

CRM-M-22845-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-22845-2024  
Reserved on: 20.05.2024  
Pronounced on: 29.05.2024

Vikas Khanna ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhri, Sr. Advocate with  
Ms. Hargun Sandhu, Advocate  
for the petitioner.

Mr. Anurag Chopra, Addl. AG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                          | Sections                                                                                                                           |
|---------|------------|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 9       | 06.07.2022 | Vigilance Bureau,<br>Punjab at Amritsar | 409, 120-B, 201 IPC and 13(2) of<br>Prevention of Corruption Act<br>1988 (Section 420 IPC and 7A of<br>PC Act 2018 added later on) |

1. The petitioner, whose earlier bail petition had been dismissed on merits by this Court vide order dated 20.10.2023 passed in CRM-M-30844-2023, apprehending arrest in the FIR captioned above, had again come up before this Court for the second time under Section 438 CrPC seeking anticipatory bail.

2. Prosecution’s case is being taken from the reply dated 13.05.2024, which reads as under:-

*“4. That the brief and relevant facts of the case are that the aforesaid FIR No.09 dated 06.07.2022 (Annexure P-2) was registered at the Police Station Vigilance Bureau, Range Amritsar as per the direction of the Senior Superintendent of Police, Vigilance Bureau, Amritsar after obtaining a legal opinion from the Deputy District Attorney (Legal) on the basis of the suggestion/recommendation made by the then Deputy Superintendent of Police, Vigilance Bureau, Unit Amritsar vide Report No. 562 dated 06.07.2022 after examining and analyzing the contents of a D.O. letter No. 3706 dated 04.07.2022 and a complaint addressed to the Senior Superintendent of Police, Vigilance Bureau. Amritsar, by the Law*

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*Officer (Part Time), Amritsar Improvement Trust, Amritsar with complete details of the facts and fraudulent activities of the co-accused Dinesh Bassi being Chairman of the Amritsar Improvement Trust and other documents attached therewith sent by the Deputy Commissioner, Amritsar cum Chairman, Amritsar Improvement Trust requesting for the registration of FIR and investigation of the case against them and other employees of the Improvement Trust for committing cognizable offences in respect of allotment of Plot No. 204-D, Ranjit Avenue, D-Block, Amritsar in favour of Sohan Singh and also for committing infirmities/ irregularities in the empanelment of contractors and in respect of allotment of a milk booth to the petitioner as an unemployed person.*

*5. That after the registration of the FIR, the co-accused Dinesh Bassi was arrested on 06.07.2022 during the course of investigation. The record relating to the sale of the Plot No. 204-D, Ranjit Avenue, D-Block, Amritsar in favour of Smt. Surjit Kaur through the petitioner as her attorney, allotment of a booth to him as an unemployed person and empanelment of the firm Punjab Builders owned by the petitioner, as a contractor, as available in the office of the Amritsar Improvement Trust were also taken into Police possession and the statements of the witnesses were recorded under section 161 Cr.P.C. during the course of investigation.*

*6. That the petitioner and co-accused Raghav Sharma were nominated as co-accused in the case being accomplices of the prime accused Dinesh Bassi, Chairman of the Amritsar Improvement Trust, vide G.D No. 18 dated 30.08.2022 and G.D No. 09 dated 25.11.2022 respectively, and offences under section 420 IPC and 7-A of the Prevention of Corruption Act, 1988 (As amended by P.C. (Amendment) Act, 2018) were added in the case.*

*7. That a Special Investigating Team comprising of the deponent and two Inspectors of the Vigilance Bureau, Amritsar has been constituted by the Senior Superintendent of Police, Vigilance Bureau, Amritsar, vide office Order No. 8893-95/S.A-1 dated 15.12.2022 for the indepth investigation of the case. At present, the Special Investigating Team is conducting the investigation of the case.*

*8. That during the investigation so far, it has been found on the basis of the available record obtained from Amritsar Improvement Trust that the co-accused Dinesh Bassi, being a Chairman of the Amritsar Improvement Trust, has misused his official authority in connivance and conspiracy with the petitioner to provide undue benefits to him by way of sale of the Plot*

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No. 204-D, measuring 200 square yards situated at Ranjit Avenue, D-Block, Amritsar in favour of Smt. Surjit Kaur through him as her attorney vide Sale deed dated 17.06.2021 at rate of Rs. 1410/- per square yards i.e., a total of Rs. 3,52,512/-, which was much below the collector rate for the year 2020-2021 i.e., Rs. 17,800/- per square yards amounting to a total Rs. 35,60,000/-, and besides that he (co-accused Dinesh Bassi) also retained the concerned record file with him and pressured his subordinate employee of the Amritsar Improvement Trust by ignoring noting given by its Sales Branch regarding the fixation of the sale consideration at Rs. 17,800/- per square in violation of the rules and regulation relating the sale of properties by the Amritsar Improvement Trust. During the investigation of the case, the statements of the trustees of the Amritsar Improvement Trust namely Sh. Vikas Hira, S.D.M-I, Amritsar, Sh. Jasbir Singh Sodhi, Executive Engineer, P.W.D (Constructions), Division No.2, Amritsar and Sh. Amolak Singh, D.T.P, Amritsar, who were the trustee of the Amritsar Improvement Trust at the time of passing of the resolution No. 62 relating to the sale of the aforesaid Plot No. D-204, have been recorded, who have stated in their respective statements that the resolution for the approval of execution the aforesaid sale deed relating to Plot No. D-204 was directly presented as a table item by the co-accused Dinesh Bassi being Chairman, Amritsar Improvement Trust in the house meeting of the trust without being part of the original agenda and without having any discussion with them in the capacity of trustees. Thereafter, the sale deed dated 17.06.2021 was executed before the receipt of the approval of the resolution by the office of the Director, Local Governments, Govt. of Punjab, Chandigarh by ignoring the rules, norms and procedure prescribed in Memo No. 10/288/02-5 SS2/122425 Chandigarh dated 24.01.2003.

9. That as per the record, the aforesaid acts of the co-accused Dinesh Bassi and petitioner have caused a wrongful loss of Rs. 32,07,488/- to the Amritsar Improvement Trust. It is also found that the co-accused Dinesh Bassi had also taken away the original record files, duplicate files and legal files relating to the transactions with respect to the allotment/transfer of the property Plot No. 204-D, measuring 200 square yards situated at posh area of Ranjit Avenue, D-Block, Amritsar from the record of the Amritsar Improvement Trust to destroy the evidence, which have not been got recovered by him during his custodial interrogation. It is pertinent to mention here that the co-accused Dinesh Bassi has issued

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*an office order No. AIT/185 dated 20.01.2020 that he himself would supervise and control all the files relating to all departments of Trust i.e., Accounts, Sales, Legal, Engineering, Town Planner etc. and all files/cases will be routed through him and all the correspondence with the government shall be conducted with his prior approval. He also issued an office Order No. AIT/185 dated 20.01.2020 directing the concerned officials that each and every file should be presented before him before taking any decision, which shows that he was over all in charge.”*

3. Mr. Vikram Chaudhri, Sr. Advocate seeks bail on the ground that police had filed report under Section 173 CrPC and did not arrest the petitioner at that stage, as such this Court should not have dismissed the bail petition on 20.10.2023. However counsel for the State submits that they were looking for the petitioner and they wanted custodial interrogation but he was evading arrest. Petitioner further submits that in case this ground is accepted then anybody can evade arrest and subsequently claim bail on such grounds and according to the State counsel it is against the spirit of the law.

4. An analysis of the above arguments would point out that when this Court had dismissed the petition vide a detailed order dated 20.10.2023, then it was dismissed because in the opinion of this Court, petitioner was not entitled to anticipatory bail under Section 438 CrPC. The petitioner instead of challenging the said order of dismissal before the Hon’ble supreme Court of India, now has again come up before this Court, which is impermissible in law.

5. Perusal of the bail petition reveals that a large number of grounds have been taken but the petitioner’s counsel did not point out that how the second bail petition is maintainable once the first bail petition was dismissed on merits and petitioner should have filed petition before the Hon’ble Supreme Court of India.

6. In State of Bihar and Ors. v. J.A.C. Saldanha and Ors., 1979-INSC-235, a three-member bench of Supreme Court holds,

[25]. There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendent over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investi-

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gating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad [1944] L.R. 71 IndAp203 , where the Privy Council observed as under:

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.

[26] . This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

7. In M.C. Abraham and ors. v. State of Maharashtra and ors, 2002-INSC-575, Supreme Court holds,

[13]. This Court held in the case of J.A.C. Saldanha (supra) that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment.

Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to de-

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termine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

8. In *G.R. Ananda Babu v. State of Tamil Nadu*, [Law Finder Doc Id # 1800715], decided on 28.1.2021, a three-judge bench of Hon'ble Supreme Court holds,

[7]. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

[8]. To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

9. In *Ramadhar Sahu v. The State of Madhya Pradesh*, SLP (Crl) no. 11130-2023, decided on 16-10-2023, while dealing with a bail of an accused who was in custody, held as follows:

[5]. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

10. In the light of the judicial precedents mentioned above and in the given facts and circumstances peculiar to this case, the petitioner fails to justify filing of the second application for anticipatory bail under section 438 CrPC in the same court.

11. Even otherwise, when this court re-assessed the petitioner's case on merits, the nature of allegations and the malicious intent of thuggee (cheating), makes the allegations grave and does not make out a case for anticipatory bail,

12. 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

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these comments.

**Petition dismissed.** Interim order stand recalled. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)  
JUDGE

29.05.2024  
Anju rani

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