

CRM-M-17173-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17173-2024
Decided on: 02.05.2024

Jitender Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Pawan Kumar Hooda, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0005	21.03.2024	Anti Corruption Bureau, Faridabad, District Anti Corruption Bureau Haryana	7/7A of Prevention of Corruption (Amendment) Act 2018 and later on added Sections 13(1)(b) & 13(2) of PC Act

1. The petitioner, who is police inspector and was posted as SHO, now apprehending arrest in the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 08.04.2024, this Court granted interim bail to the petitioner and the said order is continuing till date.
4. Prosecution’s case is being taken from reply dated 16.04.2024, which reads as follows:-

“3.That, the factual background of the case of the prosecution is that one Aashish Sehrawat moved an application to the DSP ACB Faridabad narrating therein that his wife Monika has filed a criminal case against him regarding dowry vide FIR No 332 of 2023 u/s 498 A, 323,406,506 IPC in Police Station Sadar Palwal and in this case apart from him, his mother his father and his sister were named as accused. The police had filed the challan qua him and his mother, but his father and sister were found to be innocent in the enquiry conducted by the DSP Palwal. Now the case is pending in the Ld. Court. It is relevant to mention here that none of the

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police official/officer can conduct further investigation without taking prior permission from the Ld. Court but in the present matter Ld. Court, the Investigating officer ASI Anita again issued a notice under Section 41 CrPC dated 12.03.2024 against his father and sister of the complainant upon which he went to meet the SHO Jitender Singh who stated that he has not received anything in this matter and Aashish will have to do something about it and asked him to meet Investigating Officer ASI Anita. Aashish then met ASI Anita who demanded Rs 30000/- as bribe while threatening him that in case the amount is not given, she and the SHO will make his father and sister as an accused in the case and directed him to meet the agent Wahid son of Asrudeen. Later Aashish then talked to Wahid who assured that he has had a word with the SHO and Anita and stated that amount be given to him. That even previously Investigating Officer ASI Anita had taken Rs 15000/- at the time of filing of the challan in the Hon'ble Court and now again SHO and Anita are pressurizing to pay amounting to Rs 30000/- as bribe. That the agent is asking him to come in the Police Station Sadar Palwal with the money but he is not interested to give the bribe and seeks action against Jitender Singh SHO and ASI Anita. Initially, the FIR No. 05 dated 21.03.2024 under section 7,7-A of the Prevention of Corruption Act was registered at P.S.ACB, Faridabad.

4. That after receiving the said complaint and registration of FIR, a raiding party was prepared by the Investigating Officer. Sh Sandeep Kumar was made as shadow witness, Sixty currency a notes amounting to Rs 500 each total Rs 30000/- after putting phenolphthalein powder were handed over to the complainant in the presence of Sh Vilakshan Singh Gazetted Officer, Asstt Director Labour Department Faridabad. One person was seen standing near the wall of the Police Station. The complainant informed the raiding party that he is Wahid, the agent/mediator. The complainant and the shadow witness were then sent to hand over the tainted money Wahid and the complainant then entered in the Police Station. After about 30 to 35 minutes, Wahid came out of the Police Station and then again met the complainant and then took the currency notes. All this incident was seen and heard by the shadow witness, Wahid then went inside the Police Station who was followed by the shadow witness. The raiding party started waiting near the gate of the Police Station and then the shadow witness gave a signal to the raiding party but in the meanwhile Wahid started coming out of the Police Station. The raiding party apprehended Wahid, who revealed his name as Wahid son of Asrudeen. The currency notes were reco recovered from the right pocket of his kurta. On counting the notes they were ten in the denomination of Rs 500 each i.e., Rs. 5000 /- . It is further submitted that Wahid deposed that he had handed over Rs 25000/- to ASI Anita. The raiding party then entered in the police station and arrested ASI Anita, She was asked about the amount of Rs 25000/- which handed over to her by Wahid upon which she gave a file lying on her desk which contained 20 currency notes of the denomination of Rs 500/- each amounting to Rs 10000/- which were taken into the possession of the police and she deposed that the remaining Rs 15000/- were given by her to Inspector Jitender Singh who left the police Station. Thereafter the matter was

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brought in the knowledge of the Superintendent of Police and Sections 13(1) (B) r/w 13 (2) of the Prevention of Corruption Act were invoked.

5. That upon checking of the file given by ASI Anita it was discovered that file pertained to the complaint no 60-5P dated 1922024 and it contained the copies of the notices sent to Shilpa and Ashok under Section 41 A CrPC. The hands of the arrested accused Wahid and ASI Anita were washed in sodium carbonate powder and after washing, the colour of the water turned pink. The formalities of memos personal search preparation of site plans were completed by the Investigating Officer. The statements of the witnesses under Section 161 CrPC were recorded. The Investigating Officer also got recorded the statement of the complainant u/s 164 Cr.PC before the Ld. Illaqa Magistrate, Palwal. The statement of the complainant as recorded u/s 161 Cr.PC and 164 Cr.PC corroborated the version of the complaint. Both the statements are attached as Annexure R-I and R-II (Colly) respectively. The vernaculars of the statement u/s 161 Cr.PC and 164 Cr.PC are also attached for perusal. It is also to mention here that correspondence has been made by the Investigating Officer to obtain the CCTV footage of the Police Station Sadar, Palwal but the same has not been provided by the concerned authority i.e., District Police Office, Palwal."

5. Petitioner seeks bail on the grounds that there is no direct evidence against the petitioner, and the evidence collected so far is in the nature of *hear se* statement of ASI Anita and her agent Wahid. He further submitted that the evidence of Rs.30,000/-, which was paid to Wahid, is also not connected with the petitioner because police had recovered Rs.5,000/- from Wahid and Rs.10,000/- from ASI Anita. Simply because Rs.15,000/- was not recovered and according to Anita, she had handed over the same to the petitioner, it would not make such a statement admissible. The petitioner's counsel further submitted that the petitioner has a clean record in 14 years of service, which points towards honest working.

6. To the contrary, counsel for the State has opposed the bail and submitted that out of Rs.30,000/- only Rs.15,000/- were recovered and out of which, Rs.5,000/- were recovered from Wahid and Rs.10,000/- from ASI Anita and remaining Rs.15,000/- were allegedly given to the petitioner and when he got to know about the trap, he ran away and could not be apprehended at the spot. He further stated that apart from recovering the tainted money, they need his custodial interrogation to find out how many other cases he has interfered with the justice process by taking bribes and how many more police officials are working as his cohorts. Counsel for the State has further referred to the petitioner's role as mentioned in para Nos.6 & 7 of the reply dated 16.04.2024, which reads as follows: -

"6. That the accused/Petitioner is misleading this Hon'ble Court by mentioning that complainant is himself an accused in FIR No. 332/2023 meaning thereby whether this fact gives license to the accused/Petitioner

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to depose before this Hon'ble Court falsely. It is to mention here that none of the Police Officer/Official can conduct further investigation without taking prior permission from the Ld. Courts but in the present matter, without taking permission of the Ld. Court L/ASI Anita issued notice u / s 41 A Cr.PC to the father and sister of the complainant, thus these officers are trying to supersede the Ld. Courts.

7. That the Investigating officer ASI Anita again issued a notice under Section 41 Cr.PC dated 12.03.2024 against his father and sister upon which he went to meet the SHO Jitender Singh who stated that he has not received anything in this matter and Aashish will have to do something about it and asked him to meet Investigating Officer ASI Anita. Aashish then met ASI Anita who demanded Rs 30000 /- as bribe while threatening him that in case the amount is not given, she and the SHO will make his father and sister as an accused in the case and directed him to meet the agent Wahid son of Asrudeen. Later Aashish then talked to Wahid who assured that he has had a ward with the SHO and Anita and stated that amount be given to him. Petitioner is the main accused of the case and all the prosecution story moves around him. He was accepting the bribe amount through I.O ASI Anita, he knows the mediator/agent very much and also knows the persons to whom the notices were issued by the I.O ASI Anita."

7. An analysis of pleadings and the above said arguments would lead to the following outcome.

8. There is sufficient evidence to point out that without permission from the concerned Court, ASI Anita issued summons to the father and sister of the complainant under Section 41 CrPC. After that, when complainant Aashish Sehrawat had gone to meet SHO Jitender Singh, he stated that he had not received any files in this matter and asked him to meet investigating officer ASI Anita. After that, the complainant met ASI Anita, who demanded Rs.30,000/- and clarified that SHO has a share of this money. On asking of ASI Anita, the complainant met their agent, Wahid, but instead of paying money, he informed the Vigilance Bureau. Thus, the conversation between Aashish Sehrawat and SHO-Jitender Kumar (present petitioner) is before the registration of this FIR. Further, the complainant, Aashish Sehrawat was arraigned as an accused in an FIR registered on a complaint filed by his wife against him under Section 498A IPC, etc.

9. Given above, the statement made by the petitioner-Jitender Kumar, to complainant Aashish Sehrawat, might not be hit by Section 25 or 26 of the Indian Evidence Act, and its evidentiary value would depend upon the examination-in-chief of Aashish Sehrawat in the Court. In addition to the statement made by the complainant, the investigator also collected the tower location of the petitioner, which prima facie establishes that he was present at the spot when ASI Anita had received the

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money. This portion of evidence has been referred to in para 8(c) of the reply, and the copy of tower location/CDR is annexed with the reply as Annexure R-III. The other piece of evidence against the petitioner is that if he was innocent, he would have also cooperated with the arrest of ASI Anita; however, he absconded from the spot, and his phone, as well as his driver's phone, was switched off and even wireless phone was also switched off, as mentioned in para 8(e) of the reply dated 16.04.2024. The concerned DySP has mentioned in the reply that they had recorded the statement of the petitioner's driver under Section 161 CrPC, and its copy is also annexed with the reply as Annexure R-IV. Thus, out of the payment of Rs.30,000/- by the complainant, only Rs.15,000/- were recovered, i.e., Rs.5,000/- from the agent Wahid and Rs.10,000/- from ASI Anita and as per the statement made by ASI Anita, Rs.15,000/- had been paid to the petitioner who had absconded from the spot and even his mobile phone and wireless phone was switched off. This conduct, coupled with the fact that if the Vigilance Department had raided his police station and had arrested one of his investigators with bribe money, if the petitioner was innocent and instead of fleeing from the spot, he would have cooperated with the vigilance team.

10. Thus, in the entirety of facts and circumstances of the case, petitioner is not entitled to anticipatory bail.

11. 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.

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

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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 insulted 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 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

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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

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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

02.05.2024
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	YES