

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.20607 of 2023(O&M)
Date of Decision-22.05.2023**

Amit Rattan ... Petitioner
Versus
State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. S.S. Aulakh, Advocate and
Mr. Anurag Arora, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl., A.G, Punjab.

RAJ MOHAN SINGH, J.

[1]. The petitioner seeks grant of regular bail in case bearing FIR No.01 dated 16.02.2023 registered under Sections 7, 7(a) of the Prevention of Corruption Act, 1988 (as amended by P.C. (Amended) Act, 2018) and under Section 120-B IPC at Police Station Vigilance Bureau, Bathinda, District Bathinda.

[2]. The FIR in question has been registered on the statement of Pritpal Kumar, who has alleged that his wife is Sarpanch of the village Ghudda since 2019. His wife has got different development works done in the village. In these development works, the Panchayat has purchased goods from different firms, but payment has not been released for the material

used in the development works. The complainant and his wife have met the BDPO Sangat and employees of concerned departments on many occasions, but payments have not been released to the concerned firms. Due to aforesaid in-action, new work could not be started for want of payments to the firms as no firm is ready to give any material to the Panchayat on credit basis. The complainant and his wife met the petitioner for getting the payments made to the firms, so that new development work could be started. The petitioner was made aware about the pending payments and pending development works in the village. The Panchayat has money in its account for making these payments, but the BDPO Sangat is not issuing the cheques for these payments intentionally as the wife of the petitioner has not given any bribe to the aforesaid officer. The complainant further submitted that the officials of the department are harassing the petitioner and his wife. Other works could not be started as the officials have not assigned any duty for making the assessment. The petitioner on hearing the grievance of the complainant, asked him to come again and they would sit and discuss the issue alone. The complainant is alleged to have met the petitioner alone in a room in the circuit house, Bathinda in October 2022, where the petitioner and Rashim Garg were present in the room, whom the complainant knew beforehand and who is private P.A of the petitioner, who used to supervise the whole work of the petitioner. The complainant requested them in respect of pending payments of development works in the village. The petitioner asked

the complainant as to how much amount is due and how much amount is lying in the Panchayat fund. The complainant told the petitioner and Rashim Garg that about Rs.25 lacs are lying in the Panchayat fund and bills of around Rs.12-13 lacs are pending to be paid to the firms. The petitioner assured the complainant that he will get the payment of these bills done from the BDPO Sangat on the condition that the complainant will have to give them an amount of Rs.5 lacs as bribe in lieu of the work. The complainant did not want to say yes, but due to compelling circumstances, he had to say yes for giving bribe to the aforesaid persons in order to get the payments released in favour of the firms as the firms were raising demand for their payments time and again. The petitioner asked his private P.A Rashim Garg to call BDPO Sangat to the circuit house. Before the BDPO came there, the petitioner asked the complainant to do the transaction with his P.A Rashim Garg only. He told the complainant that he is his private P.A so the complainant should pay the money to him and he will transfer the same in favour of the petitioner. In the meanwhile, BDPO reached there and the petitioner asked the BDPO to make the payments of pending bills of the Panchayat immediately and also told him that whatever the Sarpanch says, the work to be started immediately. The petitioner also told the BDPO that in future, he will not create any hurdle in any work and he can take share directly from Rashim Garg and he will take care of all. The complainant went back and after some days, the complainant got a call from Rashim Garg, asking him

whether the payment of money has been made or not. The complainant told him that till now, the Junior Engineer has not come to take assessment of the works done by the Panchayat. Rashim Garg replied to the complainant that he will call him after talking with the BDPO. After some time, Rashim Garg told the complainant that JE is coming to the village for doing the assessment work. He asked the complainant to get their payment made. Satwinder J.E came to the village in the evening and made the assessment of the work done by the Panchayat in the village and after some days, payment of around Rs.6 lacs was released by the BDPO Sangat to different firms. About 2-3 payments were kept pending intentionally by BDPO. The complainant made Rashim Garg aware in person as well as telephonically. Rashim Garg used to tell that their share is of about Rs.1.5 lacs and payment of the same be made first and then only he will get the balance amount released. The complainant did not want to give bribe, therefore, he delayed the matter time and again. Rashim Garg called upon the complainant through whatsapp few days back in this regard to give amount of bribe as the petitioner is getting angry because of non-payment of his share. The complainant asked Rashim Garg to tell when the petitioner will come to Bathinda as he would come to meet the petitioner. On 09.02.2023, Rashim Garg called upon the complainant and told him that the petitioner has come to Bathinda and the complainant can come to the house of the MLA next morning. On the next day i.e. 10.02.2023 at about 8:30 AM, the complainant went to the house of

the petitioner where Rashim Garg was also present. The petitioner met the complainant and they sat in the room. When the complainant requested the petitioner to get the payment released for the work done, then the petitioner and Rashim Garg asked the complainant to give them Rs.5 lacs as committed by the complainant. The complainant told them that only an amount of Rs.7-8 lacs have been released, then they asked the complainant to pay the share of Rs.1.5 lacs out of payment of Rs.7-8 lacs on that very day. The complainant requested them to get the payments of all the work done and gave them false assurance for making payment of Rs.5 lacs on Tuesday, but the petitioner asked him to pay Rs.3 lacs in the evening, then they will get the payments released of all the pending amounts. Out of compulsion, the complainant made promise regarding Rs.2 lacs on 10.02.2023 and came back home. The complainant had done the recording of all the conversations in the recorder. On his return, Rashim Garg again called him in the evening, asking him as to why he did not visit him. The complainant out of compulsion, arranged Rs.50,000/- and gave it to the petitioner and Rashim Garg and made false promise for making payment of the balance amount on Tuesday or Wednesday and thereafter, went back home. The complainant further alleged that Rashim Garg had already taken Rs.2.5 lacs from the complainant for appointing S.C Namberdar Gurdas Singh in the village. The complainant was delaying the payment of bribe

despite the payment made by them. With these allegations, the FIR in question came to be registered.

[3]. Thereafter, a trap was laid and Rashim Garg was apprehended. Dr. Parampal Singh, Polyclinic, Bathinda and Dr. Devraj, Polyclinic, Village Ghudda were associated and their introduction was done with the complainant and were joined in the raiding party. 200 notes of Indian currency of denomination of Rs.2000/- with specific numbers were produced before the police and powder phenyl pathalyn was applied upon the notes and handed over the aforesaid notes laced with powder to the complainant with the instructions that when Rashim Garg will demand for the bribe, then he must give powder laced currency notes to him and the petitioner. The proceedings were initiated, whereupon the complainant and official witnesses Dr. Parampal Singh, Polyclinic, Bathinda and Dr. Devraj, Polyclinic, Village Ghudda appended their signatures and the DSP attested the same. As per trap, the complainant and official witnesses were given appropriate instructions and they were made to depart towards circuit house, where DSP along with raiding party kept on waiting for the signal. Thereafter, the complainant and official witnesses went inside the circuit house. After some time, official witness namely Dr. Parampal Singh, Polyclinic, Bathinda gave the signal by swirling his right hand over his head to the raiding party, then DSP along with the raiding party reached near the shadow witness and witness Dr. Parampal Singh, Polyclinic, Bathinda told the DSP that

the amount of bribe has been received from the complainant by a person sitting in white coloured Creta car bearing No.PB-11-DB-9860. The person driving the Creta car took out the vehicle from the circuit house, then DSP intercepted the vehicle and stopped the vehicle and signaled the person driving the vehicle to come out. The person driving the vehicle came out. In the presence of the raiding party, DSP asked for his introduction, then he disclosed his name as Rashim Garg. On being asked, Rashim Garg told the raiding party that the amount received from the complainant was lying towards the window of driver seat. The security personnels were deployed near the vehicle and Rashim Garg was asked the reason for coming to the circuit house and then he told that he is private PA of MLA/petitioner. On being asked, Rashim Garg told that the MLA is sitting inside the circuit house in room No.1. Thereupon, the DSP along with the raiding party and Rashim Garg went inside the room in the circuit house, where the petitioner and a person wearing a turban were sitting, who was his personal P.A. Ranbir Singh. DSP asked the petitioner as to whether Rashim Garg is his private P.A, then the petitioner/MLA told that he knows Rashim Garg personally, but he is not his P.A.

[4]. In the presence of the witnesses, DSP poured water in clean glass and mixture of sodium carbonate was prepared. When in the said mixture, fingers of both the Government witnesses got washed turn by turn, then colour of mixture did not change. In this mixture, fingers of Rashim Garg were got washed turn by turn, then

the colour of the mixture turned light pink. The mixture was put in a quarter bottle by the DSP and sealed with his seal and the mixture was taken into police possession. The witnesses also signed the same. Thereafter, DSP along with Rashim Garg and Government witnesses reached near the Creta Car and in front of the witnesses, Rashim Garg took out the bribed amount from the driver side window from the place meant for keeping water bottles. Since there was rush of people, therefore, faced with the difficulty, matching of notes could not be done there and they went inside the room of circuit house for doing the needful.

[5]. Learned Senior Counsel for the petitioner submitted that it is a case of trap on Rashim Garg. No recovery has been effected from the petitioner. The petitioner is not the passenger of the car. As per allegations, the complainant out of compulsion, made promise of Rs.2 lacs on 10.02.2023 and recovery of Rs.4 lacs was effected from the car, which was being driven by Rashim Garg. Learned Senior Counsel further submitted that the petitioner was arrested on 22.02.2023 and the challan has already been submitted to the Court on 17.04.2023. The petitioner is not required in any further investigation of the case and the petitioner is in custody for more than three months as of now. The investigation is complete. No *bona fide* purpose would be served by keeping the petitioner in custody. The trap was on third person. As per allegations, the complainant had dealing with Rashim Garg in the past also as he had paid Rs.2.5 lacs to Rashim Garg for appointing S.C.

Namberdar Gurdas Singh in the village. The petitioner was not privy to such transaction.

[6]. Admittedly, Rashim Garg was not P.A of the petitioner. The petitioner was supposed to know the persons of his constituency and this fact alone would not label Rashim Garg to be official P.A of the petitioner in any manner. Rashim Garg is not a public servant and the culpability is not attracted qua the petitioner. As per prosecution case, the car was stopped outside the circuit house and thereafter, some security personnels were deputed to guard the vehicle in question. As per prosecution story, SI Varun Yadav along with Constable Mehma Singh and Constable Gurmeet Singh were left to guard the Creta car, when the raiding party went inside the circuit house. Mehma Singh has not been cited as prosecution witness in the challan. Statement of SI Varun Yadav does not advance the case of the prosecution as his statement under Section 161 Cr.P.C is not in respect of guarding the vehicle as per alleged instructions of DSP.

[7]. Statement of SI Varun Yadav under Section 161 Cr.P.C reads as under:-

“Bian SI Varun Yadav office daily Bathinda, Mb. No.9464303908 Mutalka Suit No.01 dated 16.02.23 No.7A PC Act 1988 as amended by PC (Amendment) Act 2018 against Ramish Garg son of Ashok Kumar resident of Samana District Patiala No.161 Cr.P.C.

Stated that I am stationed at the office, Raj Bathinda. Today, Jasbir Singh, Panchayat Secretary, Block Sangat came to the office and gave you a photo of the certified document regarding the payment of Rs. Copies of 36 pages and Cheque No.304867 dated 10.02.2023 amounting to Rs.52,500/- to Sukhmani Enterprises and Bank for payment made for renovation of saline well of Gram Panchayat Ghuda, repair of water tank and main iron gate of Community Setter No.304874 dated 10.02.2023 amount Rs.63,395/- which G.S. 8 pages including photocopies of attested documents issued to the Agri Works Firm and the attested account of Panchayat Ghuda's HDFC Bank account number 50100328308856 out of which the said amount of Rs.7,82,178/- was paid. The statement presented a total of 2 pages, a total of 46 pages, which was taken into custody by the police through the record of the payment made by Fard Peshkardag' village Ghuda development works. I have written a statement to you. I have read and heard it correctly.

Deputy Captain

Police Vigilance Bureau, Punjab

Bathinda Range, Bathinda

Dated 17.02.23"

Statement of Gurmeet Singh, Constable is discrepant as he himself is alleged to have gone inside along with the raiding party in the circuit house.

[8]. Learned State counsel, however, quoted his statement in vernacular to suggest different meaning arising out of his statement. In any case, his statement would remain on explanatory note. After getting the hand wash done in the circuit house, the raiding party came out of the circuit house and thereafter,

proceeded to recover the tainted money from the car itself at the instance of Rashim Garg.

[9]. With reference to prosecution story, learned Senior Counsel for the petitioner submitted that in order to constitute an offence under the Prevention of Corruption Act, there has to be demand and acceptance. In the instant case, there was alleged offer of Rs.2 lacs by the complainant and an amount of Rs.4 lacs has been recovered from Rashim Garg.

[10]. Learned Senior Counsel for the petitioner referred to **Criminal Appeal No.261 of 2022** (arising out of SLP (Criminal) No.7182 of 2019) titled **K. Shanthamma Vs. The State of Telangana** decided on 21.02.2022 and contended that the offence under Section 7 of the P.C Act relating to public servant, requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing the offence under Section 7 of the PC Act. Learned Senior Counsel also referred to **Neeraj Dutta Vs. State (Government of NCT of Delhi), (2023) 4 Supreme Court Cases 731** and contended that proof of demand and acceptance of illegal gratification by a public servant is *sine quo non* in order to establish the guilt. The prosecution has to first prove the demand of illegal gratification and subsequent acceptance as a matter of fact.

[11]. *Per contra*, learned State counsel submitted that there was a demand by the petitioner and voice of the petitioner has been compared and on comparison, it has been found to be that of the petitioner. Learned State counsel also submitted that the challan has been submitted. FSL report has been received on 17.05.2023 and the voice of the petitioner was found to be having matching configurations. The trap was successfully laid and the amount was recovered from Rashim Garg, who happens to be close associate of the petitioner.

[12]. Having considered the submissions on behalf of the learned counsel for the parties, I refrain from making any observations on the merits of the case, *lest* it may prejudice the case of either side during trial.

[13]. At this stage, only consideration which is to be made is on the basis of *prima facie* material on record. The raid was conducted. The car in question was stopped outside the circuit house. After stopping the car and ensuring that the amount is lying in the car, raiding party took the accused Rashim Garg to the circuit house, where the petitioner was sitting. Some security personnels were deputed to guard the vehicle. Statement of SI Varun Yadav under Section 161 Cr.P.C as reproduced in the earlier part of the order appears to be totally misplaced as regards the prosecution story of deputing him as guard to have a watch on the vehicle in question. He being the Sub Inspector was incharge of the alleged

security cover, where the vehicle in question was put under security. Out of three security personnels, Constable Mehma Singh has not been cited as prosecution witness. The statement of Constable Gurmeet Singh would remain debatable in the light of words used by him in addressing himself as well as the incharge of the raiding party. Nothing has been recovered from the petitioner. When the petitioner was very much present in the room itself, taking of amount away in a car by Rashim Garg outside the circuit house, would remain on debatable note as the same was never intended to hand over to the petitioner in the circuit house itself, particularly in view of the previous proximity of the complainant with Rashim Garg as he had already paid to Rashim Garg an amount of Rs.2.5 lacs for appointing S.C. Namberdar in the village. There is no allegation that such amount of Rs.2.5 lacs was also payable to the petitioner, nor such allegation has come forth i.e. whether the same was got done by the petitioner in the capacity of MLA.

[14]. At this stage, this Court will not make any such observations on merits. The *prima facie* consideration would show that the challan has already been submitted to the competent Court on 17.04.2023. The petitioner was arrested on 22.03.2023. No recovery has been effected from the petitioner. The presence of the vehicle outside the circuit house and recovery effected after getting the hands of Rashim Garg washed in the room itself, would remain debatable. As against the promise made by the complainant in respect of Rs.2 lacs, the recovery has been effected in a sum of

Rs.4 lacs from Rashim Garg, who is not the official P.A. of the petitioner. The link evidence in the form of statement of SI Varun Yadav and Constable Gurmeet Singh would be scrutinized by the Court at the relevant time as Mahima Singh has not been cited as official witness in the challan. At the time of notice of motion, reference was made to **Ritu Chhabaria Vs. Union of India and others** i.e. **Writ Petition (Criminal) No.60 of 2023** decided by the Hon'ble Apex Court on 26.04.2023, but in view of subsequent clarification, reliance is not placed on the said judgment, rather the case is *prima facie* considered on merits on the basis of material available in the challan and attending circumstances of the case.

[15]. Taking into consideration the aforesaid facts and without meaning anything on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail on his furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

[16]. Nothing expressed hereinabove, would be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

22.05.2023
Prince

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**