

113 (1st case)

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM M-7390-2024 (O&M)
Date of Decision: 18.04.2024

Anil Kumar SharmaPetitioner

Versus

State of UT ChandigarhRespondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. BipanGhai, Senior Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. P.S. Bindra, Advocate,
for the petitioner.

Mr. Manish Bansal, PP UT, Chandigarh
assisted by Inspector Kirpal Singh.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure (for short “Cr.P.C”) for seeking bail pending trial in FIR No. 24 dated 18.02.2023 under Sections 420, 467, 468, 471 & 120-B of Indian Penal Code, registered at Police Station Central, Sector 17, Chandigarh.

2. Above FIR was registered on the basis of written complaint made by Sh. Sunil Dutt, Superintendent Parking, Municipal Corporation, Chandigarh (for short ‘Corporation’) and the same is reproduced as under:-

“I the undersigned would like to submit the following facts for your kind perusal and for prompt action. It is intimated that Municipal Corporation, Chandigarh had allotted tender to M/s Pashchatya Entertainment Pvt. Ltd. Vide allotment dated 23.01.2020 for work of operation and management of 57 paid parking sites of Chandigarh for the period of three years. As per the terms and conditions of contract, three Bank Guarantees of Syndicate Bank (Now Canara Bank) amounting to Rs.1,65,33,333/- (Rs.55,11,111/- each) was deposited by M/s Pashchatya Entertainment Pvt. Ltd. (attached at Annexure A). The

agency had also deposited 36 no.(s) of Post dated cheques for the purpose of recovery of penalty amount. Upon receiving these bank guarantees, a letter dated 28.01.2020 was sent to the Branch Manager, Syndicate Bank, Mori Gate Branch, Delhi to confirm the genuineness of the said BGs (attached at Annexure B). In response to the said confirmation letter, letter dated 15.02.2020 was received from bank in their letter head which was duly signed by the branch manager, whereby it was confirmed that said bank guarantees have duly been issued by the Syndicate Bank, Mori Gate Branch on the request of M/s Pshchatya Entertainment Pvt. Ltd. (Attached at Annexure C). On account of failure to pay the licence fee amounting Rs.7 crores approximately, as per the terms and conditions of contract, the formal claim for the encashment of said three BGs was lodged by the officials of Municipal Corporation, Chandigarh in person vide its letter dated 03.02.2023. The original three bank guarantees were also submitted before the Incharge of said Bank who in turn informed through E-mail dated 17.02.2023 at 1.38 p.m (attached at Annexure D) that on verification of records, it has been observed that no such bank Guarantee has been issued from their branch. They will not be in a position to honour the request for invocation. The cheque No. 207039 was issued presented to the bank account of MCC for utilizing the same for recovery of penalty amount vide No. 104 dated 13.03.2023. However, the same was returned by the PNB Bank on 15.02.2023 with the remarks "bank merged". The said e-mail dated 17.02.2023, prima-facie, shows that M/s Pashchatya has issued the forged bank guarantees with the intention to defraud the Municipal Corporation, Chandigarh. Since there is huge financial fraud committed by the agency, and it is required to be investigated through the economic offence wing of Chandigarh Administration, therefore, it is requested to lodge an FIR for cheating and forgery for submitting the false bank guarantee amounting to Rs.1,65,33,333/- only and non-depositing the licence fee of approximately Rs.7 crore against the director of M/s Pashchatya Entertainment Pvt. Ltd. The name and address of the said agency is as above, as per the website of Ministry of

Corporate Affair, Govt. of India: Company Name: M/s Pashchatya Entertainment Pvt. Ltd. CIN No.: U92199DL2002PTC117798 registration NO. : 117798 registered address: 2533, Punjabi Basti, Old Sabji Mandi, Delhi-110009. Local Address: SCO, 10-12, First Floor, Sector 17-B, Chandigarh. Director's name: Lalita Sharma, (DIN No:01340585) and Sanjay Sharma (DIN No.: 01340587). For and on behalf of Commissioner, Municipal Corporation, Chandigarh dated 18.02.2023. Endst. No. MCC/PPA/Supdt./ (P)/2023/133-135.”

CONTENTIONS

3. On behalf of Petitioner

3.1 Contends that petitioner is in custody since 23.03.2023; he is not named in the FIR; rather nominated on the basis of disclosure made by co-accused Sanjay Sharma. Further contends that entire allegations are either against M/s Pashchatya Entertainment Pvt. Ltd (for short “company”) or its director, namely, Lalita Sharma and/or Sanjay Sharma, but petitioner is neither the director; nor employee of the said company.

3.2 Again contends that report under Section 173 of Cr.P.C, has already been presented before the Court of competent jurisdiction; but charges are yet to be considered; hence, conclusion of trial will take sufficient long time.

3.3 Also contends that present case is triable by Magistrate and there is no apprehension that in case petitioner is released on bail, he is likely to hamper the proceedings in any manner.

3.4 Lastly contended that co-accused, including Sanjay Sharma have already been granted the concession of bail pending trial.

4. On behalf of U.T

4.1 While opposing the prayer, learned counsel for U.T submitted that petitioner is the main conspirator; after misappropriation of Rs.7 crore,

collected from 57 parking sites, he has siphoned off the money through shell companies and an amount of Rs.1.48 crore has gone into his personal account.

4.2 Also submitted that petitioner, in a pre-planned manner, played fraud with Syndicate Bank (now Canara Bank), Mori Gate, New Delhi as well as the Corporation while furnishing 03 bank guarantees to the tune of Rs.1,65,33,333/- (Rs.55,11,111/- each), which later on found to be fake.

4.3 Again submitted that SIT, headed by Ms. Niyati Mittal, DSP (Economic Offences Wing) is still investigating the matter and in case petitioner is released on bail, he shall hamper the fair investigation as well as ongoing trial before learned Chief Judicial Magistrate.

4.4 Lastly, submitted that after conducting preliminary inquiry, FIR No. RC0052024A0002 dated 10.01.2024 has already been registered by CBI and investigation is still going on, but he is not aware about the actual status of the same.

5. Heard learned counsel for the parties and perused the paper book.

6. As per prosecution case, contract for Operation & Management of 57 parking sites in Chandigarh was awarded to the Company on 23.01.2020 for a period of three years. In pursuance of the terms & conditions of contract, the Company furnished 03 bank guarantees for an amount of Rs.1,65,33,333/- (Rs.55,11,111/- each), which later on, were found to be fake. There is sufficient material on record that an amount of Rs.1.48 crore has gone into the account of petitioner; thus he is the main beneficiary of the proceeds of fraud.

7. Apart that, after going through the Police file, it is more than clear that petitioner is the main conspirator and he has duped the Corporation to the tune of Rs.7 crore in connivance with other co-accused.

No doubt, some of the co-accused have been granted the concession of bail, but *prima-facie* petitioner has played an active role and in case, he is released on bail, shall hamper the fair trial.

8. It is noteworthy that regarding this Parking Scam, Comptroller and Auditor General of India raised audit objection(s) vide their report No.24 of 2022 and as a result thereof, 06 officials from the Corporation were charge-sheeted. Also discernible from records that in the wake of aforesaid audit objection(s), preliminary inquiry was conducted by the CBI and finally, regular case bearing FIR No.RC0052024A0002 had been registered on 10.01.2024.

The level of influence exercised by the accused persons can be gauzed from the fact that even the Central Agency has also gone slow in the matter and there is virtually no progress of the investigation.

9. In view of the above, this Court is not inclined to grant the concession of bail to the petitioner, at this stage.

10. Consequently, there is no option, except to dismiss the petition.

11. Ordered accordingly.

12. Needless to say that observations made above shall not be construed as an expression of opinion on merits of the case in any manner; rather confined only to decide the present bail matter.

13. Pending application(s), if any, shall also stand disposed off.

18.04.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No