

CRM-M-54700-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54700-2023
Reserved on: 12.01.2024
Pronounced on: 23.01.2024

Vijay Pal Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Anurag Arora, Advocate for the petitioner.

Ms. Shubhra Singh, Addl. AG, Haryana.

Mr. Narender Pal Bhardwaj, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
505	22.09.2023	Ambala Cantt, District Ambala	384, 420, 120-B IPC and Section 7 & 13(1) of Prevention of Corruption Act 1988

1. Apprehending arrest in the FIR captioned above, petitioner had come up before this Court seeking anticipatory bail by filing the present petition under Section 438 CrPC.
2. Vide order dated 02.11.2023, this Court had granted interim bail which is continuing till date.
3. Facts of the case are being extracted from para 4 of the reply dated 29.11.2023, which reads as under: -

“4. That complainant Amit Saxena moved a complaint against present petitioner, Neeraj Sharma s/o L.C Sharma resident of House no. 4314/3 Ansari Road Dariyaganj Central Delhi and Yagaydutt Sharma s/o Rajinder Parsad resident of House no. 1450 Sector 3 Hudda Complex Ballabhgarh District Faridabad and enquiry was conducted by the Economic Cell, Ambala District Ambala and on the recommendation of Economic Cell FIR was registered under section 384,420,120-B IPC P.S Ambala Cantt. District Ambala. After registration of the FIR investigation was carried out by the police of P.S Ambala Cantt. During the course of investigation of the case after perusing the documents produced by the complainant i.e Bills of goods sent by the complainant at NCERT, getting the inspection done on time, getting the rate contract renewed of firm etc. and on the allegation of receiving gifts again & again and cash received by the co accused Neeraj

from the complainant, On 24-09-2023 Section 7, 13 (1) (d) of the Prevention of Corruption Act was added and SIT was constituted as per the order of Superintendent of Police Ambala.

4. This Court also deems it appropriate to reproduce the FIR, which reads as under: -

"Superintendent of Police, Ambala City Subject: Application against Dr. V.P. Singh, HOD. Divisional office - Kits (Dek) NCERT. (Office Address: National Council of Educational Research and Training, Sri Arvind Marg, New Delhi-110016) Phone: 01126592271 Mobile: 9818102115, Neeraj Sharma Former Forman Dek Yagdutt Sharma Ex. Section Officer (Dek). Regarding negligence in government service, and threatening and intimidating the applicant to extract bribes and non-compliance with unlawful demands, causing mental, physical, and financial harm to the applicant. Sir, it is requested that

1. The applicant, Amit Saxena, son of Mr. Harish Chandra Saxena, is the proprietor of M/S Inter Labs H.S.A. (H.U.F.) in Ambala Cantt. He has been doing business of scientific instruments, math and science kits for many years and has been supplying these items to educational institutions throughout India, both government and non-government.

2. In the year 2021, NCERT (National Council of Educational Research and Training) had issued an E- Tender for supplying science and educational kits to educational institutions in all states of India. The applicant was selected as a successful bidder and in accordance with the terms of the said tender, an agreement was made with NCERT for one year on 15.12.2021, which could be extended for two more years.

3. It was binding on the applicant and NCERT to adhere to all the terms of the tender as per the conditions of the amendment dated 15.12.2021.

4. Sometime after the aforementioned contract was executed, NCERT issued an order to the applicant to prepare certain items under the Division of Education Kits (Dek). The applicant complied with the order and, following an inspection, dispatched the items to educational institutions located in India as per NCERT's directives. After the supply of these items, the applicant submitted the bill, satisfaction certificate, and all requisite documents to NCERT's Head of Department (HOD) for the Division of Education Kit (Dek), expecting payment within 30 days as per the tender terms. However, the senior officer, Dr. V.P., did not forward these to NCERT's Accounts Department in a timely manner and continued to delay the payment for the goods supplied by the applicant under various pretexts.

5. Furthermore, Dr. V.P. Singh, through his associate Neeraj Sharma, who was the foreman at that time, demanded a 1% bribe as a precondition for processing the bills for payment. When the applicant did not comply with this illicit demand, the payment for his bills was unjustifiably delayed for 3-4 months.

6. It was stipulated that after the completion of one year of the aforementioned agreement, the applicant's contract was to be renewed for the next 1 year on 14.12.2022. However, Dr. V.P. Singh and his associates demanded money from the applicant as a condition for renewal. In this context, Neeraj Sharma had invited the applicant to meet at Kingfisher Ambala in 2021, but the applicant declined to go there on December 25, leading Dr. V.P.

Singh and his associates to deliberately avoid renewing the agreement on time, thus tarnishing the market reputation of both the applicant and their firm. Ultimately, when the applicant reached out to higher authorities for the renewal of their aforementioned agreement, it was renewed by Dr. V.P. Singh and others in February 2022 for one year, i.e., from 24.12.2022 to 14.12.2023. Dr. V.P. Singh and his associates intentionally delayed the process when the applicant did not meet their illegitimate demands.

7. Various state governments in India had issued orders to NCERT for supplying educational kits to educational institutions within their states. The Gujarat government issued an order regarding the supply of educational kits on 21.06.2022, Himachal Pradesh government on 15.11.2022, Uttar Pradesh government on 12.12.2022, and Bihar and Haryana governments issued separate orders on 03.03.2023. The purpose of these orders was for NCERT to prepare educational kits through its empanelled contractors and deliver them on time to educational institutions in these states to aid in children's education. Despite receiving separate orders from the aforementioned governments, the senior official of NCERT's DEK department, Dr. V.P. Singh, and other employees deliberately delayed giving these orders to NCERT's empanelled contractors. In lieu of providing the said orders, Dr. V.P. Singh solicited a bribe from the petitioner through his associate Neeraj Sharma, who was the then foreman. However, the petitioner did not fulfil the bribe demand, leading Dr. V.P. Singh to intentionally delay issuing the order to the petitioner, who only received it much later along with other firms.

8. The petitioner prepared the goods as per the orders given by NCERT, which were meant for educational institutions across several states, and wrote to the DEK department of NCERT several times about getting the goods inspected.

9. Despite written requests from the petitioner to inspect the prepared goods, Dr. V.P. Singh and others did not form an inspection team. When the petitioner repeatedly requested for an inspection, Mr. Yagdatt Sharma, the Ex-Section Officer, told him that Dr. V.P. Singh was quite upset with the petitioner for not adhering to his demands and for failing to please the senior officials of the department. If the petitioner wanted timely payment for his goods after inspection, he would have to accede to Dr. V.P. Singh's demands. However, the petitioner refused to meet these unjust demands, leading the senior officials to intentionally delay the inspection. Finally, the inspection of the petitioner's goods was conducted on May 16, 2023, and within the next 2-3 days, and the inspection team was satisfied with the productivity and quality of the goods, sending their report to the DEK department accordingly.

10. It states that on June 5, 2023, the applicant was informed via a letter from the Under Secretary. CIET/NCERT, to appear as a witness in a departmental Inquiry against Pankaj Clark on June 9, 2023, at 11:00 AM. Upon attending. Madame Usha, the Under Secretary, showed a video. After watching it, the applicant learned that Pankaj Clark had demanded bribes during a meeting with science industry traders at Kingfisher Ambala on December 25, 2021. The applicant informed the aforementioned authority that he was invited to this meeting by Neeraj Sharma but did not

attend due to principles. Therefore, the applicant does not have further information about the meeting.

11. It is also stated that after the inspection of the applicant's finished goods, the NCERT was supposed to send a supply list of those goods to various educational institutions to the applicant. However, senior officials like Dr. V.P. Singh deliberately did not send the supply list to the applicant. Instead, they demanded a 1% cash bribe of the order value. When the applicant did not comply with Dr. V.P. Singh's unethical demands, he intentionally delayed sending the list of 2 out of the ne 7 orders to Uttar Pradesh on June 9, 2023, and Bihar on July 12, 2023, while not sending the list for other states.

12. It is further stated that Dr. V.P. Singh, the HOD, is deliberately delaying the sending of the aforementioned order, its inspection. and delivery list because he wishesto receive a 1% bribe of the order value from the applicant.

13. The complainant stated that when the delivery list of the above-mentioned orders was not received on time, they met with Dr. V.P. Singh and other officials. During this meeting, the officials told the complainant that the delay was deliberate on their part. They suggested that if the complainant wanted to expedite the work, they would have to "please" them and the other departmental employees, and would have to give 1% of the order value as a bribe. If this was not done, the complainant was informed that the delivery list would not be provided on time. Dr. V.P. Singh and his colleagues demanded bribes and illegal payments from the complainant for placing the order, arranging for its inspection, releasing the delivery supply list, and making the payment for the supplied goods. They also threatened harm if their illegal demands were not met, stating that if the complainant wished to continue working with the department, they would have to meetall their legitimate and illegitimate demands. They further stated that if the complainant did not comply, they would not approve the prepared goods and would delay the supply list long enough to force the complainant to meet their demands.

14. The petitioner is a law-abiding individual who has been conducting

business with the aforementioned firm for his livelihood. However. senior officials of the department, Dr. V.P. Singh (Retired), Neeraj Sharma, and Yagyadutt Sharma (Ex. S.O.). demanded 1% of the order amount from the petitioner. This amount was solicited for their personal financial gain, and their unethical actions, including Dr.V.P. Singh and other guilty parties, led to the petitioner not being informed about the order on time and a delay in the inspection of the goods prepared by him. Now, they are deliberately not providing the delivery list to the petitioner to coerce him into giving in to their illegitimate and forced demands of 1% of the order amount as a bribe. All these acts have been deliberately delayed by the guilty parties, showing negligence and inefficiency in their government jobs, causing significant loss to the government. The educational kits that were supposed to be delivered on time for children's education have been delayed with the intent of personal gain, which is a punishable offense and is not excusable. Dr. V.P. Singh, HOD, and others have done all these actions to pressure the petitioner into paying the 1% amount as

bribery and extortion. Because the petitioner did not meet their unethical demands, the list of items has been deliberately not sent to him on time, even though these officials know that the petitioner has prepared all these goods with loans from banks. Any delay in delivering the goods will consequently delay the petitioner in supplying them. The petitioner is a common man and is doing this business for his livelihood. He has no other source of income, and due to Dr. V.P. Singh not providing the delivery orders on time, the prepared goods have been lying in the petitioner's warehouse for a long time, accruing interest on its cost day by day. Dr. V.P. Singh, who is a senior official of DEKNCERT, has the duty to timely supply science and educational kits to various schools in India to ensure that children's education is not hindered. However, Dr. V.P. Singh, with the intention of serving his own interests and for personal gain, and due to his demands not being met, has intentionally delayed the list of supplies. He has tampered with the future of the applicants, the general public, and children while being a Public Servant, which is a serious offense.

15. It is already under investigation by the Vigilance Department against Neeraj Sharma and Yagdatt Sharma. Therefore, we request that, taking cognizance of the applicant's request, a case be registered against V.P. Singh, Head Department, Divisional office Kits (Dek) NCERT, and others under the Indian Penal Code and the Prevention of Corruption Act, and legal action be taken so that no one like Dr. V.P. Singh can ever tamper with the future of India's children. Therefore, we request that justice be provided to us. We shall be forever grateful."

5. Mr. R.S. Rai, Sr. Advocate argued that State of Haryana has no jurisdiction of the matter because there was no occasion for co-accused Neeraj Sharma to make phone call by moving from Delhi to Ambala and simply for the purpose to confer jurisdiction, a false call has been made and he has been shown in Ambala. State counsel opposes such arguments by stating that they have evidence to substantiate that Neeraj had travelled to Ambala on 25.12.2021 and that he had made phone call to the complainant and other book sellers. In addition to that he had organized meeting of 16 firms and had conveyed the demand made by the present petitioner for one percent of the contract amount from them. He further submits that the story put by the complainant Amit Saxena is truthful and is well corroborated. He further submits that the bills were delayed because of the non-payment of taxes [GST] by the complainant's company, and no officials of NCERT delayed the same. The petitioner further submits that he has a clean record, has worked honestly and sincerely, and is now being falsely roped in this case.

6. State counsel vehemently opposes the bail and submits that a big scam is occurring in NCERT. He submits that NCERT officials take 1% commission of the contract amount from booksellers as bribe. The petitioner-Vijay Pal Singh in connivance with other officials deputed Neeraj Sharma to demand bribe on his behalf. His modus

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operandi was that he would personally not give and take money from the booksellers, but had kept Neeraj Sharma, a foreman, for this purpose and would give a share to him for this job. Based on the investigation, the State counsel submits that despite being working on a Class IV post, Neeraj Sharma, who was deputed by the petitioner, had called a meeting of 16 firms who were well established and the purpose of that meeting was to take one percent commission of the contract amount, in which, the Neeraj Sharma had a share and the majority of the share had to be given to Vijay Pal Singh (present petitioner) and other accused Yagdudd Sharma. State counsel submits that they have collected call details and the location of Neeraj Sharma was found to be at Ambala, and he had no business traveling all the way from Delhi to Ambala. These travel to Ambala and making of phone calls of Neeraj Sharma to complainant and firms are directly connected to the recovery of extortion money by delaying their bills.

7. Counsel for the complainant submits that some officials of NCERT are running a den of massive corruption, and they did not release the payments unless they received one percent of the contract amount as a commission. He further submits that a massive amount was taken by these corrupt government officials, including Neeraj Sharma, who was working as a tout of Vijay Pal Singh (present petitioner) and Yagdudd Sharma. The complainant further submits that until the said 16 firms did not pay bribes, they would not clear the bills, which increases bank installment interest and the expenditure in storing the books and other materials, which has limited shelf life. He submits that during such storage, books and copies get damaged because of the dampness, and new products also make them out dated because of the new stock, causing them unbearable financial losses. The main accused, Vijay Pal Singh and Yagdudd Sharma took advantage of other book sellers' precarious and vulnerable conditions and would only clear their files if they paid one percent commission of the contract amount as a bribe. The complainant's counsel submits that if the petitioner is granted bail, it would further boost the morale of these thugs, and the booksellers would run out of business. In addition, it would be like increasing corruption, which is already rampant and widespread.

8. I have heard counsel for the parties and gone through the pleadings and its analysis leads to the following outcome.

9. Pursuant to the order passed by this Court, the concerned Deputy Superintendent of Police, had filed reply dated 12.12.2023 and relevant paras 5 & 6 of the said reply are extracted as follows:-

"5. That the complainant has levelled allegations regarding the demand of illegal gratification/bribe from the complainant by the petitioner and co-accused in conspiracy with each other. It is pertinent to mention here that complainant is doing the business

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in the name & style of M/S Interlabs HAS, having its registered office at 6262/9-6262/26, Cross Road 9, Idgah Road, Ambala Cantt. District Ambala. After getting of the contract from NCERT the complainant supplied/delivered the goods as per agreement and goods were dispatched from Ambala.

6. That it is worth to mention that inspection was also done by the representatives/team of NCERT at the office of complainant which is situated at Ambala District Ambala, Haryana and at the time of inspection also illegal gratification/bribe was demanded from complainant at Ambala. It is also worth to mention here that co-accused Neeraj Sharma came at Ambala on 25-12-2021 and petitioner made a telephonic call to the complainant from Ambala and demanded illegal gratification/bribe. It is further submitted that co-accused Neeraj Sharma in conspiracy with petitioner Vijay Pal Singh and co-accused Yagaydutt Sharma demanded illegal gratification from complainant in the shapes of gifts from complainant which the complainant arranged from Ambala.

10 The investigator has collected evidence that Neeraj Sharma visited Ambala on 25.12.2021 and made a phone call to the complainant. After that he demanded a bribe of Rs. five lacs. The investigator had got prima facie evidence that Neeraj Sharma demanded Rs.5 lacs from the complainant in the form of gratification/bribe. The perusal of the FIR which is annexed with the present petition, clearly mentions demand of bribe and the plight of the complainant. The complainant, Amit Saxena, explicitly stated that despite his bid being selected as the most competitive and lowest tender and all the terms of the financial bid also being appropriate, NCERT had entered into an agreement with him, which could have been extended for a further two years. He explicitly stated that the officials of NCERT had sent Neeraj Sharma, who was although working as a foreman but actually operating as petitioner's tout, to pay them money, which was one percent of the contract amount. Petitioner and his accomplice intentionally delayed the payment's release by 3-4 months when he did not pay the bribe money. The complainant further stated that they supply books but accused put all types of pressures for bribe. The complainant has explicitly stated the demand of payment of bribe was made on 25.12.2021 by the officials of NCERT through the petitioner. The investigator has collected evidence that corroborates the presence of Neeraj at Ambala and has also collected evidence that corroborates the delay in payment. Regarding delay because the non-payment of GST is an afterthought by the petitioner-Vijay Pal Singh, it does not eclipse the specific allegations of demand made by Neeraj Sharma, which have been found truthful in the investigation.

11. Given above, it is not a case for anticipatory bail. In addition to that, the petitioner's custodial interrogation is required to find out the involvement of other officials of NCERT and to unearth the scam of corruption going on in NCERT, where these officials take money even from the book supplier for supply of books to young school-going children.

12. 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.

13. In *State of Gujarat v. Mohanlal Jitmalji 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....."

14. 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.

15. In InJai 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].

16. 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.

17. 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.

18. 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 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.

19. 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.

20. 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.

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

(ANOOP CHITKARA)
JUDGE

23.01.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.