

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M-62611-2023
Reserved on: 09.01.2024
Pronounced on: 16.01.2024

Kishori Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jasdev Singh Mehndiratta, Advocate and
Ms. Jyotnoor Kaur Sethi, Advocate
for the petitioner.

Ms. Shubhra Singh, Addl. A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
2162	13.09.2023	Shivaji Nagar, Gurugram, District Gurugram	7, 8, 12, 13 of PC Act and 120-B and 166 IPC

1. The petitioner, who is posted as TI, apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 13.12.2023, this Court had granted interim anticipatory bail to the petitioner which is continuing till date.
3. Facts of the case are being taken from reply dated 16.12.2023 filed by concerned Assistant Commissioner of Police which reads as follows:-

“3. That the facts leading to the registration of FIR are that on 13.09.2023, a secret information was received that in the office of RTA, for getting permit of RC of commercial vehicles, accused Gaurav was taking bribe in collusion with the officials of Gurugram. On this information, a raiding party was constituted, comprising of Sh. Jagdish Chander, Tehsildar, Farrukhnagar who was deputed as Duty Magistrate, Sh. Vipin Kumar, Reader to 31-11-202 Tehsildar, Farrukhnagar who was deputed as Shadow Witness, Insp. Dharambir Singh, Sub-Insp. Suresh Chand, Sub-Insp. Mahavir, ESI Samay Singh, ASI Ashok Kumar & ASI Ashok Kumar from the Chief Minister's Flying Squad, Gurugram, whereby, the three persons namely Gaurav, Saubhan and Suresh sitting in the park along with Mini Secretariat Gurugram were called for questioning. Gaurav, son of Sanjay Kumar made a statement that about 15 days ago TI Kishori (the petitioner herein) told him to take Rs. 1500/-for local and

Rs.2,900/- for vehicles whose address is outside Gurugram from all brokers for redemption of RC. Accused Gaurav collected money per vehicle and gave to TI Kishori (the petitioner herein) for this work. TI Kishori (the petitioner herein) gave him Rs.3,000/- a week. For this work, from 28.08.2023 to 11.09.2023, accused Gaurav had given about Rs.7 lacs to TI Kishori (the petitioner herein) and he had received Rs.7,000/- till now. Till now accused Gaurav had given Rs.7 lacs to TI Kishori (the petitioner herein) and as per the list Rs.36,63,300/- was to be paid to TI after extorting money from the brokers. According to the list given by Kishori, accused Gaurav had collected Rs.40,000/- from brokers which was to be handed over to TI Kishori (the petitioner herein), RTA Department, Gurugram. Since accused Gaurav was called for questioning and he got recovered Rs.40,500/-. Rs. 07 lacs were given in installment to TI Kishori (the petitioner herein). Accused Saubhan used to do the work of making permits in PCL Transport Company. This work was done through Dimpy Dalal, Smt. Neeraj Lady TSI got it done from DTO office, Gurugram. Apart from this, accused Suresh Kumar had mentioned in his resume that he worked for getting permits made at SD Motors. This work was done by Neeraj Mahila TSI, DTO office Gurugram through Dimpy Dalal. During the raid, broker Gaurav got recovered the NOC, RC and permit. A total of 21 related files, apart from this, a total of 21 NOCs issued from DTO office Gurugram and Rs.40,500/- in cash and 10 files of vehicle permits have been recovered from accused Saubhan. Documents recovered during the raid, it had been found that Rs.40,500/- recovered from the above mentioned Gaurav. That TI Kishori (the petitioner herein), Neeraj Mahila TSI DTO posted in RTA Department, Gurugram misusing their position in lieu of doing government job and it had been found that money was received in lieu of making the permit. A total of 21 files related to RC, NOC and permits and apart from this, 21 NOCs issued from Gurugram office dated 28-29-31.08.2023 and dated 1-4-5-6-8-9- 11/09/2023, cash Rs.40,500/- total 10 slips/new Number Collection List (which was given by TI Kishori (the petitioner herein) to accused Gaurav to collect money), and from accused Soubhan, 10 files of permit of vehicle were recovered. Accused persons got recovered 31 permit files, form and statement of the accused persons, NOC, mobile phone and Rs.40,500/-, Accused Sanjeev Mishra got recovered 12 files, new R.C. and the permit and accused Ashish alias Bholu got recovered 6 files of new RC and old RC. Accused Ashish alias Bholu got recovered his disclosure statement that he had given accused Gaurav Rs.91,250/- in bribe in 12 days. He had worked with T.I Sandeep Prasad from the year 2022 to March 2023 and after that worked with TI Rakesh and then worked with Sandeep S.T.I. Accused Ashish gave everyone after collecting bribe from brokers of old and new RC, he gave it along with broker Varun. Accused Amit got demarcated the place where he used to give money to other accused. Sai Auto used to give accused Amit Rs.500/- for new RC and Rs 200 per file for permit. Broker Varun used to collect bribe for new RC from agents for STI Rakesh and accused Gaurav did the same for TI Kishori. Accused Amit used to give Rs.250/- per RC as a bribe for new RC to accused Varun and Gaurav and agent gave Rs. 1450/- per RC to accused Gaurav and Varun. Accused Amit gave Rs. 1 lac per month as a bribe to accused Varun and Gaurav to give STI Rakesh and TI Kishori. The accused Suresh Kumar M.D Motors and Magic Auto Karol Bagh used to do the work of registration of vehicles of Delhi and making permits and NOCs, who through Dimpy Dalal used to give files to woman TSI Neeraj, TI and computer operator Poonam (the petitioner herein), in return for NOT pyhich he used to give Rs. 380/- per file and recovered kept Rs.20/- for himself. In the tases, code no. 013

belongs to Suresh, who used to give Rs.1500/- per vehicle to Suresh and Gaurav for a vehicle in Gurugram and Rs.2900/- per vehicle for a vehicle outside Gurugram and had given Rs.58700/- as bribe to Gaurav. A prayer for taking legal action against accused persons was made. On the basis of the abovementioned facts, the instant FIR was registered and investigations were taken up in the matter."

4. State counsel opposed the bail on the ground that the petitioner is the main accused and he had recruited one conduit to collect money from the brokers. The police has collected prima facie evidence to the extent that Gaurav had given Rs.7 lacs to the petitioner and they have to recover the bribe amount. State counsel submits that the petitioner did not cooperate with the Investigator and no recovery has been effected. State seeks custodial interrogation of the petitioner to find out the role of other government officials.

5. After analyzing the pleadings, response filed by the State and the nature of allegations and the role of the petitioner, who is main accused, custodial interrogation of the petitioner is required. Petitioner was working on a sensitive post and he was supposed to comply with the rule. In return the petitioner exploited his sensitive post and acted like a robber and started extorting money from vulnerable brokers.

6. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

7. 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.

8. In State of Gujarat v. Mohanlal Jitamalji 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....."

9. 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.

10. In Jai 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].

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 order dated 13.12.2023 stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

16.01.2024
Jyoti Sharma

Whether speaking/reasoned:	Yes
Whether reportable:	No.