

242 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24784-2023
Reserved on: 22.11.2023
Pronounced on: 05.12.2023

Dinesh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana
Ms. Shubhra Singh, Addl. A.G., Haryana
Ms. Geeta Sharma, D.A.G., Haryana
Mr. Gurmeet Singh, A.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
15	06.04.2023	Anti Corruption Bureau, Gurugram	409, 418, 420, 466, 467, 468, 471, 477-A, 120-B and 7, 7-A, 8, 13 (1) (B) read with 13(2) of PC Act, 1988 (as amended in 2018)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 6 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 16.05.2023, a Co-ordinate Bench of this Court had granted interim anticipatory bail to the petitioner. The said order is continuing till date.
4. Counsel for the petitioner argued that the allegation of causing loss of Rs.2,27,93,092/- has nothing to do with the petitioner because the petitioner was not the owner of the said property and it was Ravinder Singh who owned the said property. Further the report of the auditor which stated that the Collector rate was Rs.40,56,15,600/- and stamp duty comes to Rs.2,83,93,092/-, also has nothing to do with the petitioner because it had to be paid by the vendee Harish Kumar. He further submits that it was Ravinder Singh and Harish Kumar who in connivance had showed the value of property to be of value of Rs.8 crores and had evaded stamp duty of Rs.2,27,93,092/- and petitioner has no role at all. He further submits that it was

Ravinder Singh and Harish Kumar who had colluded with Tehsildar and the allegations that accused also colluded with ZTO and Joint Commissioner and other officials of Municipal Corporation is incorrect. The next argument of the petitioner is that the petitioner was neither named in FIR nor is involved in change of use of land. Petitioner has been nominated on the basis of disclosure statement of co-accused Vikas. He submits that petitioner was implicated on the basis of an e-mail dated 19.10.2021 which he had sent to DULB and such e-mail had an attachment in excel sheet.

5. On the other hand, State counsel submits on the basis of reply filed in connected petitions CRM-M No.43207 of 2023 and CRM-M No.29882 of 2023 that without the involvement of the petitioner, the scam would not have happened. Further, the scam is not just an evasion of stamp duty but also that value of the property which was Rs.40,56,15,600/- and they showed the value of property as only Rs.8 crores, as such ill-gotten money of Rs.32 crores was utilized by Harish Kumar and received by Ravinder Singh on which they did not pay capital gain tax. Further the source of such black money is also to be verified. State counsel further submits that it is an open and shut case that they have collected sufficient evidence against the petitioner and the petitioner does not deserve anticipatory bail as well as any bail at all during the pendency of the trial. State counsel submits that custodial interrogation is required to unearth the other officials involvement in such a massive scam and the possibility of so many similar scams going on cannot be ruled out. It was the petitioner who was instrumental in changing the property ID from unauthorized to authorized in the excel sheet. Further the nature of the property was changed from industrial to mix use and even the mobile number of the owner was changed.

6. I have heard counsel for the parties.

7. An analysis of the above arguments and contentions would lead to following outcome. The petitioner was posted as ZTO (Headquarters). State's case is that co-accused Chiranjiv Sharma, who was working as an agent in the sale of land contacted the petitioner for illegal changes in the property ID. Petitioner had taken a bribe of Rs.2 lacs from co-accused to alter the data of property in question. Thereafter, petitioner in connivance with co-accused Samar Kapoor changed the property ID from Industrial to mixed use.

8. Thus, there is sufficient evidence that the petitioner in connivance with other accused not only changed the category of property from industrial to mixed but also forged the documents and edited e-mail to do so. There is evidence of involvement of other officers of Municipal Corporation, Gurugram and other authorities who knew about such change and appear to be in conspiracy with him. Thus, by changing the category of the land from industrial to mix use, the petitioner not only played his role in the conspiracy which was hatched by the seller and purchaser to use the actual circle

rate of the property from Rs.40,56,15,600/- to Rs.8 crores and which in turn reduced the stamp duty applicable @ 7% from Rs.2,83,93,092/- to Rs.56 lacs. In addition to causing loss of around Rs.2,27,93,092/- to the exchequer, such conspiracy had also caused a further loss to Income Tax Department by evading the capital gain tax to the seller and also to the purchaser who utilize his undeclared ill gotten money in the said purchase. The investigation is required to be carried out even on his part and concerned Investigator is directed to sent a copy of this order also to Income Tax Department for necessary action at their end. Thus, analysis of the entire scam and petitioner's role does not entitle him to any bail.

9. 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.

10. 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.

11. In *State of Gujarat v. Mohanlal Jitmalji 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....."

12. 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 ensconded 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 insulted 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.

13. 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 enroped 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].

14. 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.

15. 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.

16. 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.

17. 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. Petitioner’s custodial interrogation is required to unearth the complete scams and also to recover the alleged bribe amount.

18. 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 16.05.2023 stand vacated. All pending applications, if any, also stand disposed. Investigator is directed to comply with the direction given in para no.8 of this order within 10 days.

(ANOOP CHITKARA)
JUDGE

05.12.2023
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: **YES.**