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

CRM-M-23254-2024
Decided on: 21.05.2024

Pankaj Khurana ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Tejaswini, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
06	09.02.2024	ACB, Karnal	7, 7 A of PC Act, Section 384, 120B IPC (later on added Sections 13(1)(b), 13(2) of Prevention of Corruption Act

1. The petitioner incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. As per para 14 of the petition, petitioner has no criminal history.

3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. Counsel for the State also strenuously opposes the bail.

5. Prosecution's case is being taken from the reply dated 16.05.2024, which reads as under:-

"2. That the petitioner has concealed the true and material facts from this Hon'ble High Court. The true facts of the case are that on 09-02-2024 Dinesh (complainant) handed over his complaint to Inspector Sachin Kumar (Investigating officer) wherein he had stated that he is engaged in Handloom business at Panipat, GST is charged on whatever clothes, carpets and handloom products are sold in the market by complainant and GST is charged on variable rates prescribed by the Government on those products. He (complainant) had deducted that GST as per law on whatever articles were sold by him in the year 2022-23 and 2023-24 and deposited the same with government. On 06-02-2024, some officers of GST Department Panipat, one of whom disclosed his name Premraj Meena (co-accused) and other disclosed his name as Nikhil Bansal, accompanied by 6-7 other officials came to his factory and checked the bills etc. and told that GST was deducted at lesser rate and complainant had deposited the GST on the last two years bills at a lesser rate, then the prescribed rate. They further told that heavy penalty will be imposed upon him and on asking they told that atleast Rs. 70 lacs to Rs. I crore penalty can be imposed. Nikhil Bansal or other officers tallied te cach other and told him that if complainant wanted to avoid penalty, then he should talk to Pankaj Khurana (PvE CAL Panipat (petitioner-accused) and they telephonically called Pankaj Khurana (petitioner-accused) on the spot. Pankaj Khurana, CA after talking to Premraj Meena (co-accused). Nikhil Bansal and other officers, told the complainant that Premraj Meena and other officers were demanding bribe amount of Rs. 12,00,000/- in lieu of closing the matter by imposing the penalty of Rs. 11,00,000/- only, and threatened, if bribe amount not paid, then he will have to pay Rs. 7,00,000/- or even one crore. Premraj Meena and other officers in collusion with Pankaj Khurana (petitioner-accused) threatened and pressurized complainant and obtained bribe amount of Rs. 3,00,000/- on 06- 02-2024 and on the same day, got deposited Rs. 5,00,000/- from him as GST. Premraj Meena (co-accused) and other officers in conspiracy with Khurana CA (petitioner-accused) Pankaj demanding bribe amount of Rs. 9,00,000/- and were saying that they will close the matter after the complainant deposits Rs. 6,00,000/- more as GST. Premraj Meena and Pankaj Khurana were creating unnecessary pressure on him and were

demanding Rs. 9,00,000/- as bribe. On 09-02-2024, complainant told Premraj Meena and Pankaj Khurana that he has having Rs. 7,00,000/-, but he (complainant) didn't want to pay the said bribe money to the accused persons.

Hence, the present FIR No. 06 dated 09-02-2024 (Annexure P-1) was registered against Premraj Meena, Pankaj Khurana u/s 120-B, 384 IPC and 7, 7A, 13(1)(b), 13(2) PC Act. Police Station, Anti Corruption Bureau, Karnal Range, Karnal.

3. That thereafter, the Superintendent of Police Anti Corruption Bureau, Karnal appointed Sh. Ravinder Singh District Social Welfare Officer as Gazetted Officer upon which the Gazetted Officer /Independent witness further appointed Sh. Gurdyal Clerk, O/o District Social Welfare Officer Panipat as Shadow Witness. Raiding team was constituted and after applying Phenolphthalein powder on currency notes of Rs.7,00,000/- the said notes were handed over to the complainant Dinesh who was Instructed to talk with Pankaj Khurana CA, Panipat for his work and on raising his demand, the complainant was instructed to hand over Rs.7,00,000/- tainted money to Pankaj Khurana (petitioner-accused) on demand. The Shadow witness was also instructed to see and hear the conversation between complainant and accused and was further directed to give the appointed signal to the raiding team. List of Currency notes, memo of handing over the notes and the search memo etc. were prepared.

Thereafter, on dated 09-02-24 the complainant and shadow witness proceeded to meet Pankaj Khurana, CA and after some time the complainant, the shadow witness acted accordingly and thereafter Pankaj Khurana CA (petitioner- accused) was apprehended near Mittal Mega Road, Panipat. Upon asking him to produce the bribe money, the petitioner- accused got recovered the bribe amount/tainted money of Rs. 7,00,000/- from his bag on spot and petitioner-accused was arrested in the present case and he voluntarily suffered his disclosure statement and disclosed that he took the bribe money from complainant upon asking of Premraj Meena. Superintendent, Panipat (co-accused). Thereafter petitioner- accused telephonically called Premraj Meena (co-accused) through his mobile phone and the said telephonic conversation between *petitioner Pankaj Khuran CA and co-accused Premraj Meena was got recorded on spot (attached herewith as recording no. 3 in Annexure R-1)*

Thereafter, hands of the complainant Dinesh and Pankaj Khurana CA (petitioner-accused) were got washed separately and the solution thereof turned light pink. Thereafter in pursuance of his disclosure statement, Premraj Meena (co- accused) was arrested on 09-02-2024, and he got recovered currency notes of Rs. 3,00,000/- from the boot space of his car make Creta CRDI bearing registration no. RJ-20CE-9324 and currency notes of Rs. 50,000/- from rear pocket of driver seat of his above said car which were taken into possession vide separate recovery memo's. The currency notes, nips of hand washes were converted into sealed parcels and were taken into possession vide separate recovery memo's which were also signed by the respected witnesses. Site plan of the place of occurrence and recovery were also prepared. The investigating officer also took into possession mobile of Premraj Meena vide separate recovery memo and recorded the statement of witnesses u/s 161 Cr.P.C.

That during the course of investigation on 12-02-2024, the investigating officer got recorded the statements u/s 164 Cr.P.C. of complainant Dinesh before Ld. JMIC, Panipat, who fully corroborated the prosecution version.

That on 13-02-2024, complainant Dinesh produced the audio recording device, before the investigating officer, wherein demand of bribe/conversation was recorded among the complainant Dinesh and accused persons viz Pankaj Khurana (petitioner-accused) and Premraj Meena (co-accused). upon which the investigating officer with the help of ASI Surender Kumar ACB, Sub Unit Panipat, prepared three audio CD's and its transcript in Hindi and after converting the audio CD's into a separate sealed parcels, the audio CD's, its transcripts (Annexure R-1) and certificates u/s 65-B, Evidence Act were taken into possession vide memo, which was signed by respective witnesses. The investigating officer also recorded the statement of witnesses u/s 161 Cr.P.C on even dates.

5. That on 19-02-2024, relevant record regarding appointment, promotion, transfer, joining and case file of record pertaining to the firm viz M/S Bhagvati export from the O/o GST Department of Premraj Meena were also taken into possession vide separate recovery memo.

That on 21-02-2024, the mobile phones of Pankaj Khurana (petitioner-accused) and Premraj Meena (co-accused) has been sent to the FSL Panchkula for retrieving the data of whatsapp chats, whatsapp voice call etc. and upon receiving its report, the final report u/s 173(8) Cr.P.C. will be submitted in the trial court at the earliest.

6. That FSL report dated 12-03-2024 of Sh. Rajkumar, Assistant Director (Chemistry) FSL, (H) Madhuban, Karnal was obtained. which confirmed the fact of presence of phenolphthalein powder on Exihibit-3 (tainted/currency notes). It further confirmed the presence of phenolphthalein and Sodium Carbonate on the hand washes of co-accused Pankaj Khurana CA (Exhibit-1) and complainant Dinesh (Exhibit-2), respectively.

7. That on 13-02-2024, the order from Ld. JMIC, Panipat dated 10-02-2024, regarding taking voice samples of Pankaj Khurana (petitioner-accused) and Premraj Meena (co-accused) were obtained for comparison and after taking voice samples of complainant and both accused on 13-03-2024, they were sent to FSL, Madhuban for comparison on 21-03-2024 and the same is awaiting for results.

That on 30-03-2024, the challan report u/s 173 Cr.P.C against petitioner-accused Pankaj Khurana and co-accused Premraj Meena has been presented before the Court of Ld. Special Judge, Panipat and the same is now fixed for 05-06-2024 for arguments on charge.

Furthermore the prosecution sanction dated 24-04-2024 against Premraj Meena (co-accused) has been obtained from the competent authority on 29-04-2024.

However, the investigation in the present case is still going on and after obtaining the FSL reports and after concluding the investigation of the present case, the final challan report u/s 173 (8) Cr.P.C will be submitted in the Special Court in Panipat at the earliest."

6. As per paragraph 4 of the bail petition, the petitioner is in custody since 10.02.2024. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

7. In Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, Supreme Court holds,

> [28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

8. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal v. State (NCT of Delhi), **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. In Madhu Tanwar v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

> [10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.
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> [21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving

alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms**:**

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds, thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

12. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

13. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

14. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner’s name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all

prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

15. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

16. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide a sense of security to the victim. In Mohammed Zubair v. State of NCT of Delhi**, 2022:INSC:735 [Para 28]**, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

18. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s),

the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

19. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

20. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

21. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

21.05.2024
anju rani
Whether speaking/reasoned: Yes
Whether reportable: No.