

CRM-M-63180-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63180-2023
Reserved on: 11.01.2024
Pronounced on: 22.01.2024

Dalvinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
1	10.02.2017	Vigilance Bureau, Economic Offence Wing, District Ludhiana, Punjab	409, 420, 467, 468, 471, 120-B IPC and Sections 13(1)(D) read with 13(2) of Prevention of Corruption Act 1988 (Section 201 IPC added later on)

1. The petitioner incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 29 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes the bail.
5. The facts of the case are being extracted from para Nos. 1 to 5 of the reply dated 03.01.2024, which reads as follows:-

CRM-M-63180-2023

"1. That it is pertinent to mention here that the FIR No. 01 dated 10.02.2017. registered Under Section 409, 420, 467, 468, 471, 120-B IPC and Section 13 (1) (d), 13 (2) of the Prevention of Corruption Act 1988, at Police Station Economic Offences Wing, Punjab, Vigilance Bureau Ludhiana, was initially registered after Vigilance enquiry no. 09/2016 Jalandhar. Earlier 13 accused were nominated in this FIR and the role played by other 15 suspects was to be investigated. Thereafter, during the course of investigation a SIT was constituted to investigate the said matter by the then Chief Director Vigilance Bureau Punjab vide its office order dated 25.05.2018. The said SIT investigated the matter and filed cancellation report before the Hon'ble Special Court of Dr. Ajit Atri, Ludhiana on 13.06.2019.

1. That the Hon'ble Special Court of Dr. Ajit Atri, Ludhiana had directed to further investigate the said FIR vide its order dated 05.04.2022. That as per the direction of this Hon'ble court the case was further investigated especially in the light of following 13 points.

a) Whether any permission was sought from the Municipal Committee, Hoshiarpur/ administration prior to publication of notification no.3-A for the development of the colonies or not and what is the exact time of the development of colony if any?

b) Whether the proper procedure for the change in the nature of the land has been followed before issuance of the variation certificates and when the change in the nature of land was applied in each such case and when the necessary procedure was followed in each case of change of the nature of the land? Whether owner of the land moved any written application before the SDM with regard to change in nature of the land or not and whether these application were entered in the diary by assigning the numbers? Apart from this, whether the nature of the land could be changed after publication of the notification no.3-A, 3-D, 3G or not and if it was possible, then what procedure was to be adopted for this purpose? In how many cases the nature of the land is changed after the notification 3A, 3-D and 3G?

c) Whether the land in question has been sold or purchased after publication of notification no.3-A and subsequent notifications in pursuance to some conspiracy by the accused? The number of the sale deeds executed and registered immediately before and after the issuance of the notification/s, the market rate of the area prior to those sale deeds and the market rate of the area after the issuance of the notifications?

d) In how many cases the applications for the change in the nature of the land were received, in how many cases such application were allowed and in how many cases the applications were not allowed? The entire process followed for the change of the nature of the land?

e) To what extent the amount of compensation was increased on change of nature of the land on sale/purchase of land in question after the publication of notification no.3-A?

f) on what basis, the amount of compensation was calculated?

g) To how many persons the compensation was disbursed and at what rate, who purchased land after the publication of notification 3-A?

h) What were the guidelines of the M.O.R.T.H regarding the aspect of sale/purchase of the land during the process of acquisition?

i) What were the responsibilities of the CALA regarding the issue of sale/purchase of the land and whether CALA carried out his responsibilities as outlined in the M.O.R.T.H guidelines?

CRM-M-63180-2023

j) Whether the proper procedure was followed by CALA in determination of the compensation to be paid to the land owners?

k) Whether the change of the nature of land in question influenced the rates of compensation, if yes, then how much loss was caused by this to the State?

l) Whether the CALA determined the rates of compensation bases on nature of the land and market value as on the date of notification issued under section 3-A of the N.H. Act 1956 or not?

m) Whether the criteria followed for deciding the market value of the lands was based on the parameters provided by the law?

2. That, in order to comply with the directions of the Hon'ble court under order dated 05.04.2022, a Special Investigation Team (SIT) was constituted. Thereafter, during the course of further investigation by the said SIT, new facts have been discovered regarding the gravity of offence committed by the accused in the said matter. After perusal of the case documents by the SIT, it has come to notice that Draft 3A schedule was prepared by the survey company Louis Berger group and same was sent to office of XEN PWD Hoshiarpur (Project Director). Thereafter the same draft 3A Schedule was further sent to the office of co-accused Anand Sagar Sharma who was the then SDM-cum- CALA Hoshiarpur by XEN PWD Hoshiarpur vide office letter no. 903 dated 19-01-2015 for verification of khasras. It is pertinent to mention here that the accused Anand Sagar Sharma the then SDM-cum-CALA Hoshiarpur intentionally and with mala fide kept the said Draft 3A schedule pending in his office for about four months and fraudulently changed the khasra numbers of five villages namely Khwaspur/Piplanwala, Dagana Kalan, Dagana Khurd, Hardokhanpur and Bassijana in the 3A schedule. By doing this he illegally created a new road alignment falling in the above mentioned five villages. That, in order to prove this illegal road alignment, the present SIT compared both the draft 3A schedule prepared by Louis burger company and 3A schedule prepared by the accused and then SDM cum CALA Anand Sagar Sharma along with mentioned khasra numbers in both and map showing the road alignments through concerned Revenue officials. (Copy of the comparison report and map attached herewith as annexure-1).

3. That after the creation of new road alignment in the above mentioned five villages the accused Anand Sagar Sharma the then SDM-cum-CALA Hoshiarpur involved his near and close persons namely Harpinder Singh etc. That accused Harpinder Singh started purchasing the agricultural land in villages Khawaspur and Hardokhanpur in is own name and in the name of his family members/relatives/close associates. Thereafter, in connivance and conspiracy with accused Anand sagar sharma, the accused Harpinder Singh and 20 other accused mentioned in this FIR received compensation on colony/residential rates, which is totally unfair and illegal in the eyes of law. It is worth while to mention here that the present SIT while during the course of investigation obtained reports from the concerned departments to verify and investigate the facts as following:

(i) The SIT obtained report dated 04/10/2023 from the office of District town planner Hoshiarpur and as per this report/record no CLU/Lay out/Site plan/NOC were issued by the then office. In fact there is no communication between any of the accused who filed application under

3C and the Office of District town planner with regard to same. It is crystal clear from the report of DTP dated 04/10/2023 that there is no basic facility like street lights/drainage system/water supply etc. available even as on date as per the record. (Copy of the report dated 04/10/2023 is attached as annexure-2),

(ii) That during the course of investigation the report from PSPCL. was also obtained. While in the said report dated 10/10/2023 it is specifically mentioned that none of the recused who filed application under 3C has applied for issuance/installation of the electricity meter nor the same has been issued by the department as per the office record. (The copy of said PSPCL report dated 10/10/2023 is attached as annexure-3)

(iii) That the current/latest report from the revenue department was also obtained by the SIT during the course of investigation and as per the said report dated 21/09/2023 there is no colony/residential area in the said land described by the accused while filing application under 3C. Even the said area is surrounded by agricultural land with crops as well. (The copy of revenue 1-2024 report dated 21/09/2023 is attached as annexure-4).

4. That as per the law laid down in the National Highway Act 1956 under section 3D(2);-

"On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances." But the accused and the then SDM cum CALA Anand sagar sharma, in connivance and conspiracy with other accused and by abusing process of law kept transferring the ownership titles in the changed khasra numbers in 3A schedule by him even after notification under 3D/3G, even when the names of actual owners of the land were already published in the notification under 3D/3G, in order to give compensation to other accused and conspirators in this matter. It is also pertinent to mention here that during the course of investigation the actual owners of the land came forward and got recorded their statements that the accused have cheated and defrauded them and their compensation amount has been grabbed by them, in connivance and conspiracy with each other.

5. Detail of sequentially published notifications regarding the acquisition of land under National Highway 70 (NowNH-3) (Jalandhar-Chintpurani) as following:

Sr. No.	Notifications	Date of publication in newspaper
1	3A	14.07.2015
2	3D	10.11.2015 & 11.11.2015
3	3G	01.12.2015

6. Petitioner seeks bail on the ground of false implication and the fact that the land in question in his ownership has been shown in jamabandi from the year 2012-13. The petitioner’s other grudge is that out of so many accused he was arrested and main accused Anand Sagar Sharma had already been granted anticipatory bail by Coordinate

CRM-M-63180-2023

Bench of this Court vide order dated 09.08.2017 passed in CRM-M-9452-2017. Petitioner's counsel further submits that the State never challenged the anticipatory bail granted to Anand Sagar Sharma which shows that so many police officials and other officials were hand in glove with Anand Sagar and made other efforts to protect him. The petitioner who had hardly any role, was arrested and he is in custody for more than 02 months now.

7. State opposes the bail and refers to the petitioner's role as mentioned in para 6 of the affidavit dated 03.01.2024, which reads as under:-

"Accused/petitioner Davinder utile in connivance and conspiracy with other accused and his closely known Harpinder Singh appeared on behalf of joint land owners and other accused namely Gurbax kaur and accused Baljit kaur at the time of sale deed No. 4439 dated 13/11/2015. It is worthwhile to mention here at the accused Baljit kaur and accused Gurbax Kaur are well known and close to accused Harpinder Singh. The lands were purchased from actual owners after notification 3D/3G, in order to grab the compensation amount. Accordingly, From the facts mentioned here it is crystal clear that the Accused/petitioner with mala fide intention and mensrea cheated and defrauded actual owners who were not aware of the land acquisition proceedings going on."

8. It remains undisputed that Co-ordinate Bench of this Court had granted anticipatory bail to Anand Sagar Sharma, who was principal accused and the State did not take any step to challenge the said bail order. It can also not be disputed that all this scam was handiwork of Anand Sagar Sharma who siphoned the funds through his relatives and laundered the same through his friends. A massive scam had taken place but the concerned government officials buried it under the carpet obviously because of the influence exercised by Anand Sagar Sharma, may be through his post or through his money. Be that as it may, petitioner is entitled to bail not only on the ground that main accused has been granted anticipatory bail but also on the ground that his role was much less to Anand Sagar Sharma.

9. As per paragraph 7 of the reply, the petitioner was arrested on 18-11-2023 and is in custody since then. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. 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

CRM-M-63180-2023

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.

11. 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.

12. 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.

13. 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.

14. Given above, provided the petitioner is not required in any other case, the petitioner 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

CRM-M-63180-2023

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court 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)	
----	--------------------------	--

15. 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.

16. 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, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

17. 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.”

CRM-M-63180-2023

18. 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.

19. 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."

20. 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.

21. 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.

22. 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.

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

24. *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*

CRM-M-63180-2023

download and use the downloaded copy for attesting bonds.

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

(ANOOP CHITKARA)
JUDGE

22.01.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.