

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59344-2022 (O&M)
Reserved on: 10.01.2024
Pronounced on: 22.01.2024

Satish Kumar
... Petitioner(s)
Versus
State of Haryana
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Kunal Dawar, Advocate
for the petitioner(s).

Mr. R.K. Singla, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
21	5.9.2023	Anti Corruption Bureau, Faridabad	120-B, 166, 167, 201, 218, 406, 409, 420 IPC and Sections 7, 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988.

1. The petitioner, who was posted as Accounts Officer, Municipal Corporation, Faridabad, apprehending arrest in approving bills on which Contractor Satbir in connivance with other officials got money, based on which Satbir got undue benefits, had come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition.
2. Vide order dated 1.12.2023, this Court had stayed petitioner’s arrest which is continuing till date and vide order dated 19.12.2023, the petitioner was ordered to declare his assets along with his spouse. On 4.1.2024, petitioner’s counsel submits that they had voluntarily complied with the order dated 19.12.2023 and declared all their assets.
3. Facts of the case are extracted from reply dated 5.12.2023 filed by the State by way of affidavit of the concerned DySP, which read as under:-
- “2. The allegations in brief as contained in the FIR are that the accused persons named in the FIR including the petitioner by committing the offence of Criminal Misconduct and other offences under the Indian Penal Code as indicated in para 1 above, awarded a tender to contractor Satbir Singh for installation of 590 iron grills in the divider road from

crematorium, Ballabgarh to Tigaon chowk bye pass by deliberately splitting the work in parts to keep the tender amount below Rs. 1 crore so as to avoid seeking of approval of the HQ Chandigarh. It is further alleged that such 6 works which were awarded to the contractor Shri Satbir Singh was of the total value of Rs. 27,52,000/- (447000+460000+530000+440000+442000+433000) (details of six works) which were dishonestly and with an ulterior motive of causing wrongful gain to themselves and the contractor were enhanced and revised to Rs. 5,80,47,574/- (9917905+9991325+9311949+9678988+9718103+9429304) without actually getting any work executed and thus cheated and caused wrongful loss to the Govt. exchequer.

3. That it was further revealed that during enquiry conducted by the Executive Engineer, Ballabgarh Zone, Municipal Corporation Faridabad vide his letter no. 86 dated 21.01.2022 had informed this office that as per record of Ballabgarh Zone for the year 2015, one work order no. MCF/EE-IV/2015/424 dated 11.09.2015 was issued for RMC, Divider and Grill on Tigaon road. No other work order has been issued for fixing of iron grill on Crematorium, Ballabgarh to Tigaon Chowk, Bye Pass Road and it has also come in to the notice during the investigation that the works which were decided to be done by way of preparing fake orders, had already been completed earlier vide work order no. 424 dated 11.09.2015, thus the accused in connivance with the other co-accused has committed fraud by getting prepared the fake work orders in 2018 for the work which had already been done earlier in 2015. Copy of the letter/work, order of the Executive Engineer(B), Municipal Corporation Faridabad is attached as **Annexure R-I**.
4. That during the course of investigation, the Executive Engineer, Municipal Corporation, Faridabad, Ballabgarh Zone vide letter bearing no. MCF/E.E-4/2023/554 dated 14.09.2023 has informed the Investigating Officer that as per available record work orders bearing no. 1436,1444,1445,1447,1449 and 1456 dated 27.11.2018 were not found to be issued from their office. **The copy of the said memo is attached as Annexure R-II(COLLY)**. It is pertinent to mention here that it is clear from this version that the Petitioner in connivance with the other accused has prepared fake/forged record to give undue benefit to themselves and cause undue loss to the Government Exchequer.
5. That it was further revealed that the entry of all the 6 bills in MW-14 have been made by Shri Rajendra Kumar Clerk Accounts Branch (now retired) and noting sheet for payment of related bills has been found to be prepared by Shri Naveen Kumar Clerk Accounts Branch, Municipal Corporation, Faridabad. The bills were checked by Mr. Vinod Kumar, Superintendent Budget, Accounts Wing and Mr. Vishal Kaushik OIA (Officer Incharge of Account). It is also revealed during the enquiry that Sh Satish Kumar Accounts Officer had proposed for the release of the payments to the contractor Satbir Singh. It was revealed that the bills were sent to the audit branch, Municipal Corporation, Faridabad for pre-audit by Mr. Vishal Kaushik OIA (Officer In-charge of Accounts). After that pre audit was done by Shri Naveen Kumar Senior Auditor and Shri Hargu Lal Audit Officer, Municipal Corporation, Faridabad. The bills were again sent to Accounts Branch for payment. The Petitioner and other co-accused have misused their official position and power and have given undue financial benefits to themselves and undue loss to the Corporation/Government exchequer.
6. That during the investigation of the case, it has been found that the said work was already done in the year 2015 as per work order dated 11.9.2015 and the payment for the same was made earlier. Now again by

forging and fabricating documents the payment of about 5.80 crores was made in 2019 for the work done and payment made earlier in 2015 and huge loss to MCF/Government was caused. During investigation, it came out that Petitioner/accused Satish Kumar as Accounts Officer signed on noting sheet and voucher for payment in respect of forged work order no.1449 dated 27.11.2018, despite knowing that no such work was executed.”

4. Petitioner’s counsel submits that petitioner was an Accounts Officer and he only had a desk job and had no role in any capacity whatsoever with regard to allotment of any work or inspection or verification thereof. Petitioner’s counsel further submits that it was the job of concerned Engineer to verify the work at the spot and in case there is any defect at the end of contractor, he has to report and petitioner cannot be blamed for such lapses. Petitioner's counsel prays for bail by imposing any more stringent conditions, though petitioner along with his spouse have already declared their assets, and are 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. He further submits that petitioner being a responsible officer was supposed to know that work has been done or not. He further submits that it has been revealed during enquiry that the petitioner had proposed the release of payments to the contractor Satbir Singh.

6. It remains undisputed that audit was done by one Shri Naveen Kumar and Hargulal-Audit Officer Municipal Corporation, Faridabad. It also remains undisputed that initially the entries in the bills were made by Accounts Branch. Subsequently, bills were checked by Vinod Kumar, Superintendent, Budget, Accounts Wing and Mr. Vishal Kaushik, Officer Incharge of the Account. After that, petitioner Satish Kumar, Accounts Officer had proposed for the release of payments to the contractor Satbir Singh. Subsequently, bills were sent to the Audit Branch, Municipal Corporation, Faridabad, for pre-audit, where the Audit Officer and along with one Naveen Kumar, Senior Auditor, conducted audit. Once they had done the audit, it was sent to Joint Director, Audit, who had also approved the same.

7. Given above, petitioner’s case is on different footing from the contractor and the engineers who were supposed to verify the work at the spot. There is no allegation that there was any tampering or cutting in the bills or excess amount was released.

Consequently, it is not a case of any custodial interrogation and pre-trial incarceration is not required, as such, the petitioner is entitled to bail.

8. I have heard counsel for the petitioner as well as the State and gone through the record.

9. The petitioner was granted interim protection on 1.12.2023, and during the interregnum, there is no allegation 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.

10. Given the penal provisions coupled with the *prima facie* analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for pre-trial incarceration at this stage.

11. In *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, Supreme Court holds,

[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

12. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

13. 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, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

14. In *Madhu Tanwar v. State of Punjab*, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

15. Given above, provided the petitioner is not required in any other case, he shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the investigator/SHO concerned, and in case of non-availability, to any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

- (c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.
- (d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.
- (e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds, thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. 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.
17. 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.
18. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the

petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled.

19. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

20. 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.

21. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide a sense of

security to the victim. In Mohammed Zubair v. State of NCT of Delhi, **2022:INSC:735 [Para 28]**, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

22. 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.

23. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

24. 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.

25. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

26. *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.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 22, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes