

2024:PHHC:132834



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-45426 of 2024
Date of Decision: 04.10.2024

Pardeep Yadav		...Petitioner
	Versus	
State of Haryana		... Respondent

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

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
Mr. Hinanshu Arora, Advocate
Mr. Amritpal Singh Maan, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 483 of BNSS with a prayer to grant a regular bail in case FIR No.491 dated 18.07.2024 registered under Sections 3(5), 318(4), 351(2) (111(2), 308(2), 338, 336(3), 340(2), 238 and 215 added later on) of the BNS, 2023 and Sections 7, 7-A, 13 and 8 of Prevention of Corruption Act, 1988 (Added later on) at Police Station HTM Hisar, District Hisar.

2. The FIR in the present case was registered on the basis of the complaint filed by Satbir Singh Saharan son of Amar Singh Saharan and the same has been reproduced below:-

“To the SHO P.S. HTM Hisar. Subject: Complaint for initiating legal proceeding against (1) Raj Kumar alias Raja Gujjar (mobile No.9992511222), (2) Mukesh Gujjar (mobile No.9812694370), (3) Ram Avatar Gujjar (mobile No.972934455) (4) Surjit (mobile No.9812416000), residents of Hisar.

(1) That the complainant is a law abiding citizen and he is retired from the Air Force.

(2) That complainant and his daughter had taken shares in the Vikas Marg Welfare Society, Nijipur Chowk, Hisar, in lieu of which, the society has transferred Plots No.35 and 36.

(3) That neither the complainant and his daughter have raised any four wall on the above mentioned plots nor any kind of boundary wall. By taking advantage of this, the above mentioned accused started illegally interfering in the shares/plots of complainant and his daughter with intention to take illegal possession. Upon which, complainant talked to above mentioned accused several times for not interfering by doing illegal occupation on said plots, but above mentioned accused did not give any satisfactory answer and started negotiating with the complainant by stating that if he wants to save his property, so in lieu of which, half of the share/plot will have to be given to said accused, otherwise the complainant and his daughter do whatever they want, as

the said accused will take said property in their possession. The above accused also said that they have prepared documents and false assessments related to the above-mentioned plots. Therefore, the complainant cannot cause any harm to the above-mentioned accused. The above accused also Indirectly threatened the complainant that if the complainant and his daughter tried to use any kind of force, the consequences would not be good because the above accused have good relations with some police officers as the accused pay huge amount of money on monthly basis to police officers.

(4). That above mentioned accused are criminal type of persons. Many criminal cases are pending against them. Above mentioned accused persons have illegally taken possession on properties of many people in the city and they use to extort huge amount of money from everyone in the name of leaving the possession. In this way, above mentioned accused persons have acquired illegal property worth crores of rupees. It is necessary to conduct an impartial enquiry on the said matter. Above mentioned accused are openly claiming that they have connivance with senior police officers and senior officers have also stake in other properties occupied by the accused.

(5) That above mentioned accused, apart from forcefully taking illegal possession on properties of innocent and weak people, they are also involved in other illegal activities like liquor smuggling and other drugs etc.

(6.) That above mentioned accused persons in connivance with each other and in collaboration with

different government departments used to prepare false documents of properties of Innocent people like assessment etc. Just few days ago, news was published in the newspaper in this regard that false documents of properties in Hisar worth about Rs.15 lakh have been prepared in connivance with some officials of the Municipal Corporation, Hisar, enquiry on which is going on.

(7) That accused are directly and indirectly stating complainant and his daughter that if the complainant and his daughter try to come to plots, the consequences would not be good. Therefore, the complainant is now left with no other option except to take legal action.

(8) That while accused persons are carrying out illegal interference on the above mentioned property, they carry dangerous dogs with them, so that complainant and his daughter do not go to the above mentioned property and if complainant and his daughter come to the above mentioned property, they attack them and could cause physical harm. Therefore, it is respectfully prayed before you that legal action may kindly be taken by lodging FIR for the respective offences against above mentioned accused for interfering in the shares/plots of complainant and his daughter, for threatening the complainant to face dire consequences, if the applicant tries to restrain them from interfering into the said land, he should be ready to face dire consequences and for demanding half of the share/plot in lieu of not interfering in the share/plots of the complainant and his daughter and further, said accused persons are demanding half share in said property in lieu of not committing criminal

*trespass and for demanding extortion. Thanking you.
Dated 18.07.2024. Place: Hisar. Complainant Sd/-
Satbir Singh Saharan son of Amar Singh Saharan,
resident of House No.1295, Sector 16/17, Hisar, Tehsil
and District Hisar”.*

3. Learned senior counsel vehemently submits that the petitioner was working on the post of the Deputy Superintendent of Police having record of exemplary service. Even in the past, he was never involved in any criminal activity and has clean antecedents. Even in the FIR, allegations were mainly levelled against Raj Kumar @ Raja Gurjar, Mukesh Gurjar, Ramavtar and Surjit, who had allegedly grabbed the plots of the complainant and his daughter and had forged several papers/assessment papers pertaining to the said plots. Even, a vague reference was made in the FIR that the accused had the nexus with the senior police officers and other officials of Municipal Corporation, Hisar. Learned senior counsel further submits that the petitioner was neither named in the FIR nor there was any averments in the FIR, which even remotely connected the petitioner with the commission of the crime. As per him, during the course of investigation, the statement of Surjit, co-accused was recorded in police custody and only on the basis of the statement made by co-accused, the petitioner was wrongly arrayed as accused in the present case. Further, the involvement of the petitioner in the crime was inferred from the fact that there was exchange of phone calls between the petitioner and Surjit, co-accused in the year 2023-2024.

In fact, the petitioner was admittedly in touch with Surjit co-accused, it was only with regard to the purchase of 02 acres of land, which was registered in favour of wife of the petitioner and Surjit, co-accused from the property dealer in the said deal. Apart from the said transaction, the petitioner had no financial or any other dealings with Surjit, co-accused. Learned senior counsel further contends that the petitioner is in custody since 15th of August, 2024 and all the documentary evidence in the present has already been collected by the police. Learned senior counsel has also referred to the orders (Annexure P-2 to P-5) passed by this Court in CRM M-38864-2024 titled as ***“Raj Kumar @ Raja Gurjar Vs. State of Haryana”***, CRM-M-41553-2024 titled as ***“Jai Singh Vs. State of Haryana”***, CRM-M-42226-2024 titled as ***“Sanjeev Kumar Vs. State of Haryana”*** and CRM M-42894-2024 titled as ***“Mukesh Kumar Vs. State of Haryana and another”***, whereby, co-accused Raj Kumar @ Raja Gurjar, Jai Singh, Sanjeev Kumar and Mukesh Kumar have already been granted the concession of anticipatory bail by this Court. Learned counsel for the petitioner further submits that the case of the petitioner was on better footings than the said accused and he deserves to be enlarged on bail in the instant case.

4. On the other hand, learned State counsel has vehemently argued that the petitioner is posted as DSP with Haryana Police and had threatened the original owners and was involved with the land

Mafia. Even, the SIT had got the call detail records as well as location details of the mobile phone of the petitioner, which clearly shows that he was in constant touch with Surjit, co-accused. Apart from that, the petitioner is in a position to not only influence the investigation, which is at initial stage, but may also intimidate the witnesses including the complainant. Even keeping view the seriousness of the allegations, the petition is liable to be dismissed by this Court.

5. I have heard the learned counsel for the parties and perused the record carefully.

6. It has been held by the Hon'ble Supreme Court in the matter of ***Sanjay Chandra Vs. CBI, 2012(1) SCC 40: 2012 AIR (SC) Crl.) 47*** as follows:-

“14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody

pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

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*16. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of **State of Rajasthan v. Balchand, (1977)4 SCC 308**, this Court opined :*

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner

who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative. 3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

7. In fact, the jurisdiction to grant the bail has to be exercised on the basis of the well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, nature of evidence in support thereof, the severity of punishment, if the conviction will entail, character, behaviour, means

and standing 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 interest of the public or the State and similar other considerations viewed from all the above referred perspectives. It is apparent that the present petitioner is working on the post of Deputy Superintendent of Police. He was not initially named in the FIR and the allegations were levelled against certain persons, namely, Raj Kumar @ Raja Gurjar, Jai Singh, Surjit, Mukesh Kumar etc., out of them Raj Kumar @ Raja Gurjar, Mukesh Kumar and Sanjeev Kumar etc., have already been granted the concession of *interim* bail by this Court. Still further, at this stage, the involvement of the petitioner was initially found on the basis of a disclosure statement made by Surjit, co-accused and the exchange of call details between Surjit and the present petitioner is yet to be proved by the prosecution before the trial Court by leading evidence before the Court. At this stage, the prosecution has not been able to place on record any material, which may indicate that the petitioner is in a position to influence the witnesses or flee from the process of justice. Moreover, the documentary evidence in the present case has already been collected by the Investigating Agency and the petitioner is in custody since 15.08.2024.

8. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

04.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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