

CRM-M-57378-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57378-2023
Reserved on: 13.02.2024
Pronounced on: 26.02.2024

Yashpal Gopal @ Minta ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Manav Prateek Sharma, Advocate for the petitioner.
Mr. Gurpartap S. Bhullar, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
133	10.07.2023	Samrala, Police District Khanna, District Ludhiana	7(a) of Prevention of Corruption Act 1988

1. The petitioner, who was a Reader to the Additional Deputy Commissioner, Khanna-Samrala and had retired in the year 2019, apprehending arrest in the FIR captioned above for allegedly demanding Rs. 5 lacs and receiving Rs.3,50,000/- in three installments from complainant for entering a mutation, had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 17.11.2023, the petitioner was granted interim protection by Coordinate Bench of this Court, which is continuing till date.
3. Prosecution’s case is being taken from preliminary submission of the reply dated 29.01.2024, which reads as under:-
- “1. The complainant Gurjit Singh had moved an application dated 23.11.2022 with the DSP-Samrala levelling allegations that Mutation case of his land was pending in the Court of Additional Deputy Commissioner, Khanna-Samrala where the present petitioner was then posted as Reader. However, the petitioner told the complainant that no justice will be imparted to the complainant here and that, if the complainant wants to get his work done, then the complainant should tell to the petitioner and that the petitioner will get done the work of the complainant by talking to the Additional Deputy Commissioner.
- It was further alleged that by alluring the complainant, the petitioner demanded Rs.5.00 Lac for getting sanctioned mutation of the complainant's land in his name. The deal was finalised at Rs.3.50 Lac and

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the complainant paid Rs.1.50 Lac to the petitioner on 07.05.2018, then Rs.1.00 Lac on 28.05.2018 and Rs.1.00 Lac on 10.06.2018 (total Rs.3.50 Lac) in the presence of one Rinku Thapar and the petitioner assured to get done the work soon. It was further alleged that thereafter the complainant used to ask the petitioner about his work but on every date of hearing, the petitioner used to say that on the next date of hearing, the petitioner will get favourable order from the Additional Deputy Commissioner but nothing such happened. Thereafter, the complainant demanded money from the complainant on which initially the petitioner dally dallied the matter and finally refused to return the said money and threatened the complainant.

2. That preliminary enquiry on the above noted Application of the complainant was conducted by the DSP-Samrala during which both the parties including witness Ram Gopal were joined in the enquiry and their statements were recorded and the bank record of the complainant was perused and ultimately the allegations of the complainant were duly established. It was revealed that mutation case of the land of the complainant was going on in the court of Ld. Additional Deputy Commissioner, Khanna and at that time, the present petitioner was posted as Reader to the said Officer and the petitioner demanded Rs.5.00 Lac from the complainant for getting favourable decision of the complainant's case from the said ADC.

However, the deal was finalised at Rs.3.50 Lac and the said money of Rs.3.50 Lac was given to the petitioner at his house on three different dates by the complainant by withdrawing the money from his bank account in the presence of one Ram Gopal. Thereafter, the petitioner neither got done the work of the complainant, nor returned the money and on 30.09.2019, the petitioner retired from the said service.

Thus, during the enquiry, DSP, Samrala found that commission of offence u/s 7 of Prevention of Corruption Act is made out and in this regard opinion of D.A. (Legal) should be obtained. Thereafter SSP, Khanna obtained legal opinion on which District Attorney (Legal) opined that commission of offence punishable u/s 7(a) of Prevention of Corruption Act is made out. Accordingly, FIR No.133 dated 10.07.2023, u/s 7(a) of Prevention of Corruption Act, P.S. Samrala, Police District Khanna (Annexure P-1) was registered against the petitioner."

4. Counsel further prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. The state's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary.

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6. I have heard counsel for the parties and gone through the pleadings and its analysis would lead to the following outcome.

REASONING:

7. Applicant has put dates of demand prior to 26.07.2018 when amendment to Section 8 of P.C Act came into force. However the most important question which still remains is that the silence of the complainant till he filed a complaint on 23.11.2022, the complainant did not offer any explanation that for what reasons he did not lodge the complaint against the petitioner immediately when his work was not done and waited till November 2022. Petitioner's stand is that after retirement, he has become social worker and has associated with BJP, which is a party in opposition, as such, FIR has been registered as a witch-hunt, which probably cannot be ruled out at this stage. Thus, in the entirety of facts and circumstances, it is not a case for pre-trial incarceration or custodial interrogation.

8. The petitioner was granted interim protection, and in the interregnum, there is no allegation that he had intimidated the victim or victim's family or the witnesses or that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection, and the same is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

9. *The petitioner is directed to join the investigation as and when called by the Investigator.* The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

10. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

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11. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

12. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not improve.**

13. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

14. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

15. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

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

17. *There would be no need for a certified copy of this order 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. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

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Petition is allowed in aforesaid terms and interim order dated 17.11.2023 is made absolute. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

26.02.2024
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Whether speaking/reasoned:	Yes
Whether reportable:	No.