith as ANNEXURE R-1. The of relevant part of the transcript is reproduced hereunder for the ready reference of this Hon'ble Court:-

"ASI Balvinder:	Come and sit Sandeep there is no problem when I am saying.
Complainant Sandeep:	No problem let me sit just two minutes
ASI Balvinder:	See brother
Complainant Sandeep:	Sit two minutes

Complainant Sandeep: Don't do such with these poor people
 ASI Balvinder: I will take Rs.50,000/- each
 Complainant Sandeep: hey
 ASI Balvinder: 50-50
 Complainant Sandeep: Let it be brother, take while in Satisho and Santish and convenience him for old lady.
 ASI Balvinder: No work of old age lady cannot be done, if it was possible I would say myself"

12. That the above reproduced translation of the transcript of recorded conversation between the accused-petitioner and the complainant also proves the fact of demand of illegal gratification by the accused-petitioner.

13. That on 15.01.2024 the FSL report was received which confirmed the fact of presence of Phenolphthalein powder on the tainted currency notes Exhibit-1. It further confirmed the presence of Phenolphthalein and Sodium Carbonate on the hand washes Exhibit-2 and Exhibit-3 of accused- petitioner ASI Balwinder Singh and complainant Sh. Sandeep Kumar respectively. On 29.01.2024 and 05.02.2024 the Call Detail Record, of the complainant Sh. Sandeep Singh and accused-petitioner was received through e-mail. FSL report is annexed herewith as ANNEXURE R-2.

14. That after taking the necessary directions from the Ld. Trial Court the voice sample of the accused-petitioner, co-accused and the complainant was got recorded on 02.02.2024 for comparison. The report regarding the same is awaited. The statements of witnesses in this regard were separately recorded under section 161 Cr.P.C.

15. That on 03.02.2024 the screen short of the whatsapp chat between the accused-petitioner and the complainant was taken into police possession from the complainant Sh. Sandeep Kumar vide separate recovery memo. The statements of witnesses were recorded under section 161 Cr.P.C.

16. That on 05.02.2024 the call detail report of the complainant and accused-petitioner were got analysed from the cyber expert and analyse report of the same was taken into police possession vide separate recovery memo. The statements of witnesses were recorded under section 161 Cr.P.C.

17. That thereafter report under Section 173 Cr.P.C. was submitted before the Court of Ms. Sangeeta Rai Sachdeva, learned Additional

Sessions Judge, Kaithal on 08.02.2024 for trial and the copy of the same alongwith all the documents was supplied to the accused/petitioner in which 32 prosecution witnesses are to be examined. The case is now fixed for 13.02.2024 for appearance. It may be relevant to mention here that the further investigation in this case is still going on. The report from Forensic Science Laboratory, Haryana, Madhuban regarding comparison of voice sample, the mobile phones of the co-accused is yet to be sent to Cyber Forensic Laboratory for analysis and thereafter the analysis report from Cyber Forensic Laboratory, Haryana Panchkula is to be obtained and the prosecution sanction of the accused-petitioner is yet to be received and thereafter a supplementary challan report u/s 173 (8) Cr.P.C will be submitted against the accused persons in the court of Ld. Special Judge at Kaithal. Since the further investigation is pending hence, there is great apprehension of evidence being tampered with and witnesses being influenced.

18. That it has been established in the investigation that the accused-petitioner being a public servant, in collusion with the co-accused by threatening the complainant that his mother could be arrested in FIR No.284/2023 and in order to remove her name from the case, had demanded and accepted 60,000/- as illegal gratification other than legal remuneration as a motive or reward for showing a favour to him in the discharge of his official duties by illegal and corrupt means otherwise abusing his position as a public servant.

19. That again on 07.12.2023 the accused-petitioner in collusion with the co-accused demanded 50,000/- per person for removing the name of complainant and the names of his neighbours Aman and Shekhar from FIR No. 284/2023 and on 12.12.2023 accepted 10,000/- through co-accused as illegal gratification other than legal remuneration as a motive or reward for showing a favour to him in the discharge of his official duties by illegal and corrupt means otherwise abusing his position as a public servant.

20. That the complainant in his written complaint has specifically named the accused-petitioner. From the investigation, verification, statements of witnesses, statement under section 164 Cr.P.C. and evidence collected during the investigation there is sufficient legal evidence which clearly and manifestly prove the offence punishable under Section 7, 13 (1) (b) read with section 13 (2) of the Prevention of Corruption Act, 1988 and Section 384 and 120-B of IPC.

21. That as per record no other criminal case has been found to be registered against the accused-petitioner or pending against him. However, considering the seriousness and gravity of the offence, great apprehension of evidence being tampered with and witnesses being influenced, reasonable possibility absconding of accused-petitioner on being enlarged on bail and pending further investigation, the accused-petitioner does not deserves the concession of regular bail at this stage.

22. That there is also great apprehension of the accused- petitioner running away from the justice and will not abide by the term and conditions imposed by this Hon'ble Court. The accused-petitioner has even not given any undertaking in this regard in the present petition.

23. That a criminal offence is a wrong against the society even though committed against an individual. The allegations made in the FIR and the evidence collected in support of the same disclose the commission of offence punishable under Section 7, 13 (1) (b) read with section 13 (2) of the Prevention of Corruption Act, 1988 and Section 384 and 120-B of IPC and make out a strong case against the accused-petitioner.

24. That as per record of this office no such or similar petition of the accused-petitioner in the above said case except the present one has been received from the Learned Court of Sessions or from this Hon'ble Court or from the Hon'ble Supreme Court of India till date. It may be relevant to mention here that the accused-petitioner had filed regular bail which was rightly dismissed by the Learned Court of Additional, Sessions Judge, Kaithal vide well-reasoned detailed speaking order dated 29.01.2024 by considering and appreciating the facts of the case in its right perspective.

25. That since accused-petitioner is police official, there is great apprehension of tampering with the prosecution evidence by him. The allegations against the accused constitute an offence and there is sufficient legal evidence which clearly and manifestly prove the offence. Therefore, the present petition is liable to be dismissed in the interest of justice.

26. That there is no material to find whether there are reasonable grounds for believing that the accused is not guilty rather from the submissions made above the participation of the accused-petitioner is manifestly proved beyond any shadow of reasonable doubt. Therefore, unless the Hon'ble court comes to that belief cannot, under the statute grant any bail to the accused.

27. That the corruption in a society is required to be detected and eradicated at the earliest as it shakes the socio- economic political system in an otherwise healthy, wealthy, effective and vibrating society. Liberty cannot last long unless the State is able to eradicate corruption from public life. The corruption is a bigger threat than external threat to the civil society as it is instrumental in improper implementation and enforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a subject matter of grave concern and requires to be decisively dealt with.

28. The Hon'ble Apex Court in the case of Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185 was pleased to held that corruption in our country not only poses a grave danger to the concept of Constitution governance, it also threatens the very foundation of Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular, democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which is the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

In view of the submissions made above and considering the seriousness and gravity of the offence, the accused-petitioner does not deserves the concession of Regular Bail at this stage, hence, it is most respectfully prayed that the present petition being devoid of any merit may kindly be dismissed in the interest of justice.”

5. Complainant has also opposed the bail by making the following submissions:-

“1. That allegations against the present petitioner are for demanding and accepting bribe of Rs. 60,000/- along with ESI Harpal Singh (out of which Rs. 50,000/- was kept by the present petitioner), from the complainant in order to drop the name of the mother of the complainant from FIR No. 284/2023 which was got registered by one Mahabir in respect of a quarrel against the complainant, his mother, his neighbor Jaipal and his

sons Shekhar and Aman.

2. That there are allegations of further demand for bribe for dropping names of the complainant, Shekhar and Aman as well from the said FIR for an amount of Rs. 50,000/- each.

3. That the petitioner was arrested in the present FIR, i.e., FIR No. 30/23 under sections 7, 13(1) (b) read with section 13(2) of the Prevention of Corruption Act, 1988, on 12.12.2023, wherein the investigation is still underway.

4. That three audio clippings have been submitted by the complainant qua conversations with the present petitioner and co-accused ESI Harpal Singh wherein they are heard demanding illegal gratifications. The present petitioner is heard demanding a further amount of Rs. 50,000/- per head for dropping names of three more persons from the above-mentioned case. The petitioner accedes to the fact that 50,000/- has been received by him. The voice samples of the petitioner are yet to be taken to be compared with the voice recording of the demand of bribe.

5. That it will be most apposite to mention that tainted money to the tune of Rs. 10,000/- has been recovered from the drawer in the office of the present petitioner and he has been apprehended red handed accepting bribe from the complainant.

6. That the petitioner is a police official who rather than conducting fair and impartial investigation is involving himself in such serious offence indulging in demanding bribe and he himself is pressurizing the complainant to do away with the present FIR, which is unbecoming of a police official. Moreover, being aware of the legal parlance, the petitioner is time and again resiling from statements made by him and misleading the investigation.

7. That already several Panchayats have been set up by relatives of both the accused in the present case, i.e. ASI Balwinder Singh and ESI Harpal Singh and a lot of pressure is being mounted upon the complainant. If granted the concession of bail at this stage, there is every possibility for the petitioner to threaten and pressurize the complainant and tamper with the evidence, especially in view of the fact that the investigation is yet to be completed. 8. That in recent times there is an unprecedented increase in socio- economic offences which are solely committed for personal gains. These crimes are affecting every part of the country's economic structure and wrecking the people's faith in the system. In these circumstances, owing to the influential capacity of the person

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involved, there is every chance to mislead the case and therefore bail may not be granted. In view of the seriousness of the corruption charges, it is prayed that the bail application of the petitioner be dismissed at this stage at least till the time the complainant is examined and challan is presented by the investigating agency in the present case.”

6. I have heard counsel for the parties as well as the complainant and also gone through the pleadings.

7. It remains undisputed that the petitioner was in custody from 12.12.2023 till he released from jail pursuant to the order dated 15.02.2024. Thus in all, petitioner has remained in custody for 02 months. Although there is prima facie evidence connecting the petitioner with crime but considering the pre-trial custody which is approximately 02 months and coupled with the fact that petitioner had voluntarily declared assets, there would be no justification for further pre-trial incarceration.

Petition is allowed. Interim order dated 15.02.2024, is made absolute. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

21.02.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.