

CRM-M-29883-2023 and connected case

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29883-2023
Reserved on: 04.03.2024
Pronounced on: 20.03.2024

Mukesh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CRM-M-29871-2023

Mukesh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, advocate and
Mr. Dhruv Trehan, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
43	28.11.2022	SVB, Gurugram, District Gurugram	409, 418, 420, 467, 468, 120-B IPC and Sections 13(2), 13(1)(c), 13(1)(d) of Prevention of Corruption Act 1988

1. This order shall dispose of two petitions as mentioned above, as common allegations leveled in both the FIRs against the petitioner i.e re-allotment of two different SCO(s) to allottee without approval of competent authority after taking bribe. The petitioner, who was posted as Estate Officer in HSVP Gurugram, apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition in May 2023.

2. In para 31 of the petition, it is declared that petitioner has no criminal antecedents but it is also submitted that this fact can be verified from the State counsel. In para 12 of

CRM-M-29883-2023 and connected case

the reply dated 23.08.2023, it is mentioned that petitioner is involved in one more case, which is as under:-

Sr. no.	FIR No.	Dated	Police Station	Sections
1	11	05.03.2023	Anti Corruption Bureau, Gurugram	409, 418, 420, 467, 468, 120B IPC and Section 7(c), 13(1)(A) r/w 13(2) of PC Act

3. Petitioner’s counsel Mr. Vinod Ghai, Sr. Advocate submits that petitioner is unaware of the said case at the time of filing of present petition and as such this fact was not concealed and otherwise it would have also no bearing in the present petition. Moreover, connected petition for bail relates to the aforesaid FIR.

4. Vide order dated 07.06.2023, Coordinate Bench of this Court had granted interim anticipatory bail and the said order remained continuing and on 01.09.2023, when the matter listed before this court, interim order was extended when the petitioner voluntarily stated that they would have no objection if this Court while extending the interim order imposes any stringent conditions including declaration of assets of petitioner as well as his spouse. Subsequently, on 14.09.2023, petitioner’s counsel submitted that they have voluntarily complied with the order dated 01.09.2023 and handed over the affidavits to the State counsel.

5. Facts of the case are being taken from the reply dated 23.08.2023 filed by the concerned DySP, which reads as follows:-

“6. That brief facts of the case are that an enquiry No.07 dated 10.05.2019, Gurugram was registered after due permission of the State Govt. u/s 17A of PC Act vide letter No.58/52/2018-IV(1) dated 03.05.2019 conveyed through Additional Principal Secretary, Haryana Government, Vigilance Department and office Endst. No.7767/1-2/SVB(H) dated 10.05.2019 of Director General, State Vigilance Bureau, Haryana Panchkula against petitioner/accused Mukesh Solanki Estate Officer, HUDA Gurugram and Rishi Raj, Director M/s R.R. Foundation Engineering Private Limited.

7. That, during the course of enquiry, it was revealed that M/s R.R. Foundation Engineers Pvt. Ltd. had submitted applications to HUDA Department, Sector 14, Gurugram for participating in open auction of S.C.O. No. 08 and 30, Sector 23/23A, Gurugram. Thereafter, due to highest bid of R.R. Foundation Engineers Pvt. Ltd. S.C.O. No. 08 and 30, Sector 23,23A, Gurugram were allotted to him on 18.12.1997 and further due to highest bid of R.R. Construction S.C.O. No. 13, Sector 23,23A, Gurugram was allotted to him. 10% cost of the total cost was got deposited from the above mentioned firm at the spot. Thereafter, 15% amount was to be deposited within one month from the date of issuance of allotment letter

CRM-M-29883-2023 and connected case

of HUDA Department. In this regard, HUDA, Gurugram had sent registered letter No. 284 dated 18.12.1997 to M/s R.R. Foundation Engineers Pvt. Ltd and letter No. 285 dated 18.12.1997 to R.R. Constructions, but these letters were received back at HUDA office from the postal department with the remarks that "there is no such company existing with this name and style at this address". Whereas even at present, the offices of the above mentioned companies are located at the same address. Both the above mentioned companies did not deposit 15% amount within stipulated period. Thereafter, Estate Officer -1, HUDA, Sector-14, Gurugram vide letter dated 10.04.1998 cancelled the allotment orders of S.C.O. No. 08,13 & 30, Sector 23/23A, Gurugram on 10.04.2018 and forfeited 10% deposited amount. The above mentioned orders/notices were sent at the address of M/s R.R. Foundation Engineers Pvt. Ltd. and R.R. Constructions which they have received. Thereafter, on 15.04.2018 the owner of M/s R.R. Foundation Engineering Pvt. Ltd. Company and R.R. Constructions had visited the office of HUDA Sector-14, Gurugram and submitted their applications against the cancellation of allotment. The application filed before the Estate Officer, HUDA, Gurugram, Administrator, HUDA, Gurugram and thereafter, before Chief Administrator, HUDA, Haryana, Panchkula. The appeals/revisions were dismissed upto the level of Commissioner and Secretary, Town and Country Planning Department, Haryana. Revision Petition was also dismissed on 20.02.2000. Thereafter, M / s R.R. Foundation Engineering Pvt. Ltd. had filed a petition on 08.10.2004 before District Consumer District Redressal Forum, Gurugram, but the same was also dismissed on 01.08.2008. The Appeal was also dismissed in the State Consumer Dispute Redressal Commission on 30.11.2011. Thereafter, they kept mum. Rishi Raj, Director of R.R. Foundation Pvt. Ltd. got registered G.P.A. of S.C.O. No. 08 and 30 on 21.04.2010 in Ateli, District Mahendergarh in favour of Sh. V.K. Goyal son of R.C. Goyal resident of C.B.H. 11, Narayana, New Delhi. Due to cancellation of the above SCOs Rishi Raj was no more the owner of the above mentioned SCOs. Rishi Raj in connivance with Sh. V.K. Goyal and other accused fraudulently prepared forged documents and executed G.P.A. of both the above mentioned S.C.O. in his favour. Thereafter, in regard to S.C.O. No. 08 and 30, Sector 23/23, Gurugram, G.P.A. holder Sh. V.K. Goyal has filed C.W.P. No. 12629/2016 and C.W.P. No. 8565 of 2018 in the Hon'ble Punjab and Haryana High Court at Chandigarh for re-allotment of both the above mentioned S.C.O. In this Civil Writ Petitions, HUDA had filed written statement on merits. While the above mentioned matters were pending in the Hon'ble High Court, V.K. Goyal holder of G.P.A. on 07.03.2018 has filed a representation before the Government, which, in general procedure, was sent to the office of Chief Administrator, HUDA, Haryana, Panchkula. The Chief Administrator, HUDA, Panchkula has down marked the same to Administrator, HUDA, Panchkula for further action. Thereafter, Sh. Ram Swaroop Verma, the then Administrator, HUDA, Panchkula had instructed/ordered on the noting that, "If the said fact is correct, the Admn./EO- 1,HSVP, Gurugram may be requested to take necessary action regarding issuance of allotment letter accordingly under intimation to within 03 days positively". By complying the same, Sh.

CRM-M-29883-2023 and connected case

Bharat Bhushan Taneja (Superintendent), office of the Chief Administrator, HUDA, Haryana, Panchkula instead of submitting the same to the competent authority i.e. Chief Administrator, HUDA, Haryana, Panchkula, had sent the same to Administrator, HUDA, Gurugram and Estate Officer-1, HUDA, Gurugram vide letter No. 122448-49 dated 15.06.2018, in which he instructed to take necessary action after verifying the facts within three days and sent the report to this office. On 20.07.2018 again an E-Mail was sent to Administrator, Huda, Gurugram and it was directed to send the report after verification in 2 days. Sh. Ram Swarup Verma, I.A.S., the then Administrator, HUDA without the permission of his senior officer i.e. Chief Administrator, HUDA, Haryana, Panchkula, issued guidelines in the above mentioned noting. Sh. Bharat Bhushan Taneja, (Superintendent) in compliance to the instructions mentioned in the noting, without bringing into the notice of Chief Administrator, HUDA, has issued letter to Administrator HUDA, Estate Officer-1 at his own level. By doing so, he has violated the Rules of HUDA. Thereafter, Mukesh Kumar Solanki the then Estate Officer-1, HUDA, Sector-14, Gurugram has issued re-allotment letters to M/s R.R. Foundation Pvt. Ltd. vide his office letter No. 739 dated 22.06.2018 with regard to S.C.O. No. 30 and vide letter No. 740 dated 22.06.2018 with regard to S.C.O. No. 08, Sector 23/23A, Gurugram. Whereas, as per rules, it was necessary that Sh. Mukesh Kumar Solanki, Estate Officer-1, HUDA, Gurugram prior to re-allotment of S.C.O. No. 08 and 30 in favour of the firm, should verify complete facts and get permission/approval from his senior officers. But the aforesaid officer by abusing his official position and violating the rules, had allotted both the above mentioned S.C.O., after 21 years on the rate and cost of the year 1997 to gave the undue advantage to the firm by causing loss to the government exchequer.

8. That, whereas, the then Administrator, HUDA, Gurugram had resumed the above SCO's, hence, the Estate Officer while preparing his report, had to give his comments after giving reference to these facts, but the above mentioned officers have not done so. Thereafter, V. K Goyal withdraw the above mentioned CWP's on the ground that above said SCO's have been re-allotted. When the copy of orders passed by the Hon'ble High Court was received in the office of the Chief Administrator, HUDA, Haryana, Panchkula, the said office sought comments from the office of the Administrator, HUDA, Gurugram and came to know about the allotment letters of S.C.O. No. 08, 30 and 13, Sector 23/23A, Gurugram issued by Sh. Mukesh Kumar Solanki the then Estate Officer by ignoring the rules of allotment and thus misused his post and power in connivance with other accused the petitioner. Sh. Mukesh Kumar Solanki did not attend his office for two days, hence, the additional charge of Estate Officer-1, HUDA, Gurugram was handed over to Sh. Bharat Bhushan Gogia Estate Officer-2, HUDA, Gurugram, who vide letter No. 349 dated 30.08.2018 has cancelled the re- allotment order of SCO No. 30 Sector 23/23A, Gurugram and vide letter No. 350 dated 30.08.2018 has cancelled the order of re-allotment of SCO No. 08, Sector 23/23A, Gurugram. Sh. Mukesh Kumar Solanki, Estate Officer-1, HUDA, Gurugram, Sh. Sajjan Singh, the then Section Officer, Sh.

CRM-M-29883-2023 and connected case

Subhash Chand, Deputy Superintendent, Sh. Sanjay Kumar, Clerk/Record Keeper in connivance with the owner of above mentioned firm/G.P.A. Holder V.K. Goyal in connection with the above mentioned S.C.O., despite dismissal of appeals/revision, without intimating true and complete facts to the senior officers, re-allotted the said SCO's on the rate of 1997 and thus caused undue loss to the Government exchequer and undue advantage to the said firm. On the basis of the above omission and commission intentionally just to give undue benefit to themselves and the accused persons/petitioner, it was recommended to register a case under Section 409, 418, 420, 467, 468, 120-B I.P.C. and 7(C) P.C. Act against Sh. Mukesh Kumar Solanki, Estate Officer-1, HUDA, Gurugram, Sh. Sajjan Singh, then Section Officer, Sh. Subhash Chand, Deputy Superintendent (Office), Sh. Sanjay Kumar (Petitioner), Clerk/Record Keeper, Rishi Raj owner of above mentioned firm, V.K. Goyal G.P.A. Holder and others and thereafter, Government approved the same and this Case FIR 43 dated 28.11.2023 was registered under section 409,418,420,467,468,120-B IPC and 13(1)c, 13(1)(d) r/w 13(2) P.C. Act at Police Station, State Vigilance Bureau now Anti Corruption Bureau, Gurugram.

9. That, during the course of investigation of the case, the Special Investigating Team arrested the accused Vashisht Kumar Goyal on 03.12.2022 and in his disclosure statement, accused Vashisht Kumar Goyal disclosed that allotment of the said SCO's were cancelled due to non deposit the 15% amount by Rishi Raj owner of the firm R.R. Foundation Pvt. Ltd. Rishi Raj executed GPA in favour of him and got registered the GPA in the office of sub-registrar Ateli district Mahendergarh. In the said G.P.A., it was mentioned that the Rishi Raj, is the owner of the said SCOs and thereafter he had taken the possession, but reality is that allotment has already been cancelled. He further discloses that he gave Rs. 7,80,000/- to Rishi Raj. Rs. 2,00,000/- had been given to the petitioner/accused Sh. Mukesh Solanki, the then E.O for issuing re-allotment letters, Rs. 60,000/- to Subhash Dy. Superintendent (Office), Rs. 75,000/- to Sanjay Kumar Clerk and Sajjan Singh, Section Officer on 17.06.2018 outside the HUDA office. After giving the above said bribe, noting sheet was prepared by the accused and re- allotment letter was issued on 22.06.2018 by the prtitioner/accused Mukesh Kumar Solanki, Estate Officer-1, HUDA, Gurugram. Copy of disclosure statement is annexed as Annexure R- I.

10. That, It has also been established during the investigation conducted so far by the Special Investigation Team that accused Sanjay Kumar, Clerk and Sajjan Singh, Section Officer have taken Rs. 75,000/- as bribe from co-accused Vashisht Kumar Goyal on 17.06.2018 outside the HUDA office. On the basis of the said bribe, noting sheets were prepared by the accused Sanjay Kumar, Clerk without mentioning complete material facts and later on allotment letters were issued on 22.06.2018 to the firm by the petitioner.

11. That, the report under section 173 Cr.PC against accused Vashisht Kumar Goyal has been submitted in the Ld. Court of Sh. Ved Prakash Sirohi, ASJ, Gurugram on 31.01.2023.

CRM-M-29883-2023 and connected case

6. I have heard counsel for the parties on various dates. On 21.02.2024, this Court had asked the petitioner's counsel to explain that despite being posted as Estate Officer, how was he unaware of entire litigation and if he was aware how did he issue re-allotment letter and whether he was competent to issue re-allotment and if not whether any approval from competent authority was taken or not.

7. On 22.02.2024, State counsel responded that the petitioner had accepted money through his portal on 03.07.2018 without any authorization and symbolic possession was given on 23.08.2018, whereas allotment was provisional. It was further informed that said allotment was cancelled on 30.08.2018 and symbolic possession was also recalled and in fact allottee was never put in physical possession of the SCOs in question.

8. I have heard counsel for the parties and gone through the record.

9. Petitioner's counsel submits that representation dated 07.03.2018 was given to the Hon'ble Chief Minister by M/s RR Foundation Engineers Pvt. Ltd. for restoration of SCOs No. 8 & 30. The office of Hon'ble Chief Minister had given a note on that saying that "CM would like to know, if (A) is correct? If yes, he would like Article 19 to be observed." This was received by the Chief Administration HSVP Panchkula. The note sheet of Head Office Panchkula including note sheet dated 15.06.2018 which is signed by Administrator HSVP, Gurugram. Thereafter, HSVP, Panchkula issued a letter dated 15.06.2018 to the Administrator and Estate Officer, Gurugram by which it was said that the fact regarding non delivery of allotment letter to the allottee, if found correct, then action regarding issuance of allotment letter under intimation to the office be taken within 3 days positively. This letter was received by the Gurugram Office and the verification was done by the officials (the note sheet of verification dated 21.06.2018 is at Page 12). The petitioner after verifying the fact of non-delivery of allotment letter to the allottee issued allotment letter dated 22.06.2018 with a condition in clause 27, wherein he specifically mentioned that the said allotment was subject to final approval of allotment from the Chief Administrator, HSVP, Panchkula. Thereafter, the petitioner sent another letter on the same day i.e. 22.06.2018 to the Chief Administrator, HSVP with copy to Administrator HQ RS HSVP Panchkula and Administrator HSVP, Gurugram detailing therein that with reference to letter dated 15.06.2018 of Chief Administrator, Panchkula, the factum of non-delivery of allotment letter was verified and found to be true. He also mentioned therein that based on the above fact, he was issuing provisional allotment letter with a specific condition in Clause 27. The allotment was subject to final approval of allotment from Chief Administrator, HSVP Panchkula. To corroborate the fact

CRM-M-29883-2023 and connected case

of sending of the above letter, the dispatched register, wherein it is mentioned that this letter, which was sent is being attached which the prosecution cannot be denied. The copy of dispatched register dated 22.06.2018 maintained by Estate Office-I, Gurugram duly attested by Estate Officer-I, HSVP Gurugram. It is further submitted that vide memo No. 6045 dated 23.08.2018 issued by the petitioner, Chief Administrator HSVP, Panchkula was informed that facts of issuance of allotment letter dated 22.06.2018 under the intimation to HQ office, after verifying the fact of non-delivery of allotment letter and the litigation which was going on about the SCO was also informed. It was also informed that the allotment letter was issued in compliance to the letter dated 15.06.2018 and email dated 27.07.2018. That the fact of issuance of letter dated 22.06.2018 had also come in the statement of Sh. Prem Raj Singh Assistant in the office of Estate Officer-1, HSVP Gurugram during the inquiry proceedings, wherein to a specific question being asked that whether the intimation regarding provisional allotment letter was sent to Head Quarter or not. He had specifically admitted that HQ was intimated vide memo No. 4488-91 dated 22.06.2018. It is submitted that even during inquiry proceeding dated 07.03.2022, it has come to the notice that Sh. Nitin Hooda Superintendent HSVP and Sh. Gulshan Saluja ADO attempted to extend undue favour to Sh. R.S. Verma Administrator HSVP and wrongly concluded against the petitioner on 25.08.2020. It was also concluded therein that the petitioner had reported the lacuna to higher authorities while making compliance of Hon'ble Chief Minister's direction dated 08.03.2018. It also concluded that clause 27 shows that the petitioner was not concealing anything before the higher authorities. It was also mentioned that allegation of criminal conspiracy of the petitioner would be a serious mistake and would lead to demoralization of honest officer of HSVP who always acts to comply with Hon'ble Chief Minister's order. Even in the inquiry conducted by Sh. Narinder Kumar Wadhawan IAS dated 17.08.2022, it was concluded that there was no financial loss to HSVP as restoration of allotment letters was cancelled on the direction of Chief Administrator and also that he had issued re-allotment orders subject to approval of Chief Administrator HSVP. Even otherwise, there was no financial loss caused as the allotment letters issued were only provisional and even the alleged possession which was not handed over by the petitioner, but by the JE was symbolic. After cancellation of re-allotment, the symbolic possession was taken back. The amount deposited by the allottee was also refunded back. The petitioner as per the orders of this Hon'ble Court has already furnished affidavit declaring his assets to show his bonafide and that he was an honest officer.

10. Counsel for the State also responded to the above said submissions and submits that SCO No. 08 and SCO No. 30 of sector 23/23A were allotted to R.R. Foundation engineers Pvt. Ltd. on 18.12.1997 through open auction by HSVP and due to non

CRM-M-29883-2023 and connected case

payment of the installment, the allotment of both the SCOS were cancelled and SCOs were resumed by Estate Officer-1 HUDA vide his order dated 10.04.1998. Appeals/Revisions were filed by allottee M/s R.R. Foundation engineers Pvt. Ltd before Estate Officer HUDA Gurugram, Chief Administrator, HUDA, Panchkula and up to the level of Commissioner and Secretary, Town and Country Planning Haryana on different dates, All the appeals filed by allottee were dismissed at every stage till 20.02.2000. Thereafter the original allottee went in District Consumer Redressal forum and State Consumer Redressal Forum and their claim was dismissed by both the forums. Thereafter original allottee R.R. Foundation engineers Pvt. Ltd executed a GPA for SCO No. 8 and 30 on 21.04.2010 in favour of V.K. Goyal Son of R.C. Goyal and the same was registered in Ateli Mahendergarh on 21.04.2010. It is worth mentioning that the contents of GPA were false. Before the execution of GPA the SCO sites were resumed and possession of SCOs was with HSVP only. Also, at no point of time, original allottee was in possession of the said SCOs. It is also submitted by State counsel that GPA holder V.K. Goyal filed representation before the Government on 07.03.2018 which in a routine manner, was sent to the chief Administrator, HUDA, Panchkula. The Chief Administrator Panchkula down marked the same to Sh. Ram Svroop Verma, IAS the then Administrator HUDA Panchkula for necessary action. Thereafter Sh. Ram Svroop Verma, IAS marked the same to Mukesh Kumar Solanki, HCS for further necessary action vide his letter No. 122448-49 dated 15.06.2018. Thereafter Mukesh Kumar Solanki, the then Estate Officer-I, instead of sending detailed comments or true facts about the case in hand, issued re allotment letter to R.R. Foundation engineers Pvt. Ltd for SCO. No. 8 and SCO No. 30 vide letter No. 739 and 740 dated 22.06.2018 without any verification of the complete facts and necessary permission/approval of his senior officers and that too after 21 years of the allotment and at the rates of 1997 despite knowing the fact that all appeals in this matter have already been rejected by higher authorities.

11. In addition to the above, it is also brought to the notice of the Court that a regular vigilance enquiry No. 07/2019 ACB Gurugram was registered after getting necessary approval under section 17A of PC Act from Govt of Haryana Vide Chief Secretary office No. 58/52/2018-1V(1) dated 03.05.2019. Based upon final report of above said enquiry and after getting necessary permission u/s 17A of PC Act from Government of Haryana communicated vide letter No. 58/52/2019-I VIG(1) dated 10.11.2022, an FIR No. 43 Dated 28.11.2022 u/s 409, 418, 420, 467, 468, 120B IPC and 13 PC Act PS ACB Gurugram was registered against the following accused:

- a) Mukesh Kumar Solanki, HCS
- b) Vashishth Kumar Goyal
- c) Sajjan Singh, Section Officer, HSVP

CRM-M-29883-2023 and connected case

- d) Subhash Chand, Dy. Superitendent, HSVP
- e) Sanjay Kumar, Clerk, HSVP
- f) Rishi Raj Director R.R. Foundation engineers Pvt. Ltd

12. As per prosecution, the role of the petitioner is as under:-

I. Petitioner Mukesh Kumar Solanki was not competent to issue the re allotment letter to the SCOs when all the appeals / Revisions of the original allottee were dismissed till the office of Commissioner and Secretary, Town and Country Planning, Panchkula.

II. Petitioner Mukesh Kumar sokanki issued re-allotment letters of both the SCOs during the year 2018 at the rates of year 1997 there by causing loss to the tune of crores of rupees to the government exchequer and giving undue advantage to the co accused.

III. Petitioner Mukesh Kumar solanki illegally issued re-allotment letter to the firm and possession of the SCOs were given by HSVP officials vide letter No. SDE(S) 851Dated 23.08.2018 and SDE (S) 850 Dated 23.08.2018 to the co-accused just after allotment.

IV. In the FIR No. 43 Dated 28.11.2022 u/s 409, 418, 420, 467, 468, 120B IPC and 13(1), 13(1)(d) r/w 13(2) of PC Act PS ACB Gurugram following accused have been arrested so far.

- a)Vashisth Kumar Goyal (arrested on 03.12.2022)
- b) Sanjay Kumar Clerk (arrested on 10.05.2023)
- c) Subhash Chand (arrested on 05.06.2023)
- d) Sajjan Singh (Released on anticipatory bail)

V. V.K. Goyal in his disclosure statement stated that he gave bribe of Rs. 2,00,000/- to Mukesh Kumar Solanki Rs 60,000/- to Subhash, Rs. 75,000/- to Sajjan, Section Officer and Sanjay, Clerk, to get the re-allotment order issued.

VI. The Hon'ble High court has stayed the auction of above mentioned SCOs by HSVP.

VII. That, petitioner/accused has been an officer of doubtful integrity in his carrier. Final reports of 3 Vigilance enquiries are pending with the Government of Haryana for grant of necessary sanction under section 17A of PC Act for registration of FIR against the petitioner/accused.

13. Petitioner's counsel has drawn attention of this Court to the letter dated 23.08.2018, vide which Estate Officer-1, HSVP, Gurugram communicated to the Chief Administrator, HSVP, Panchkula and the said letter reads as follows:-

"Sub: CWP No.12629 of 2016 and writ petition no.12653 of 2016 titled as R & R Foundation Engineers Pvt. Ltd. Vs. State of Haryana and others (SCO No.8 & 30, Sector 23/23A, Gurugram)

The public auction was held on 27.11.1997 and SCO No.30, Corner, three storey with basement sector 23-23A, DSC Gurugram was put on auction with reserve price of Rs.28,65,000/- R.R. Foundation Engineers Pvt. Ltd. 24, Bara Khamba Road, New Delhi gave highest bid i.e. 39,52,000/-. The allotment letter was issued by the Estate Officer, HSVP, Gurugram vide letter No.288 dated 18.12.1997 in favour of M/s R.R. Foundation Engineers Pvt. Ltd. 24, Bara

CRM-M-29883-2023 and connected case

Khamba Road, New Delhi. The allotment letter was received back with the remarks of Postal Department that "No such company on this address". No other address was available in the office record. Due to non deposit of the 15% amount as per condition No.4 of allotment letter. The same was cancelled by the Estate officer, HSVP, Gurugram vide letter No.1958 dated 10.04.1998.

The appeal filed by the allottee against cancellation order and revision petition were dismissed vide order dated 16.04.1999, order dated 28.02.2000. Similarly DCF complaint, appeal in SDRC was also dismissed on 01.08.2008, 30.11.2011 respectively.

The Chief Administrator, HSVP, Panchkula (Urban Branch) vide his letter No.122448 dated 15.06.2018 followed by email dated 27.07.2018 directed Estate Officer-1, HSVP, Gurugram to take necessary action regarding issuance of allotment letter by verifying the facts with regards to non delivered of the allotment letter, if the said facts is correct under the intimation to this office within three days positively.

In compliance of the directions issued by CA, HSVP, Panchkula in above said letter No.122448 dated 15.06.2018 and e-mail dated 27.07.2018, the allotment letter was re-issued in the favour of M/s R.R. Foundation Engineers Pvt. Ltd. R/o 24, Bara Khamba Road, New Delhi. Vide this office No.739 dated 22.06.2018 under the intimation to the H.Q. Office, after verifying the facts on record that the allotment letter of this site was not delivered to the allottee."

14. Petitioner's counsel explicitly argued that allotment was conditional and it was subject to approval by Administrator of HSVP, Panchkula. He refers to the allotment letter dated 22.06.2018, which reads as follows:-

"Sub: Presentation on behalf of M/s R.R. Foundation Engineer Pvt. LTd. For restoration of SCO No.30(corner) in Sector 23-23A, Gurugram to the company being their case at par with the case of M/s Inter Global Enterprises Pvt. Ltd., New Delhi.

Please refer to your office memo No.122448 dated 15.06.2018 on subject cited above. The desired report and comments are as under:-

a. The facts with regard to non-delivery of allotment letter of the site to the allottee has been got verified from the office record by the Record Keeper, Dealing Assistant and Deputy Superintendent of his office. The original allotment letter was not delivered to the allottee and undelivered letter was received back from the postal authorities with the comments that "iss nam ki yaha koi company nahi hai" which is still attached in the original plot file.

b. It is further intimated that based on the above facts of non-delivery of the allotment letter of the site to the allottee, the provisional allotment letter has been issued as per the direction mentioned in the letter referred above with a specific condition that:-

CRM-M-29883-2023 and connected case

“27. The above said allotment is subject to final approval of allotment from Chief Administrator HSVP, Panchkula.”

15. State seeks dismissal of the bail on the ground that other accused who were on lesser footing, their bails have already been dismissed by this court vide orders dated 13.02.2023 passed in CRM-M-4511-2023 (Petitioner-Rishi Raj), 11.01.2023 passed in CRM-M-1060-2023(Petitioner-Subhash Chander) and 28.03.2023 passed in CRM-M-61162-2022 (Petitioner-Sanjay Kumar). State counsel further submits that the petitioner was main king pin and there was malicious intent, as evident that inspite of knowing pendency of the entire civil litigation and writ petitions, he rushed not only for the issuance of provisional certificates but also handed it over the symbolic possession without even waiting for further investigation from CEO. This shows that some hush money was paid to the petitioner and entire work had amounted to actions which were unwarranted and by taking shelter to reference made by the Chief Minister's office, he proceeded to issue re-allotment for which he was not competent and tried to bring highest office of Chief Minister office under cloud. State further submits that during the investigation, co-accused disclosed payment of Rs.2 lacs as bribe to the petitioner.

16. The analysis of the above arguments points out that petitioner was required to wait for the final decision by CEO, when he was specifically asked, but he issued provisional allotment, his malicious conduct is established when he handed over symbolic possession of the property itself to the said beneficiaries. The another reason which points towards the petitioner's mis-conduct is that he was aware of the pendency of the writ petitions and other civil proceedings and quietly ignored all such while issuance of provisional allotment. As concerned for the inquiry on his part qua non-delivery of letter to allottee, was part of proceedings before the Appellate Authority of HUDA as well as before Consumer Redressal Forum. The petitioner also ignored and by-passed the judicial order passed by the authority and Consumer Court.

17. Petitioner also seeks bail on the ground that no loss has been caused to the government and the said argument is meaningless. If this argument is accepted, then every government employee who commits such an act and where no loss caused to government, would be entitled to bail which is neither the meaning within the Prevention of Corruption Act nor the provisions relating to cheating, forgery under Indian Penal Code. In fact the petitioner tried to avoid allotment from the CEO at Panchkula by ensuring that the matter is closed at Faridabad itself. Later on when the writ petition which was filed by the beneficiaries was withdrawn, then the matter was enquired by CEO Panchkula, which resulted in further enquiry and revealed the malicious intent and participation of petitioner.

18. 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.

19. In *State of Gujarat v. Mohanlal Jitamalji 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 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....."

20. 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 insulated 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.

21. 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].

22. 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 being tampered with, the larger interests of the public/State and other similar considerations.

23. 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.

24. 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

CRM-M-29883-2023 and connected case

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.

25. 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.

26. 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 these comments.

27. Given the serious nature of allegations and the apparent malicious intent of the petitioner, he is not entitled to anticipatory bail.

Petition dismissed. Interim orders stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

20.03.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.