



CRM-M-7545-2024

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

CRM-M-7545-2024
Reserved on: 11.03.2024.
Pronounced on: 21.03.2024.

Gurwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.S. Narula, Advocate
for the petitioner.

Mr. Kanav Bansal, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
29	24.11.2023	Vigilance Bureau, Ludhiana, Ludhiana Range, Punjab	7, 7-A of PC (Amendment) Act, 2018 and 420, 120-B IPC

1. The petitioner, who is a Patwari, apprehending arrest, on the allegations of agreeing to enter a mutation based on forged documents by accepting an offer of bribe of Rs.27,50,000/-, out of which the complainant had allegedly paid a sum of more than Rs.5,40,000/-, but the petitioner did not do the needful, which led to filing of a complaint, and consequent FIR, and dismissal of his anticipatory bail by Sessions Court, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Prosecution case is being extracted from status report dated 19.02.2024 filed by concerned DySP which reads as follows: -

"4. That the above mentioned FIR has been registered against the petitioner Patwari Gurwinder Singh, his private agent Nikku and Paramjeet Singh father and Balwinder Singh brother of Patwari Gurwinder Singh on the basis of statement made by complainant Babbu son of Sh. Sant Lal wherein the complainant Babbu has stated that his father Sant Lal had purchased a plot measuring 2585 sq. yards situated at Ashok Nagar, Near Bus Stand, Ludhiana from Raja Ram Partap Singh etc. through vasika no. 742 dated 09.04.1996. The complainant was in need of money due to some



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domestic reasons and hence, he wanted to sell the aforesaid plot. In the month of March 2023, the complainant along with his father went to the office of the Patwari, Area Peeru Banda, where a person namely Nikku co-accused was sitting on the seat of the Patwari and he disclosed himself as representative (Karinda) of the Patwari. The complainant gave copy of the registry of the plot to Nikku and asked him to issue the Jamabandi, upon which, Nikku replied that the property is old one and its mutation has not been sanctioned in the name of Sant Lal (father of complainant) as per record and if the complainant party wants to get the mutation sanctioned, then the matter has to be settled with Patwari Gurwinder Singh.

5. That thereafter, Nikku had arranged meeting of the complainant party with the petitioner Patwari Gurwinder Singh and at that time, Patwari Gurwinder Singh told the complainant that his work is very difficult, but he will do the same and finding no other alternative, the complainant gave a sum of Rs.40,000/- to Patwari Gurwinder Singh on his demand. Subsequently, petitioner Gurwinder Singh told the complainant that the property is commercial and a sum of Rs.30 Lac is required to be spent for getting its mutation sanctioned as Rs.10 Lac is to be given to the MLA. On this, the complainant told Patwari Gurwinder Singh that the amount is so high and he is unable to arrange such a huge amount as he is already in need of money, upon which, Patwari Gurwinder Singh told him that if the complainant will not spend this amount, then his work will not be done and ultimately, the matter was settled for Rs.27,50,000/-.

6. That in the month of April 2023, petitioner Patwari Gurwinder Singh made a mobile call to the complainant and asked him to bring Rs.5 Lac for starting his work. The complainant along with his father went to the office of the Patwari and at that time, Patwari Gurwinder Singh was sitting in his Swift Car bearing no. PB-10-DR-0123 outside his office and on his demand, Rs.5 Lac was given to him by the complainant party. After 08-10 days, the Patwari again asked the complainant to bring the balance amount, upon which, the complainant and his father arranged Rs.11 Lac and handed over the same to the Patwari outside his



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office and at that time, Patwari had assured the complainant party that their work will be done very soon and also asked them to bring the remaining amount. Despite passing a long time, the work of the complainant was not done and as such, the complainant made telephonic calls to the Patwari and his representative (Karinda) Nikku and also visited their office, but they always put of the matter on one pretext or the other.

7. That thereafter petitioner Patwari Gurwinder Singh asked the complainant to bring balance amount of Rs.11,10,000/- to his house and also sent location of his house on whatsapp number of complainant on 19.06.2023. On the same day the complainant along with his father went to the house of the Patwari situated at Dhandari Kalan, where Patwari Gurwinder Singh along with his father Paramjit Singh and brother Balwinder Singh were present in the office of P.S. Property Dealer. The complainant had asked them about mutation of his plot, upon which, Paramjit Singh and Balwinder Singh told the complainant that they will get his work done from Patwari Gurwinder Singh and asked the complainant to hand over the money to them. By giving assurances Paramjit Singh father and Balwinder Singh brother of the Patwari took the amount of Rs. 11,10,000/- from the complainant. Copy of screen short of mobile phone of complainant showing sending the location of the house of the petitioner is attached herewith as Annexure R-1. As per investigation the shop P.S. Property dealer belongs to Paramjit Singh father of the present petitioner and his mobile number 98152-76289 is also mentioned on the sign board affixed on the said shop. Copy of photograph of the shop is attached here as Annexure R-2.

8. That during this entire period, petitioner Patwari Gurwinder Singh also took Pakistani Jutis worth Rs.3 Lac from the complainant and also took 3,40,000/- cash for purchasing I-Phone and Smart Watch whereas Nikku @ Rupinder Singh took Rs.80,000/- from the complainant as expenses of his birthday party. Copy of screen short of mobile phone regarding sending the pictures of expensive shoes (Pakistani Jutis) to Patwari Gurwinder Singh and his private associate Rupinder Singh @ Nikku is attached herewith as Annexure R-3. Subsequently, the



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complainant made several telephonic calls to Patwari Gurwinder Singh and his representative (Karinda) Nikku and also visited their office so many times, but they always put of the matter on one pretext or the other. Despite lapse of a long time, Patwari Gurwinder Singh did not do the work of the complainant nor returned his money back. The father of the complainant talked with Paramjit Singh father of Patwari Gurwinder Singh on telephone and recorded the entire conversation. Copy of transcript regarding conversation between the Paramjit Singh and the complainant is attached herewith as Annexure R-4.

9. *That on 24.07.2023, the complainant contacted Local Reporter Sushil Machan and narrated him the entire story as Sushil Machan had earlier flashed a news on his channel against Patwari Gurwinder Singh. The reporter called the complainant under the bridge at Shimlapuri and assured him that he will make Patwari Gurwinder Singh to return the amount. In the presence of the complainant, reporter Sushil Machan made a WhatsApp Call to petitioner Patwari Gurwinder Singh and made him realized that he has taken bribe of Rs. 27,50,000/- and gifts from the complainant. At that time, Patwari Gurwinder Singh admitted the fact that he will return the amount of the complainant and Sushil Machan had recorded the WhatsApp call through another mobile phone. Copy of transcript of the recording is attached herewith as Annexure R-5.*

10. *That on 26.07.2023, Sushil Machan called the complainant to talk with Patwari Gurwinder Singh at Farm House, CY Sarabha Nagar. The complainant along with his father went there, but Gurwinder Singh Patwari did not turn up there. In this way, petitioner Patwari Gurwinder Singh, in connivance with his father Paramjit Singh, his brother Balwinder Singh and his representative (Karinda) Nikku has defrauded the complainant. Thereafter the complainant made complaint on anti-corruption helpline of Punjab Government and the verification of the complaint was made by the deponent and as per verification report the present case has been registered. Since recovery of bribe money and Pakistani Jutis and mobile i-phones, smart watch is to be effected from the petitioner and the accused is influential person and he can tamper*



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with the prosecution evidence or cause threat or inducement to the witnesses, therefore his arrest/custody is required for proper investigation of the case and notice u/s 41-A Cr.P.C. has not been given to him and reference in this regard has already been given in case diary no.1 dated 24.11.2023 of this case.

11. That the custodial interrogation of the petitioner is required to reach to the GOV truth and recovery of bribe amount of Rs 27,50,000/- taken by the accused petitioner from the complainant is to be effected from him moreover the petitioner is not entitled to any benefit on parity with the co-accused Paramjit Singh father and Balwinder Singh brother of the petitioner as already referred in order dated 09.01.2024 passed this Hon'ble Court in CRM-M No 62888 of 2023. Copy of order is attached herewith as Annexure R-6."

3. I have heard counsel for the parties and gone through the pleadings.

4. Counsel for the petitioner submits that it is a case of well planned, well executed trap, and the complainant and his father indulged in these types of tactics by alluring innocent government employees. He referred to Annexure P-1, which was an FIR registered on the basis of a complaint filed by the complainant's father. Such a complaint was confined to the record room because no truth was found in it.

5. State counsel opposed such an argument and submitted that, indeed, the complaint made by the complainant's father was found to be false, but it cannot be ground to presume that even the present complaint made by the complainant is also false.

6. An analysis of this argument would lead to the outcome that there cannot be any presumption that if the father of the complainant had filed a false complaint, then even the complainant's complaint is also false; as such, on this ground, the petitioner is not entitled to bail.

7. The following argument of counsel for the petitioner is that FIR is a counterblast because the petitioner refused to succumb to the pressure exerted by the complainant, and he also wrote in his official reports about the threats. Counsel for the petitioner referred to Annexures P-2 and P-3 in which the petitioner had made an entry in the roznamcha that on 28.04.2023, Babbu Tanwar had visited his office and presented a sale deed for sanction of mutation, and after that, he was asked to bring a certified copy of sale deed and affidavits. Another report dated 05.05.2023 shows that when the



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petitioner asked them to bring affidavits, they started making excuses and pressuring him to sanction the mutation. The following report is dated 24.07.2023 in which the petitioner records that Babbu Tanwar had again visited his office and inquired about the mutation of the sale deed dated 09.04.1996, and when the petitioner asked for a certified copy of the sale deed, they started arguing with him and told that they visited many times to his residence and met his father where they were told not to visit home but to visit the office. Based on this, counsel for the petitioner argued that the petitioner's conduct is corroborated by the records that he was apprehending false implication, and he even entered into the records about the pressures; as such, he is entitled to bail on this ground.

8. State's counsel opposed the bail on the ground that although the complainant is not somebody who is clean because they wanted to sanction a mutation on a forged sale deed and for that purpose, they had entrapped the petitioner, there are video recordings, and in one such video recording made by a journalist, it has explicitly been admitted by the petitioner about receipt of Rs.40,000/- at one instance and Rs.5 lacs which was kept in his car. The transcript of the video is also annexed in the reply. State counsel, on instructions, submits that they need custodial interrogation of the petitioner not only to recover the money but also to know the *modus operandi* of the other persons who had indulged in similar activities.

9. An analysis of this argument is in the following terms. The State's counsel had handed over two digital recordings; and he pointed out that the person recording the video was the journalist, and the person who he was talking with was the petitioner. The first is an audio recording of the petitioner's father. Since it was the petitioner's father, this court has no concern with it because it is secondary evidence. The journalist makes the second recording. After watching this video, it is clear that although the reporter does not appear to be a person of high credentials, but as such this court is not concerned with his credibility but with the genuineness of the recording made on his mobile phone, which was collected by the Investigator, and supplied to this court. In the video, the petitioner admits that the complainant wants him to attest a mutation based on forged sale deeds, although he says that they have offered money to him, but he had refused; the later part of the video denies the petitioner's denial and instead points out towards petitioner's admission about receipt of the money. This video clip of 11 min 55 seconds makes it clear that the complainant is immoral, unethical, and a person with highly dubious credentials; however, the conversation that has been recorded clearly points out towards the petitioner's guilt.

10. When the Courts have to compare which out of the two sets of evidence, one



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ocular and the other digital, is more confidence inspiring, provided both sets of evidence are duly proved and established by provisions of the prevailing Evidence Act and also provided that an Expert has proved the digital version to be genuine and untampered, then certainly the digital or electronic version, i.e., a video recording would stand on a higher pedestal than the ocular version for the reason that there would never be a change of narrative because of the passage of time, loss of memory, personal perspective, biases or any other factor.

11. Thus, in this case, there are two people upon whom the prosecution is relying. One is the journalist who, after watching the video, appears to be highly incredible but possesses a video recording, and secondly, the complainant who laid out a trap, made friends with the petitioner, and allured him to accept money and gifts in return for the favor of sanctioning mutation.

12. On the other hand, the video recording is subject to proof under FSL, but for the purpose of bail, which, according to the State, is untampered and is neither a deepfake nor an edited version. Even watching the video points out that the frames are in sequence, and the voice is continuous, which points out that the video clip appears genuine. As such, for bail, this court considers this video recording untampered and genuine evidence. However, these observations are only for the purpose of bail and not for the trial, where certainly, such evidence has to be proved by provisions of law, and if required to be proved through Forensic Science evidence, then even that would be required but all that depends upon the nature of electronic device which form part of the evidence, the admission and denial of the accused and the approach of the Investigating Agency and finally the decision of the trial Court.

13. In the video, the petitioner has conveyed his stand to the journalist about his reluctance to do the work and has also given his narrative that he never wanted to do the work, but the complainant is so shrewd that they made friends with him, started coming to his home, made friends with his father, got proximity to his children and claimed that they deal in Punjabi jutti (Customary local shoes) and they also took size of the children and gifted them juttis. The petitioner has also stated to the journalist his ordeal that he was befooled by the complainant, who entrapped him, his simpleton father, and his innocent children and then wanted favors in return. Even if all these conversations are accepted to be correct at face value, the fact is that a government official must perform his duties honestly and live within his ethical limits.

14. A responsibility to perform any executive function when given to an officer drawing salary from the public exchequer is nothing short of delegation by the sovereign



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of its powers, and such officers are duty bound to stand tall in the performance of their duties, and they can discharge them legally, honestly and efficiently, only when they are honest, skilled, and meritorious. Those who have strong moral compass do not waiver because of temptation, and they place their duties to the system over and above their vested interests. Temptation or unquenched thirst for more money, more power is a devil in disguise. One only enters a pathway to destruction by their own choice. Once such a person chooses to take the path of corruption, be it only once, they end up setting their own selves under a trap. What was once a choice later becomes a compulsion as no amount of running in this vicious hamster wheel would allow one to get out of their cage. When the complainants are shrewder than the government employees, it is easier for them to entrap such employees. Those employees who are vulnerable to temptation and who do not stick to the ethical standards of living, and those who have no control over their desires are prone to falling into such entrapments and it would be better for the system if they stay away from the government jobs. Even the government should keep them away from sensitive positions, and any sympathies with such an employee erodes democracy's success, as a successful and a vibrant democracy is a result of its meritorious, honest, and skilled human resources, and the absence of corruption, fanaticism, mediocrity, and sycophancy.

15. Watching this video is an eye-opener. It portrays how these thugs make friends with government employees, influencing and manipulating them and ultimately having an upper hand in a system that is otherwise to be run by the rule of law, pointing out the collapse of ethical and moral values at almost all levels. There will always be people who would like to get their jobs done, legally or illegally, through lawful or unlawful means, by adopting decent or indecent methods. Their only concern is to get their work done. They are neither bothered about unethical approaches nor the fractures they cause in the administration. It is not that only an employee at the lowest rank needs to control his desires, but the principle is of universal application.

16. The petitioner's vulnerabilities are his own failings. This court's job is to do justice to all affected, impacted, and concerned. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

17. 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



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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.

18. 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....."

19. 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.

20. In Jai Prakash Singh v. State of Bihar, (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



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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].

21. 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.

22. 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.

23. In Central Bureau of Investigation v. Santosh Karnani, CrA 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



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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.

24. 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.

25. 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

21.03.2024
Jyoti Sharma

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