

2024:PHHC:145821



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+271

CRM M-44872 of 2024 (O&M)
Date of Decision: 08.11.2024

Som Nath Jagat		...Petitioner
	Versus	
State of Haryana		... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Supriya Arora, Advocate
for the applicant/petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of BNSS 2023 with a prayer to grant the concession of anticipatory bail to him in case FIR No. 82 dated 26.04.2024 under Sections 7 and 8 of the Prevention of Corruption Act, 1988, Section 42 of the Prisons Act, 1894 and Section 120-B of IPC registered at Police Station Thanesar, Kurukshetra (Annexure P-1).
2. The FIR in the present case was registered on the basis of the complaint filed by the Deputy Superintendent of Police, Headquarter, Yamuna Nagar and the same has been reproduced below:-

“To

The Superintendent of Police, Yamuna Nagar No.1404-R dated 25.04.2024

Sub.: Registration of FIR under section 120-B of IPC r/w sections 7, 8 of the Prevention of Corruption Act 1988 (as amended in 2018) and section 42-A of The Prison Act, 1894.

Sir, It is submitted that investigation of FIR No. 387 dated 10.11.2023 under Sections 328 and 304 of IPC and Section 72-A of Punjab Excise Act, 1914 registered in Police Station-Chhappar is being investigated by a Special Investigating Team headed by undersigned i.e. Kanwaljeet Singh HPS posted as DSP/Headquarter Yamuna Nagar. In this case, four persons namely Jagmal, Anil, Sushil and Paramjeet died due to consumption of spurious liquor and one victim Suraj Bhan suffered injuries dangerous to life. During investigation, 27 accused have been arrested so far. Similarly, two separate FIR's were also registered regarding this incident in Police Station Farakpur and Police Station Bilaspur. (Copies of three FIRs are attached as Annexures R-1 to R-III). Investigation has revealed that accused Shamsher alias Monu is lodged in District Jail-Kurukshetra since 25.01.2022. (Custody certificate is attached as Annexure R-IV). He hatched a criminal conspiracy with Ankit alias Mogli to manufacture liquor in illicit manner. He had also invested money in liquor vend situated at Phoonsgarh highway (the liquor vend from where spurious liquor was sold to illegal vends and ultimately to victims) as revealed from analysis of bank accounts and record

obtained during course of investigation. He had invested money in liquor business using "Garvit Trading Company'. Proprietorship of this firm is in name of co-accused Pradeep. One of the co-accused Kapil also remained in judicial custody in Kurukshetra Jail with Shamsher in other criminal matter. Investigation has further revealed that accused Shamsher managed to get one SIM card bearing number 7206912494 subscribed in name of Vikrant Chauhan. It was delivered to accused Shamsher in jail by co-accused Kapil and Pradeep on 09.08.2023. This fact is substantiated by statement of Vikrant Chauhan recorded under section 164 of Cr.P.C. Copy of the same is attached as R-V. Tower location of this number is constantly in telecom tower covering Kurukshetra Jail area. Mobile phone was also obtained by accused while being in jail in July 2023. When accused came to know regarding registration of FIRs pertaining to spurious liquor, he burnt the mobile phone along with SIM card on 12.11.2023. Statement of eye witness Arjun has also been got recorded under section 164 of Cr.P.C. Copy of the same is attached as R-VI. Initially, accused Shamsher was joined in investigation and arrested in case FIR No. 249/2023 registered in Police Station, Farakpur. During interrogation, accused disclosed his nexus with certain jail officials. (Copy of the disclosure statement is attached as R-VII). Thereafter, disclosure statements of accused Kapil and Pardeep were recorded on 18.12.2023 in FIR No. 387/2023 PS-Farakpur wherein they disclosed that accused was shifted from security cell (Chakki) to cell meant for young prisoners (Mundakhana) after paying

illegal gratification and thereafter was continuously paying illegal gratification on monthly basis @ 40000/- per month through Kapil, Pradeep, Buntty etc. Illegal gratification was given to Som Nath Jagat, Jail Superintendent Kurukshetra through Kishori Lal. He was using mobile phone and availing other facilities including visits (mulakat) by relatives/friends without any entry in record of jail with assistance of jail officials. Thereafter, disclosure statement of accused Shamsher alias Monu was recorded on 05.01.2024 wherein he has corroborated the disclosure statements of accused Kapil and Pradeep. (Copies of disclosure statements of accused Kapil and Pradeep are attached as annexure R-VIII and R-IX) CDR analysis of co-accused Pradeep, Kapil, Ankit @ Mogli in these FIR's and other relevant persons Sunny, Sachin, Buntty and Yuvraj who have met accused in jail without formal entry in record has been done. These persons have met accused Shamsher in jail without any entry in record which is corroborated based on tower location of mobile phones and statements recorded. A chart showing visits by these persons along with dates is also enclosed herewith prepared based on CDRs analysis. Copy of the chart is attached as annexure R-X. During investigation statements Kishori Lal Head warden, Ashwini Line Officer and Kiranpal Warden who are posted in District Jail-Kurukshetra were recorded and it has been revealed by them that Jail Superintendent Sh. Somnath Jagat directed Kishori Lal Head Warden to ensure visits (mulakat) of certain persons with Shamsher without any entry in visitor register and to provide other facilities and accept illegal

gratification in lieu thereof. Illegal gratification was being accepted by Kishori Lal Head Warden on each occasion and ultimately given to Jail Superintendent Sh. Somnath Jagat. Investigation has further revealed that illegal gratification of Rs.40,000/- per month was being paid and accepted for illegal act of omission/commission like unauthorized visits (mulakat), switching off CCTV cameras during such visits, usage of mobile phone and not shifting accused Shamsher again to security cell (Chakki). (Copies of the statements are attached as R-XI to R-XV) Investigation has further revealed that accused Shamsher alias Monu while lodged in District Jail Kurukshetra frequently met co-accused Kapil, Pradeep, Ankit alias Mogli and other persons Bunty, Sunny, Sachin and Yuvraj without any formal entry in visitor register. Further, during these unauthorized visit, mobile phone and SIM card were given to accused Shamsher alias Monu. Mobile phones were subsequently used by accused Shamsher to run his liquor business in unhindered manner. Further, data extracted from the mobile phones received after examination on 23.04.2024 and CDR analysis support the nexus with jail officials mentioned hereinabove as Bunty, Kapil, Ankit and Pradeep used to talk through normal telephonic call or Whatsapp call/message on the day of such unauthorized visits. (Copies of the statements Sunny, Tushar, Yuvraj, Rajesh, Rajat, Arun alias Sachin son of Labh Singli are attached as R-XVI to R-XXI). Further one pen drive containing CDRs of persons relevant to present complaint is also annexed herewith. Therefore, it is requested that this complaint

may be sent to Superintendent of Police, Kurukshetra to get an FIR registered under section 120-B of IPC r/w sections 7, 8 of The Prevention of Corruption Act 1988 (as amended in 2018) and section 42A of The Prison Act, 1894 against Sh. Somnath Jagat Jail Superintendent District Jail Kurukshetra, Kishori Lal Head Warden District Jail Kurukshetra, Ashwini Line Officer District Jail Kurukshetra, Shamsheer alias Monu and Bunty sons of Jal Singh resident of Thambad District Ambala, Pradeep son of Karam Singh resident of village Koolpur Police Station-Chhappar (Yamuna Nagar) and others for the acts mentioned above in Police Station City Thanesar being jurisdictional Police Station”.

3. Learned senior counsel appearing on behalf of the petitioner vehemently argued that in the present case, the mandatory provisions of Section 17-A of the Prevention of Corruption Act (hereinafter to be referred as ‘**the PC Act**’) were not followed as the police officers were not empowered to conduct an enquiry or inquiry or investigation in any offence alleged to have been committed by a public servant under the PC Act, without the prior approval, if the alleged offence relate to any recommendations made or decision taken by a public servant in discharge of official functions or duties. He further contended that the police officials had registered the FIR in the present case in a mechanical and arbitrary manner without any incriminating evidence. Further, the entire case of the prosecution was based on baseless allegations and the disclosure statements suffered by the co-accused, who are already facing trials in various FIRs and

were confined in judicial custody/prisons. Such confessions made to police officers and that too in police custody were inadmissible and surprisingly, the police in the instant case had placed heavy reliance on such an inadmissible evidence, just to take the petitioner in custody illegally. He further contended that even during the last several months, the police had not been able to collect any evidence to link the petitioner with his co-accused and the petitioner deserves to be enlarged on anticipatory bail. Still further, learned senior counsel for the petitioner referred to various communications (Annexures P-3 to P-25) to contend that the petitioner had no links with Shamsher Singh @ Monu Rana, a gangster, who was confined in District Jail, Kurukshetra. He submitted that Shamsher Singh @ Monu Rana, was a notorious gangster and had created an atmosphere of terror in the mind of the prisoners as well as officials of District Jail, Kurukshetra. This prisoner was habitual of keeping the mobile phone and during search operations by the police officials, the prohibited goods including mobile phones alongwith battery and SIM were recovered from him on several occasions earlier. However, the jail officials had not shown any leniency towards him. He further submitted that the petitioner had sent several communications to different Courts, requesting that to shift the said prisoner to some other jail, so that the peace may prevail in the District Jail, Kurukshetra. Apart from that, even in the various meetings, the petitioner had always pleaded for shifting Shamsher Singh @ Monu

Rana, to some other jail and it is highly unbelievable that the petitioner had provided several facilities/mobile phone to Shamsher Singh @ Monu Rana. He further contended that even the petitioner was implicated in the present case due to political enmity as his father was an Ex. Minister, however, no such, ground was pleaded in the bail application or any other miscellaneous application.

4. On the other hand, a detailed status report was filed by way of an affidavit of the Deputy Superintendent of Police, State Crime Branch, Madhuban, on behalf of the State of Haryana and the same was taken on record.

5. Learned State counsel vehemently argued that the provisions of Section 17-A of the PC Act were only intended to protect a public servant in the bonafide discharge of official functions or duties. Prior approval under Section 17-A of the PC Act was required only where the alleged offence was relatable to “any recommendation made or decision taken by the public servant”. This was the heart and sole of the said Section. When the Act of a public servant is *ex-facie* criminal or constitutes an offence, prior approval of the Government would not be necessary. The prior approval under Section 17-A of the PC Act would not be mandatory in those cases, where the act of the public servant amounts to an offence and on the face of it lacking in good faith. In the present case, the petitioner, who was the principal officer of District Jail, Kurukshetra, had joined

hands with an infamous gangster/illicit liquor trader Shamsher Singh @ Monu Rana and the provisions of Section 17-A of the Act would not apply.

6. Learned State counsel further submitted that the present case was an offshoot of FIR No. 387 dated 10.11.2023 registered under Sections 328 and 304 of IPC and Section 72-A of the Punjab Excise Act, Police Station Chappar, District Yamuna Nagar, wherein, 20 persons had died and several persons had fallen severely ill after consuming spurious liquor, purchased from the illegal liquor vends, which were run by the gangster Shamsher Singh @ Monu Rana, and his accomplices. The petitioner was posted as Superintendent of District Jail, Kurukshetra from 12.10.2021 to 03.09.2024 and during this period, he unauthorizedly facilitated the jail inmates to keep and use the mobile phones, shifted jail inmates from one lockup cell to another lockup cell, allowed the visitors to meet the jail inmates without making entry in the visitors register and provided several other facilities to jail inmates illegally. The petitioner demanded Rs. 80,000/- for the first time and accepted illegal gratification of Rs. 60,000/- and, thereafter, accepted illegal gratification of Rs. 40,000/- per month, through his subordinate staff Kishori Lal, Jail Warden, in lieu of allowing Shamsher Singh @ Monu Rana, a gangster/liquor trader to use mobile phone and provide him undue facilities inside the jail to make the stay comfortable in the jail. He

also allowed the unauthorized meetings of co-accused Pradeep and others inside the jail with Shamsher Singh @ Monu Rana without making entries in the visitors register. The petitioner also got the CCTV's switched off during such visits, so that the CCTV footage of unauthorized visits is not recorded. All these facilities were provided by the petitioner to Shamsher Singh @ Monu Rana, inside the jail in lieu of demand and acceptance of illegal gratification through his subordinate staff Kishori Lal. Shamsher Singh @ Monu Rana, hatched a criminal conspiracy with his co-accused, while he was in jail, for manufacturing spurious liquor and all the hardened criminals were running their liquor business illegally and the consumption of such illegal liquor had led to the death of 20 persons and serious illness/loss of limbs of several others.

7. Learned State counsel further submitted that the petitioner had accepted illegal gratification from Shamsher Singh @ Monu Rana, gangster and allowed his friends and relatives to meet him in the prison near his office. Apart from providing the mobile phone, several facilities were provided to Shamsher Singh @ Monu Rana. Learned State counsel also referred to the following averments from the status report:-

“4.4 Kishori Lal, Jail Warden, in his statement recorded U/s 164 of Cr.P.C., confirmed that the accused-petitioner had directed him to facilitate the friends and relatives of Shamsher @ Monu Rana, to meet Shamsher @ Monu

Rana, who took Rs.20,000/- to Rs.25,000/- from the friends and relatives of Shamsher @ Monu Rana, for allowing them to meet Shamsher @ Monu Rana. Kishori Lal has categorically confirmed in his statement recorded under Section 164 of Cr.PC that he used to hand over the ill-gotten money to the accused Petitioner. Shri Ashwani Kumar, Line Officer, District Jail, Kurukshetra, in his statement recorded U/s 164 of Cr.P.C., has corroborated the statement of Kishori Lal, Jail Warden, recorded U/s 164 of Cr.P.C., which have been recorded by JMIC, Yamuna Nagar. Thus, this clearly substantiates that the accused-petitioner had demanded and accepted illegal gratification through his sub-ordinate staff, Kishori Lal, from the friends and relatives of Shamsher @ Monu Rana, in lieu of providing undue facilities to Shamsher @ Monu Rana, inside the Jail.

4.5 Arjun, who was lodged in District Jail, Kurukshetra, in his statement recorded U/s 164 of Cr.P.C., confirmed that Monu Rana had a mobile phone with him, inside the Jail, which was used by Monu Rana for talking to persons outside the Jail. Arjun has also confirmed that Monu Rana had destroyed the said mobile phone in his presence on 12.11.2023 inside the jail, by throwing it inside the furnace. Thus, this also clearly substantiates that Shamsher @ Monu Rana was keeping mobile phone with him inside the jail, which was being used by him to talk to people outside the Jail. This had been facilitated by the accused-petitioner, for which the accused-petitioner had demanded and accepted illegal gratification through his sub-ordinate staff, Kishori Lal,

Jail Warden. It is pertinent to mention that, it is after the registration of FIR No. 387 on 10.11.2023, under Sections 328 and 304 of IPC and Section 72-A of Punjab Excise Act, 1914, in Police Station Chappar, District Yamuna Nagar, pertaining to death caused due to consumption of spurious liquor, that Shamsher @ Monu Rana, having come to know about registration of the said FIR and deaths caused due to consumption of spurious liquor, destroyed his mobile phone on 12.11.2023, just 02 days after the registration of said FIR No. 387 on 10.11.2023.

4.6 Vikrant, who also remained lodged in District Jail, Kurukshetra, in his statement recorded U/s 164 of Cr.P.C., confirmed that he had met Monu Rana inside the Jail, who was also known by the name of Shamsher Singh, who had threatened and directed him, to hand over a SIM to Monu Rana, inside the Jail, through Kapil and Pradeep, after being bailed out. Vikrant also confirmed that his Jail inmates had told him that if anyone does not do the work of Monu Rana, then that person is got killed by Monu Rana. Accordingly, after being granted bail, Vikrant had handed over a SIM bearing No. 7206912494 on 09.08.2023, to Kapil and Pradeep, outside the Jail, who then handed over the said SIM to Monu Rana, inside the Jail. Kapil and Pradeep, are friends of Monu Rana. This also clearly substantiates that a SIM was also provided to Shamsher @ Monu Rana, inside the Jail through his friends and co-conspirators, Pradeep and Kapil, who had hatched conspiracy with Shamsher @ Monu Rana, in manufacturing spurious liquor, that had led to death of

20 persons, leaving many seriously ill.

4.7 The above statements of Kishori Lal, Jail Warden, Ashwani Kumar, Line Officer, both of District Jail, Kurukshetra, Arjun and Vikrant, both who were lodged in District Jail, Kurukshetra, recorded under Section 164 of Cr.PC, clearly substantiates that the accused-petitioner had demanded illegal gratification through his subordinate staff, Kishori Lal, Jail Warden, for providing undue facility to Shamsher @ Monu Rana, inside the Jail.

4.8 Rajat and his brother, Rajesh Kumar, belonging to village Mandhedi, Police Station Ismailabad, District Kurukshetra, Jail inmates of accused Shamsher Singh @ Monu Rana, have confirmed in their Statements recorded under Section 161 of Cr.P.C., that they have eye witnessed Shamsher Singh @ Monu Rana, using mobile phone inside the jail and also have seen Shamsher Singh @ Monu Rana lodged in Mundhakhana (Juvenile Ward), after being shifted from Chakki (Security Jail Lockup). Rajat has categorically confirmed that Shamsher Singh @ Monu Rana, had told that he was paying Rs.80,000/- per month to the accused-petitioner, in lieu of favour extended to him by the accused-petitioner inside the jail, in getting him lodged in Mundh Khana (Juvenile Ward) and also for allowing him to use mobile phone inside the jail. They have also confirmed that accused Shamsher @ Monu Rana had destroyed his mobile phone in November 2023, when he had come to know about the incident of death of persons at Yamuna Nagar, which was caused due to consumption of spurious liquor. They have further confirmed that accused-petitioner got

Shamsher Singh @ Monu Rana shifted from Mundakhana (Juvenile Ward) to Chakki (Security Jail Lockup), after the incident of spurious liquor consumption. It has also been confirmed in their statements that they use to accompany Shamsher Singh @ Monu Rana, from Dyodi to the gate of the Jail, as and when some persons came to meet Shamsher Singh @ Monu Rana, who was then allowed by the Jail officials to meet those persons outside the gate of the jail. Shamsher Singh @ Monu Rana, had also told them the names of the persons, namely, Kapil Sharma, Sunny and Pradeep, who had met him outside the gate of the jail. The copies of statements under section 161 of Cr.P.C. of Rajat and Rajesh Kumar are attached as Annexure R-5 & R-6, respectively, for the kind perusal of this Hon'ble Court.

4.9 It is of utmost importance that one of the main co-conspirator, Pradeep, who is the proprietor of a Firm, in the name and style as, M/s Garvit Trading Company, in whose Firm, accused Shamsher @ Monu Rana had invested money for doing trade in liquor business, is the same person, who visited District Jail, Kurukshetra, along with other Co-conspirators, Kapil and Sunny, and had met Shamsher Singh @ Monu in District Jail, Kurukshetra, for hatching conspiracy in manufacturing spurious liquor, which led to the death of innocent people. The tower locations of mobile phones of Pradeep, Kapil and Sunny, have been found to be within the vicinity of District Jail, Kurukshetra, on several occasions, but their entries in the visitors register of the jail, on these dates, have not been deliberately and

intentionally made in the visitors register, which further substantiates that this too, was solely done, to facilitate unauthorized visits of the above persons in the Jail, for meeting Shamsher @ Monu Rana, in lieu of demanding and accepting illegal gratification by the accused-petitioner, through his sub-ordinate staff, Kishori Lal, Jail Warden, which helped Shamsher @ Monu Rana, in hatching conspiracy with co-conspirator, Pradeep and other co-conspirators, in manufacturing of spurious liquor, that led to the death of innocent persons. Pradeep is the resident of village Kulpur, District Yamuna Nagar, whereas, Kapil and Sunny, belong to village Thumbad, District Ambala, which is at a considerable distance away from District Jail, Kurukshetra”.

8. Learned State counsel further submitted that even during the course of investigation, the statement of Tushar, brother-in-law of Ankit @ Mogli was also recorded under Section 161 Cr.P.C. Tushar, a witness confirmed that Kapil, Pradeep and Vikrant @ Kanti had visited the District Jail, Kurukshetra and Kapil and Vikrant @ Kanti had met Shamsher Singh @ Monu Rana inside the jail. They had provided a touch phone of VIVO Company to Monu Rana inside the jail. Kapil had told him that he had good relations with the jail officials and due to this he was able to hand over the mobile phone to Shamsher Singh @ Monu Rana inside the jail. Apart from the statements of the witnesses under Section 164 Cr.P.C. as well as 161 Cr.P.C., the co-accused have also suffered their respective disclosure

statements, confirming the demands and acceptance of illegal gratification by the present petitioner, in lieu of the facilities provided by him to Shamsheer Singh @ Monu Rana, inside the jail.

9. Learned State counsel further submitted that the petitioner had hatched a criminal conspiracy with Shamsheer Singh @ Monu Rana and other notorious criminals, who were successful in manufacturing spurious liquor causing death of innocent people and leaving many seriously ill. Apart from that, in view of the overwhelming evidence collected during the course of investigation, the custodial interrogation of the petitioner would be essential to unravel his role vis-a-vis, *modus operandi* adopted, collection of illegal gratification, his association with other jail officers, senior officers of Haryana Prisons Department, to unravel the entire racket prevalent inside the District Jail, Kurukshetra and to recover the bribe money/all other incriminating documents/articles. Learned State counsel further submitted that during the course of investigation, after finding sufficient evidence against the petitioner, he was issued notices by the Investigating Officer to join the investigation at 10.00 a.m. on 03.09.2024, but the petitioner did not join the investigation. Instead of joining the investigation, he had sent a letter bearing Memo No. 8451 dated 03.09.2024 through Kiranpal, Warder, District Jail, wherein, it was mentioned that he was on medical leave from 03.09.2024 to 07.09.2024. He also attached a medical certificate

issued by Shri Balaji Aroyagam Hospital, Private Limited, Kurukshetra. The said certificate was verified from Dr. Anurag Kaushal, posted in the said hospital, who confirmed that he had not attended the petitioner nor he was medically examined by him. Even, the CCTV footage was obtained on the same day. Thus, it is apparent that the petitioner is still forging/fabricating evidence to save himself from the legal proceedings and a letter has been sent to Additional DGP (Crime) for taking action against the petitioner.

10. Moreover, the petitioner is also in a position to influence the witnesses of the prosecution, as some of the witnesses are lower staff of District Prison, Kurukshetra, where the petitioner was posted as the Principal Officer/Superintendent.

11. I have heard the rival submissions made by learned counsel for the petitioner as well as learned State counsel in detail and have perused the case file as well as record carefully.

12. The Hon'ble Supreme Court has examined the provisions of Section 17-A of the Act in the matter of **Nara Chandrababu Naidu Vs. The State of Andhra Pradesh and another, 2024(1) RCR (Criminal) 736** and held as follows:-

“58. As stated earlier, the very object of the PC Act is to combat the corruption, and the object of Section 17A is to protect the honest and innocent public servants from undergoing the harassment by the police for the recommendations made or decisions taken in discharge

of official functions or duties. It cannot be the object of Section 17A to give benefit to the dishonest and corrupt public servants. If any enquiry or inquiry or investigation carried out by a police officer in respect of the offence committed by a public servant is held to be non est or infructuous by making Section 17A retrospectively or retroactively applicable, the same would not only frustrate the object of the PC Act but also would be counter-productive. It is axiomatic that no proceeding could stand vitiated or could become infructuous on account of the subsequent amendment in the Act. The well-known and well accepted rule of interpretation of statute is that the courts should take into consideration the other provisions of the Act also while interpreting a particular provision, and should avoid such interpretation as would lead to an anomalous situation or to frustration of the object of the Act.

59. As held in **Subramanian Swamy v. Manmohan Singh and Another (2012) 3 SCC 64**, in case of two possible constructions of a provision in the PC Act, it would be the duty of the court to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it. In **Subramanian Swamy v. Director, Central Bureau of Investigation and Another (2014) 8 SCC 682**, the Constitution Bench had observed while dealing with Section 19 of the P.C. Act that the protection against malicious prosecution which is extended in public interest, cannot become a shield to protect corrupt officials.

60. The judgment in case of **Yashwant Sinha and Others v. Central Bureau of Investigation (supra)**, relied upon

by Mr. Salve also would not be of any help to the appellant. Mr. Salve has relied upon the observations made by Hon'ble Justice Joseph in his concurring judgment, which according to Mr. Rohtagi was a discordant note in variance with the main judgment of two judges. Be that as it may, what has been observed by Justice Joseph is that Section 17A constitutes a bar of any enquiry, inquiry or investigation without the previous approval of the concerned authority. The said observation nowhere states that Section 17A shall operate retrospectively or retroactively.

61. Even otherwise, absence of approval before conducting any enquiry or inquiry or investigation into an offence alleged to have been committed by a public servant, as contemplated in Section 17A could never be the ground for quashing the FIR registered against the public servant or the proceedings conducted against him, more particularly when he is also charged for the other offences under the IPC in respect of the same set of allegations. As stated earlier, there are other important facets contained in Section 17A, like whether the alleged offence is relatable to the recommendation made or decision taken by the public servant or not, and whether such recommendation or decision was made or taken in discharge of his official functions or duties or not etc. Such facets could be examined only when the evidence is led during the course of trial. The alleged acts which prima facie constitute the offences, though done under the purported exercise of official function or duty, could not fall within the purview of Section 17A. The Protection sought to be granted to a public servant

under Section 17A could not be extended to his acts which prima facie were not in discharge of his official functions or duties. Any other interpretation would certainly tantamount to scuttling the investigation at a very nascent stage. Such could neither be the intention of the legislature nor could such provision be interpreted in the manner which would be counter productive or frustrating the very object of the PC Act”.

13. Now adverting to the facts of the present case, it is apparent that the object of inserting Section 17-A in the PC Act was to protect honest public servant from the harassment by way of inquiry or investigation in respect of decisions taken or acts done in bonafide purpose of their official functions or duties. The provision was aimed at protecting the honest and upright officers and were not intended to save and protect the public servants, who are accused of hatching a conspiracy with notorious criminals/gangsters/illicit liquor traders lodged in jail. In the present case, the petitioner is facing serious charges of allowing a gangster Shamsheer Singh @ Monu Rana to use mobile phone and to meet other hardened criminals, who were successful in manufacturing spurious liquor, causing death of 20 innocent persons and leaving many seriously ill. Even, the said incident had shattered the families of the deceased, causing them irreparable loss for their entire life due to consumption of spurious liquor by them.

14. Apart from that, during the course of investigation, the statements of several jail officials/other witnesses have been recorded under Section 164 Cr.P.C. as well as Section 161 Cr.P.C. and in the considered opinion of the Court, the police has been able to gather sufficient evidence against the present petitioner, which have been extensively referred by the learned State counsel during the course of arguments. Thus, keeping view the gravity of the matter, the petitioner does not deserve the concession of anticipatory bail.

15. This Court, also agrees with learned State counsel that the custodial interrogation of the petitioner would be eminently required to unravel the role, viz-a-viz, the *modus operandi* adopted, collection of illegal gratification, his association with other jail staff as well as senior official of Haryana Prison's Department. Still further, during his custodial interrogation, the police may also know the entire racket prevalent inside the District Jail, Kurukshetra and the negotiations between the criminals and the jail officials, his custody may also be required by the police to recover the bribe money and any other incriminating articles/documents, which may have been hidden by the present petitioner.

16. Apart from above, this Court has also noticed that notice was issued by the Investigating Officer to the petitioner to join the investigation at 10.00 a.m. on 03.09.2024 in the Office of State Crime Branch, Madhuban. Instead of appearing and joining the

investigation, the petitioner forged and fabricated a medical certificate allegedly issued by Shri Balaji Aroyagam Hospital, Private Limited, Kurukshetra. Thus, his misconduct disentitled him to the discretionary relief of anticipatory bail and the petition deserves to be dismissed by this Court.

17. Dismissed.

18. The above observations have been made by this Court only for the limited purpose of disposal of the present bail application and shall not be construed as an expression of opinion on the merits of the case in any manner.

19. CRM 43619 of 2024 stand disposed off accordingly.

08.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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