

CRM-M-63706-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63706-2023
Reserved on: 08.01.2024
Pronounced on: 12.01.2024

ASI Kulwant Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Japjit Singh Johal, Advocate
for the petitioner.

Ms. Swati Batra, DAG, Punjab (Through VC).

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
23	09.09.2023	Vigilance Bureau, Range Jalandhar, District Jalandhar	7 of Prevention of Corruption (Amendment) Act 2018

1. The petitioner, who is an ASI in the State of Punjab Police, apprehending arrest in the FIR captioned above on the allegations of demanding bribe, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 18.12.2023, petitioner was granted interim bail which is continuing till date.
3. Facts of the case are being taken from para No.1 of the reply dated 01.01.2024, filed by the concerned DysP, which reads as under:-

“1. That it is submitted that complainant Bhuvan son of Brijesh resident of Sarup Nagar, Hoshiarpur submitted a complaint No. 152507 dated 11.08.2023 on Anti-Corruption Line against the petitioner ASI Kulwant Singh No. 1099/Hsp. This complaint was sent to the deponent for inquiry through portal. On this, the deponent got conducted the inquiry of the above said complaint from Sub-Inspector Kuldeep Singh Vigilance Bureau Unit, Hoshiarpur. During the inquiry, Sub-Inspector Kuldeep Singh Vigilance Bureau Unit, Hoshiarpur recorded the statement of complainant Bhuvan Singh that one FIR No. 137 dated 18.5.2023 U/s 420,406 IPC was registered at P.S Tanda District Hoshiarpur against him. The petitioner ASI Kulwant Singh came to his house with regard to the said FIR but on that day he had gone to Rajasthan and as such he was not present at his house. Then ASI Kulwant Singh served notice upon his cousin Arun Kumar and he instructed his cousin to ask the complainant to appear at Police

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Post Saran, P.S. Bullowal, District Hoshiarpur within three days and he took his mobile number from his cousin. Thereafter, on 21.05.2023, petitioner ASI Kulwant Singh made a phone call to him on his WhatsApp number and demanded Rs.50,000/- from him and the matter was settled for Rs.20,000/-. After coming from Rajasthan, the complainant talked to petitioner ASI Kulwant Singh on WhatsApp call from his mobile phone on 25.05.2023 and he started demanding Rs.20,000/- as bribe from him and asked him to send this amount today. On this, he told petitioner ASI Kulwant Singh that he cannot pay Rs.20,000/- at one time. Then he asked him to give Rs.10,000/- to him today and to give remaining amount of Rs. 10,000/- next time. On this, he told the petitioner that he is sending Rs.10,000/- through his friend Amit Gupta and the petitioner collect the said amount from him. Then, the petitioner ASI Kulwant Singh asked complainant to give his mobile number to his friend and to talk to him. Then he sent Rs.10,000/- to petitioner ASI Kulwant Singh through his friend Amit Gupta son of Radhey Sham R/o Gali No.6, Parlad Nagar, Hoshiarpur and he also gave mobile number of petitioner ASI Kulwant Singh to his friend. When his friend talked to the petitioner ASI Kulwant Singh on phone, then petitioner asked his friend to give Rs.10,000/- as bribe in sweet shop near Saran Adda. Then Amit Gupta reached on the place disclosed by petitioner ASI Kulwant Singh to him and the petitioner took Rs.10,000/- bribe from his friend. His friend Amit Gupta recorded conversation on his mobile phone between him and petitioner ASI Kulwant Singh regarding receipt of Rs. 10,000/- as bribe by ASI Kulwant Singh.

Afterwards, the complainant filed anticipatory bail in FIR No. 137 dated 18.05.2023 U/s 420,406 IPC at Sessions Courts, Hoshiarpur and the bail application was fixed for 12.07.2023. Before this date of hearing, the petitioner ASI Kulwant Singh made phone call to complainant on 30.06.2023 that today his application of bail is to be heard and he had to give reply in the said bail application and asked him to send remaining amount of Rs.10,000/- to him. Then as per demand of petitioner ASI Kulwant Singh, he sent Rs.10,000/- to him through his friend Sagar R/o Parhlad Nagar, Hoshiarpur and the petitioner ASI Kulwant Singh received said amount of Rs. 10,000/- from his friend at Adda Saran. Thereafter, interim bail was granted to him by the court on 12.07.2023 and he reached police post Saran, P.S. Tanda, Distt. Hoshiarpur on 19.07.2023 and joined investigation in the above said case. His friend Amit Kumar was also with him on that day. After joining him in the investigation, the petitioner ASI Kulwant Singh took Rs.1,000/- more by saying that he is charging Rs.1,000/- of a government fee for recording of his statement right now. After receiving Rs.1,000/- from him, he demanded Rs.15,000/- more from him and asked him that he will give benefit to him in challan which will be presented by him in the court. He came to his house after making an excuse. He called him on his WhatsApp daily but he did not attend his WhatsApp calls. The petitioner was calling complainant time and again on WhatsApp call on 31.07.2023 and asked him that he is sending Rs.15,000/- to him within one or two days and he also asked him that he has already given him Rs.20,000/- and he is giving Rs.15,000/- more. Due to shortage of money, he could not give money to petitioner ASI Kulwant Singh. On 04.08.2023, the petitioner ASI sent his recorded voice message on WhatsApp of complainant that he will not call him after today and he threatened that he will remember that he met somebody. Afterwards above said petitioner ASI was also making phone call to him. But he did not answer the same. **The petitioner ASI Kulwant Singh has**

received Rs.21,000/- as bribe from the complainant after causing harassment to him on one pretext or another and he is demanding Rs.15000/- more from him. Legal action be taken against him. From the inquiry of the above said complaint, it was found that ASI Kulwant Singh being Government employee received Rs.20,000/- as a bribe from complainant Bhuvan by misusing his post and by pressurizing the complainant for not arresting the complainant in the above said case and is demanding Rs.15,000/- more as bribe from the complainant. Sub Inspector Kuldeep Singh-Inquiry officer recommended to take legal action against ASI Kulwant Singh after obtaining legal opinion from DA Legal, Hoshiarpur. Afterwards the deponent sent the inquiry report to Senior Superintendent of Police, Vigilance Range Jalandhar for further action.”

4. The petitioner’s counsel submits that the petitioner was an investigating officer in another case registered against the complainant-Bhuvan and as such the complainant has levelled false allegations to take revenge from the petitioner in the previous case. To this, counsel for the State argued that the present case has nothing to do with the previous case as it was the earlier case, because of which the petitioner had come to know about the complainant and was endeavour in touch. State counsel further submits that because of the previous case, there was neither any doubt about the identity and it further gave an opportunity to the petitioner to demand money from the complainant because the complainant being accused in the earlier case, knew the consequence of criminal case.

5. In para 6 of the bail petition, the petitioner mentioned about the fact of the complainant was an accused in an earlier FIR No.137 dated 18.05.2023 registered under Sections 420 & 406 IPC at Police Station Tanda, District Hoshiarpur. In para 7 of the petition, it has been explicitly stated that the complainant had a motive for levelling false allegations and to file fabricated complaint to pressurize the police officer (petitioner) and to hinder the investigation. It has been further mentioned that “the petitioner had got hold of the cheques issued by the present complainant to various persons, which goes on to show the fraudulent and mischievous intent of the present complainant.” Even if the allegations made in para 7 of the petition and the arguments raised, are accepted true, still it does not create doubt for demand for money, for the reason that there is audio recordings regarding demand and acceptance of bribe. State had handed over the audio recordings in the pen drive, which I have listened on the electronic device of Law Researcher. State counsel had pointed out that in the audio conversation, the person demanding money, is the petitioner-Kulwant Singh, as such there is no dispute about the identity of the person, with whom the conversation have been recorded regarding the bribe money.

6. Counsel for the petitioner could not point out any averment in the bail petition explaining the reasons for making calls to the accused in an earlier case and also about the reason for receiving and talking about the money.

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7. After hearing the audio recording, prima facie inference can safely be drawn that the conversation regarding money is nothing but demand of bribe by the petitioner from the complainant. The investigation is being conducted by the police department which is parent organization of the petitioner and it would be appropriate to refer to para 6 & 7 of the reply dated 01.01.2024, which read as under:-

“6. That it is submitted that on receipt of complaint from complainant Bhuvan on Anti-Corruption Line, the matter was inquired into and petitioner was found to have received Rs.20,000/- as a bribe from the complainant by misusing his Government Authority being Government employee after putting influence of his post upon the complainant for not arresting the complainant in the above said FIR registered against complainant and demanded Rs.15,000/- more as bribe to benefit him while presenting challan. The present FIR was registered against the petitioner after an inquiry conducted by Sub-Inspector Kuldeep Singh Vigilance Bureau Unit Hoshiarpur and after obtaining legal opinion from District Attorney, Legal Hoshiarpur.

7. That it is submitted that there are serious allegations against the petitioner in the present FIR that the petitioner received Rs.20,000/- as bribe from the complainant and was further demanding Rs.15,000/- more for doing favour in case bearing FIR No.137, dated 18.05.2020, U/s 420, 406 IPC registered at P.S. Tanda, Distt. Hoshiarpur against the complainant of the present FIR. When the complainant showed his inability to pay the same, the complainant threatened the complainant of dire consequences. The custodial interrogation of the petitioner is very much required for proper investigation in the present case. Therefore, the present petition is liable to be dismissed”

8. Petitioner's next ground is that even if demand was made in the month of May, whereas the complaint was made in the month of August, as such delay is fatal. Although there is a time gap of three months, but considering the evidence in the shape of audio recording, it is clear that the complainant had talked about money with the petitioner in connection with the investigation, in which complainant was arraigned as accused, thus there was an opportunity for the petitioner to demand money and a compulsion for the complainant not only to pay money but also to ensure that the petitioner does not carry out vindictive investigation against him, as such purpose of delay is not fatal.

9. An analysis of the grounds taken in the reply filed by the concerned DySP and the arguments addressed at the bar and also the audio recording, clearly connect the petitioner with the demand of bribe, as such, he is not entitled to anticipatory bail.

10. Given the nature of allegations, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

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11. 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.

12. 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....."

13. 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.

14. 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 therefore. 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].

15. 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.

16. 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.

17. 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.

18. 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.

19. 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, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

12.01.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.