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

CRM-M-35458-2024
Date of Reserve:18.10.2024
Date of Decision: 19.10.2024

Constable Kailash Chander …Petitioner

vs.

State of Haryana …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat
Present : Mr. Vishal Malik, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

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N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 of the **B.N.S.S** with a prayer to grant anticipatory bail to him in case FIR No. 08 dated 24.04.2024, under Section 384 of IPC and under Sections 7, 7A of the Prevention of Corruption Act, 1988 (Under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act added later on), Police Station ACB, Hisar, District Hisar.

2. The FIR in the present case was registered on the basis of the statement made by Ajay son of Shri Prem Singh and the same has been reproduced below:-

> "*With due respect, this is to inform you that I Ajay S/o Shri Prem Singh,resident of Matlauda, Tehsil Barwala, District Hisar. I run a fast food shop by the name of Ajay Fast Food near Ashoka Suzuki Centre at Subhash Chowk in Sector-33, Gurgaon. On 21.04.2024, around 12 noon to 1 PM, three men in civil clothes came in a red car and entered my shop, claiming to be from C.L.A. Staff. They said that I am in the business of supplying 'ganja', to*

which I said that I do not do any such work and earn my living by running my shop, to which they said that your shop has to be searched. I said okay search it. Then they asked if I knew policeman Vikas, I told them that said Vikas often comes to my shop and he drives a Durga Shakti car. They called policeman Vikas to the spot and searched my shop. They did not find any wrong thing in the shop, then they threatened me in the shop and asked about my room, to which I told that my room is in the Numberdar Market near my shop itself. Then they took me along to my room and searched it but there also, nothing was found. Then Vikas told me that I would have to pay them in order to get rid of them, otherwise they will arrest me and implicate me in a false case of selling drugs and threatening thus, he demanded ₹ 1,00,000 from me. I told him that I am a poor man and have a small shop, I cannot give one lakh rupees. Thereafter, Vikas talked to those people and said that they are asking for Rs. 50,000, which I refused to give even ₹ 50,000. I was afraid and came back to my village. I was scared at that time and told everything to Dalbir Singh, resident of Alipura. Then I called at Vikas' phone number 9812808348 from Dalbir's mobile number 9416138770 and I talked to him. After me, Dalbir Singh turned on the speaker and talked to Vikas. After talking to Dalbir resident Alipura, he demanded a bribe of Rs.20/25 thousand to be given in Hansi city. Vikas assured me and Dalbir that after giving the money, neither any action would be taken against Ajay nor any C.I.A. staff would ever visit Ajay's shop. I have recorded this conversation between me, Dalbir and Vikas in which Vikas has demanded bribe and I will present the same. Today Vikas has called me and Dalbir S/o Ramnivas, resident Alipura to Hansi with the bribe money of ₹20,000, which I do not want to give him and want to get him caught red-handed. Strict action be taken against them".

3. During the course of investigation, a raiding team was constituted and S.D.O, Sub Divisional Canal Officer, Barwala, District Hisar was appointed as a witness in the present case and the raiding team of Anti Corruption Bureau followed the due procedure and Vikas, co-accused was caught red handed along with bribe money. Even the recording of conversation between complainant and Vikas, co-accused on mobile phone was also taken into possession by the police. The bribe money was recovered by the police from Vikas, co-accused. During the process of investigation, Vikas, co-accused also suffered a disclosure statement, admitting the involvement of the petitioner in this case. In fact, after handing over the money of Rs.20,000/- by the complainant to Vikas, co-accused, Vikas co-accused called up the petitioner on his mobile phone No. 70154-56226 from his mobile No.98128-08348 and informed the petitioner that the complainant had given the money to Vikas. On this, the petitioner asked Vikas, co-accused to deposit the money in his account through online mode and the following conversation was recorded in the phone of Vikas, co-accused:-

> *Vikas: Hello- Yes Dahiya, I had called by that person whether he gave the payment at Hansi, talked with him who come on that day.*
> *Kailash: Yes*
> *Vikas: He has given payment of Rs.20,000/-*
> *Kailash: To whom he has given*
> *Vikas: He gave to me*
> *Kailash: Where are you*
> *Vikas; I am at Hansi*
> *Kailash: Whether, he has given at Hansi to you*
> *Vikas: I was at my village when he called me*
> *Kailash: Ok, It is good if he gave.*
> *Vikas: Ok, then where I gave to you*

Kailash: Send to me

Vikas: Ok it's right

Kailash: Ok, how are you

Vikas: All fine.

Kailash: Who met told who met

Vikas: He and his family member come with him

Kailash: If you talked about that he met and he met

Vikas: I was sitting and one other employee was also sit alongwith me and I was talking with him that how are you

Kailash: Ok, send to me right

Vikas: Ok

Kailash: At this number"

4. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case without any cogent, tangible and substantive incriminating material against him. Even the demand of bribe was made by Vikas and was subsequently accepted by Vikas. It has been falsely alleged that the name of the petitioner was revealed by Vikas, co-accused in his disclosure statement. However, apart from the disclosure statement suffered by co-accused, there is no other incriminating evidence against the petitioner and the petitioner has been involved with an oblique motive. Still further, even the conversation, which has been recorded, can never be relied upon to implicate the petitioner in a criminal case and it is yet to be proved during the course of trial. Even the police has wrongly relied upon the alleged telephonic conversation between Vikas, co-accused and the petitioner in a very mischievous manner to project that the co-accused Vikas was acting at the instance of the petitioner. Further, the petitioner is a first offender and was never involved in any other criminal activity in the past. Apart from that, Vikas

co-accused, has already been granted the concession of regular bail (Annexure P-3) and the custodial interrogation of the petitioner may not be required.

5. On the other hand, learned State counsel referred to following paragraphs of the status report which is as follows:-

> *4. That during the course of investigation the co-accused Vikas suffered his disclosure statement admitting the fact of involvement of the petitioner/accused in this case. After handing over the bribe money in the amount of Rs. 20,000/- by complainant to co-accused Vikas, co-accused Vikas called the petitioner/accused on mobile phone No. 70154-56226 from 9812808348 and said that complainant Ajay had given money upon which the petitioner/accused asked to deposit the money in his account through online mode. The audio conversation between the petitioner/accused and co-accused Vikas was taken in possession and was converted in the transcript of the conversation. The transcript of the audio conversation is annexed as Annexure R-1.*
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> *5.That the petitioner/accused is the main accused who initially entered into the shop of complainant and then putting him under fear, demanded bribe money and thereafter,co-accused Vikas was apprehended red handed by the police while accepting the bribe money from the complainant on behalf of petitioner/accused. In case of dismissal of this petition, would the police arrest the petitioner in this FIR and do they need the accused's police custody.*

6. During the course of arguments on 06.09.2024, this Court had observed that Vikas, co-accused had accepted an extortion amount of Rs.20,000/- and had telephonically informed the petitioner, who had asked him to transfer the same to him. Consequently, the Investigating Agency was

directed to conduct further investigation and to file a fresh status report before the next date. During the course of hearing, another status report dated 15.10.2024, by way of an affidavit of Deputy Superintendent of Police, Anti Corruption Bureau (H), Hisar has been filed. As per the said status report, Vikas was arrested red handed by the police, while accepting the bribe from the complainant on behalf of the petitioner. In fact, immediately, after the amount of Rs.20,000/- was paid by the complainant to Vikas, co-accused, Vikas called the petitioner on his mobile phone and informed him that the complainant had given money to him. On this, the petitioner asked Vikas, co-accused to deposit the money in his account through online mode. The audio conversation between the petitioner and Vikas,co-accused was also taken into possession by the police. It has also been mentioned that Vikas, co-accused was caught red handed while taking the amount and due to this, he could not transfer the amount to the account of the petitioner.

7. I have heard the rival contentions made by learned counsel for the parties and perused the record carefully.

8. In the present case, the complainant has levelled very serious allegations against Vikas, co-accused and three more police officials, who had entered the shop of the complainant, claiming them themselves to be from CIA staff. Even, they had threatened the complainant and extorted a sum of Rs.20,000/- from him. The amount of Rs.20,000/- was received by Vikas, co-accused and immediately, after receipt of the extorted amount i.e Rs.20,000/-, Vikas immediately made a telephonic call to the petitioner and

told him that the money had been handed over to him by the complainant/victim. Thus, it is apparent that the money was extorted by Vikas, co-accused at the instance of the present petitioner. Even from a perusal of the recorded conversation between Vikas, co-accused and the petitioner, it is apparent that Vikas specifically told the petitioner that the amount has been taken from the complainant on the asking of the petitioner. Even, the petitioner had directed Vikas, co-accused to transfer the money on the mobile phone number of the petitioner. However, before the money could be transferred by the accused, Vikas, he was arrested by the police. Thus, the petitioner is one of the main accused in the present case. Apart from that, the petitioner is a police official and is also in a position to intimidate the witnesses. Learned State counsel is justified in submitting that the petitioner may directly or indirectly made an inducement, threat or promise to the witnesses so as to dissuade them from disclosing the real facts pertaining to the matter, during the course of investigation. Apart from that, the custodial interrogation of the petitioner would be required to know the names of the other co-accused, who were also involved with the present petitioner.

9. Finding no merits, the present petition is accordingly ordered to be dismissed.

(N.S.SHEKHAWAT)
19.10.2024 **JUDGE**
hitesh

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No