CRM-M-40337-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40337-2024
Reserved on: 10.09.2024
Pronounced on: 27.09.2024

Naveen Kumar ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate
Mr. P.S. Bindra, Advocate and
Ms. Malini Singh, Advocate
for the petitioner.

****

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
13	27.05.2024	Anti Corruption Bureau, District Ambala	409, 420, 467, 468, 471, 120B IPC and Sections 13(1)(a), 13(1)(b) r/w 13(2) of Prevention of Corruption Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.

2. In paragraph 23 of the bail petition, the accused declares that he has no criminal antecedents.

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

> *"….after due approval and proper sanction accorded by the Government/Competent Authority the regular Vigilance Enquiry No. 04 dated 01.07.2021 was registered on the basis of complaint made by Sh. Leela Ram, the then MLA, Kaithal constituency. The allegations were that from the grant received in February and March, 2021 for Creation of Capital Assets the President of Zila Parishad, Smt. Minakshi Dahiya, Chief Executive Officer, Smt. Kamalpreet Kaur, CEO, Sh. Naveen Goyat, Sub-Divisional Officer Panchayati Raj and Sh. Jasbir Sandhu, Junior Engineer, Panchayati Raj, in connivance with the contractors have made the payment of the contractors before 31st March, by taking the*

commission of 35 to 40 percent, whereas by not executing any work and by misusing the grant, they have embezzled the Government funds."

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

" A. The role of the petitioner:-

4. That thereafter, a regular vigilance enquiry was conducted and Sh. Sube Singh, the Inspector, Anti Corruption Bureau, Unit Kaithal, submitted his detailed enquiry report to the Additional Director General of Police, Anti Corruption Bureau Haryana, Panchkula through Superintendent of Police, State Vigilance Bureau, Ambala Range, Ambala which was scrutinized at head quarter level herein, it was found that grant of Rs. 31.64 crores received for Creation of Capital Assets during the financial year 2021-22 in Zila Parishad, Kaithal, out of which 50% amount was to be utilized for carrying out works for Creation of Capital Assets relating to sanitation preferably for scaling up to Gobar-Dhan projects (minimum 2 per Block) as per norms under New National Biogas and Organic Manure Programme of Ministry of New & Renewable Energy as approved by District Level Sanctioning Committee and Solid & Liquid Waste Management, Construction of 3/5 ponds system, gray water management etc, after preparing plan and getting approval thereof. But Smt. Sukhwinder Kaur, the then Chairman, Zila Parisad Kaithal instead of carrying out above Tied Work had given administrative approval for Sanitation work for Desilting of Naala covered with RCC plate, Cleaning of Road of Both side, Desilting of pond, Ground leveling. Vyayamsaala, Sanitation work for Remaditation & Reclimation of Solid Waste, Removal of Solid/liquid waste, Desilting of Naala, other sanitation work. These activities do not align with the intended purpose of Creating Capital Assets, as mandated by the scheme. Therefore, approving these works amounts to diversion of funds from their intended usage. After administrative approval Naveen Kumar, the then SDO (the petitioner herein) and Jasbir Singh the then, Junior Engineer, Zila Parisad Kaithal as per para Nos. 3 to 5 of estimate letter of Department of 208 Tied Work issued vide Memo No. DFA-3-2017/63435-533 dated 07.06.2017 without visiting the spot and without taking the photographs and without giving *details of villages in which the sanitation work will be carried out and how much garbage and waste material will be lifted and which channels will be cleaned and after preparing estimates at their own level has given self technical approval. Detailed estimate was not prepared in accordance with the actual work requirements. Consequently, payments have been made based on amount mentioned in administrative approval. It is imperative to emphasise that no work should commence until a comprehensive and detailed estimate is officially sanctioned, adhering to the guidelines outlined in Part 2, Chapter XII, rule-131 of the Work Rules of 1996. Thereafter, Smt. Sukhwinder Kaur, the then Chairman, Zila Parisad, Kaithal, on the basis of half estimates for carrying out above works, prepared by Naveen Kumar SDO, made correspondence for approval from CEO Zila Parisad Kaithal for execution of above works vide letters No. 252 dated 11.02.2021 and 257 dated 12.02.2021. Om Parkash clerk office of Zila Parisad Kaithal prepared noting and sent it to Kulwant Singh, Accountant, who in turn produced the same before Jaswinder Singh Dy. CEO and in turn, he sent the same to CEO for further action. On this, the then Chief Executive Officer, Zila Parisad vide his office letter Nos. 10807 dated 08.02.2021, 10861 dated 11.02.2021 and 108976 dated 12.02.2021 issued orders for carrying out works in terms of letter No.GA-II-2021-348-69 dated 04.01.2021 and Memo No. GA-II-2021/4153 dated 18.01.2021, issued by Government to Sub Divisional Officer, Zila Parisad Kaithal.*

5. That thereafter, accused Naveen Kumar Sub-Divisional Officer in collusion with the other co-accused had shown the execution of 208 tied works of above types in 151 villages of District Kaithal by showing the hiring of JCB, Tractor Trolley, Remaditation Reclamation of Solid Waste Machine, Dumper, Poklain Machine, suction tanker etc. on rent from the following firms:- Satyam Const., the Kaithal Saraswati Co-op. Society Ltd., Bharat Project, Tejas Concrete, Autus Agrovet India, M/s. Shiv Enterprises, Rostash Singh Con. Vasu Constructions, Luxmi Building Material Store and Supplier, Shubham Kissan Pipe Kaithal, at his own level by not inviting the quotations/tenders, as per the Rule 134 (1) (b) and 135(1) in Appendix B of Haryana Government Gaz. (Extra) Sept. 26, 2017 (ASVN 3, 1939 SAKA) of the Panchayat Department ANNEXURE R-1 which implies a disregard for the procedures outlined in rule 134 of the Work Rules of 1996. As per the statements recorded during enquiry, the proprietors of above firms shown their inability to provide logbook, RC, names of drivers and other concerned documents regarding hiring of JCB, *Tractor-trolley, Remaditation and Reclimation of Solid Waste Machine, Dumper, Pocklane Machine, Suction Tanker etc.*

6. That during enquiry, it was further revealed that from 17.02.2021 to 31.03.2021, in 151 villages of District Kaithal, bogus muster rolls showing 208 tied works were got prepared and verified by the accused-petitioner Naveen Kumar, Sub- Divisional Officer, Zila Parishad, Kaithal, after hatching criminal conspiracy with other co- accused and the owners of above firms and without making entries in the log books of JCB, Tractor & Trolly, Remaditation & Reclimation of Solid Waste Machine, Dumper, Pocklane Machine, Suction Tanker etc. has falsely shown the execution of 208 Tied Work in 151 villages and prepared fake bills/vouchers of above work alleged to be carried out from February 2021 to March 2021. Further Jasbir Singh J.E. in conspiracy with the other co-accused prepared fake measurement book and fake muster rolls of labourers of one date by showing same muster roll in the same date in different villages i.e. village Jaswanti, Balwanti, Dhaus, Patti Afghan, Nauch, Harsola, Bhanpura, Garhi Padla, Devban, Sinad Balu, Chaushala etc., from February 2021 to March 2021. Thereafter, Naveen Kumar SDO and Jasbir Singh JE, on the basis of fake bills/vouchers/ muster roll of hiring of JCB, Tractor & Trolly, Remaditation & Reclimation of Solid Waste Machine, Dumper, Pocklane Machine, Suction Tanker etc. after verifying the same along with their personal bank accounts Unique Code made correspondence with CEO Zila Parisad Kaithal for making payment to labourers according to fake muster roll. On that basis, Om Parkash Clerk, Zila Parisad Kaithal made noting for payment of Tied Works and sent it to Kulwant Singh Accountant. Kulwant Singh Accountant and Jaswinder Singh Dy. CEO in conspiracy with Naveen Kumar SDO and Jasbir Singh JE after verifying all fake bills/vouchers/muster roll put their respective signatures and Dy. CEO sent the file to CEO for further action. Thereafter, Smt. Kamalpreet Kaur, HCS, the then CEO granted approval for payment and sent the file to Dy. CEO for making payment in accordance with rules. Thereafter, Jaswinder Singh Dy. CEO in conspiracy with Naveen Kumar SDO and Jasbir Singh JE through Treasury Office, Kaithal, sent an amount of Rs. 10,26,84,529/- for Creation Of Capital Assets during the financial year 2020-21 shown to be spent on 208 Tied Work in 151 different villages of Kaithal alongwith payment Unique Code to the bank accounts of concerned SDO/JE and proprietors of firms. Out of this an amount of Rs. 88,19,583/- was sent to HDFC Bank Account No. 59296888888888 of Kamaljeet son of Suraj Mal, resident of Kithana, *District Kaithal, proprietor of the Kaithal Saraswati Co-op. Society Ltd; an amount of Rs.1,43,16,616/ in UBI Bank Account No.509701010137464 of Parveen Sardna son of Sh. Ramesh Sardana r/o Kaithal, proprietor of Bharat Project; an amount of Rs. 86,02,750/- in HDFC Bank account No. 50200014139539 of Anil Kumar Garg son of Shashi Bhushan Garg, resident of H. No.95, HUDA, Pundri, District Kaithal, proprietor of Tejas Concrete; Rs.1,62,84,279/- in UBI Bank Account No. 509701010137174 of Dilbag Singh son of Bhulla Ram r/o Village Fariabad, District Kaithal proprietor of Satyam Construction; Rs. 92,99,338/- in PNB Account No.5890002100001246 of Sumit Miglani son of Harbans Lal r/o Kaithal, proprietor of Autus Agrovet India. Further Rs. 1,81,17,636/ were found transferred in Bank Account No. 50200028731212 of HDFC Bank of Tilak Raj son of Jai Ram r/6 Barna, District Kurukshetra, proprietor of M/s Shiv Enterprises; Rs. 72,17,320/- in UCO Bank A/No. 32150210000144 of Rohtash son of Inder Singh r/o Gali No.3, Rishi Nagar, Kaithal proprietor of Rohtash Construction; Rs. 41,79,654/ in HDFC Bank A/No. 50200052890336 of Rajesh Garg son of Som Parkash r/o Anaj Mandi Pundri, proprietor of Vasu Constructions; Rs. 47,65,583/- in A/No 10181100000127 of Punjab & Sind Bank of Abhay Sandhu r/o Kutubpur, District Kaithal, proprietor of Luxmi Building Material Store and Supplier and Rs. 4,64,925/- were found to be transferred in Account No. 180111100000584 of Andhra Bank of Shubham Kissan Pipe Kaithal, totaling Rs. 9,20,67,684/-. Similarly, on the basis of fake muster roll of labourers allegedly deployed for carrying out above work, Naveen Kumar, SDO (accused-petitioner) in connivance with other officers/official of the office transferred an amount of Rs. 50,67,682/-in his Bank Account No. 20290665189 of SBI; an amount of Rs. 26,89,445/- was found transferred in Bank Account No. 05251530024755 of Jasbir Singh the then JE maintained in HDFC Bank; an amount of Rs. 23,04,007/- was found transferred in Bank Account No. 20644162642 maintained in Indian Bank of Jaivir Singh JE and an amount of Rs. 5,55,712/ in account No. 2100000100035415 in Punjab National Bank of Sahil Kashyap,*

the then J.E. i.e. totaling about Rs. 10,26,84,529/-.

7 That out of above detailed amount of Rs. 10,26,84,529/- spent for Creation Of Capital Assets during the financial year 2020-21 an amount of Rs. 4,64,925/- transferred in Account No 180111100000584 managed in Andhra Bank of Shubham Kissan Pipe Kaithal was found to be paid as per rules.

B. The evidence against the petitioner:-

8. That during further enquiry, it was revealed that on asking by Naveen Kumar SDO (accused-petitioner), an amount of Rs. 23,04,007/- was sent in the bank account of co-accused Jaivir Singh J.E. and an amount of Rs. 5,55,712/ was sent in the account of co-accused Sahil Kashyap JE. But they instead of sending it back to the account of Zila Parisad in connivance with Naveen Kumar SDO (accused-petitioner), Jaivir JE sent the amount of Rs. 23,04,007/ in the bank account No. 20290665189 of co-accused Naveen Kumar SDO and co-accused Sahil Kashypa, JE sent the amount of Rs. 5,55,712/-in Bank Account No. 0231001500018638 of PNB of Ritu wife of co-accused Naveen Kumar SDO. Therefore, it transpired that they instead of discharging their duties properly, misused their official position. During enquiry, it was further revealed that Naveen Kumar SDO, on the basis of fake and forged muster roll in collusion with other co-accused got transferred an amount of Rs. 50,67,682 + 23,04,007 + 5,55,712 79,27,405/- in his account and in the bank account of concerned JEs and thereby misappropriated the said amount. It was further found that out of an amount of Rs. 79,27,405/- the accused-petitioner Naveen Kumar SDO purchased 5 Kanals 2 Marlas of land in his name from Smt. Sewapati wife of Balbir Singh, resident of village Habatpur, District Jind in the year 2021 for an amount of Rs. 30,00,000/- from his Bank Account No. 20290665189 of SBI, Branch, Jind in which he received the Government funds, which clearly and manifestly proves the misappropriation of said amount beyond shadow of any reasonable doubt. The copy of statement of Bank Account No. 20290665189 of the accused-petitioner is annexed herewith as ANNEXURE R-2.

9. That from the statements of Chowkidars, Sweepers and other respectable of different villages recorded during enquiry and also from the documents, Technical Branch of ACB, Haryana Panchkula and from the spot inspection, it was further revealed that during the year 2020-21 in the above mentioned villages only 2-3 days Tied Work was carried out. But the accused-petitioner Naveen Kumar, the then, SDO, Jasbir Singh J.E. of Zila Parisad Kaithal after misusing their official position and in connivance with owners of above firms and other co-accused after completing only 30% work and preparing fake bills/vouchers of completion of 100% work from February 2021 to March 2021 and after using one muster roll of labourers of one date and showing the same in different villages while one labourer could work in one day at one place and in connivance with Kulwant Singh Accountant and Jaswinder Singh Dy. CEO, SDO Naveen Kumar and JE Jasbir Singh verified the fake bills/vouchers and muster *roll and all of them after putting their respective signatures sent the file to CEO for further action and Smt. Kamalpreet Kaur, HCS the then CEO gave approval for payment on the basis of noting and Jaswinder Singh the then, Dy. CEO transferred an amount of Rs. 9,16,02,759/- in the accounts of above nine firms and on the basis of unique code provided by Naveen Kumar SDO sent the total amount of Rs. 1,06,16,850/- in the accounts of Naveen Kumar SDO, Jasbir JE, Jaivir JE and Sahil Kashyap JE, totaling Rs. 10,22,19,604/-. Instead of doing 100% Tide Work around 30% work for an amount of Rs. 3,06,65,881/ was found to be completed. Therefore, Rs. 10,22,19,604 Rs. 3,06,65,881 around Rs. 7,15,53,723/- were found to be embezzled by them and therefore, they caused loss of this amount to the government exchequer. So offences punishable under Sections 409, 420, 468, 471 and 120-B IPC as well as under Section 13 (1) (a), 13 (1) (b) read with Section 13 (2) of the Prevention of Corruption Act were found to exist."*

7. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, as per paragraph 20 of the bail petition, the petitioner has been in custody since 31-05-2024 and accordingly his custody is approximately 04 months. 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 further pre-trial incarceration at this stage.

8. 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

11. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

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

13. A certified copy of this order would not be needed 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. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

14. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.09.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.