

(2007) 05 P&H CK 0152
In the Punjab And Haryana At Chandigarh

Ch. Jagjit Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 438
Penal Code, 1860 (IPC) — Section 120B, 13, 409, 420, 467

Citation : (2007) CriLJ 3547 : (2008) 2 RCR(Criminal) 612

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—By this common order, the abovesaid three Criminal Misc. Petitions are being dealt with as the same have arisen from the same FIR. The facts are being taken from Criminal Misc. No. 27116-M of 2007 (Ch. Jagjit Singh v. State of Punjab).

2. The petitioner, who was a Minister Incharge of Local Government and accused in FIR No. 5 dated 23-3-2007 under Sections 7/13(I)(c)(d) read with Sections 409, 420, 467, 468, 471, 120B, IPC, registered at Police Station Vigilance Bureau, Ludhiana, has approached this Court for grant of pre-arrest bail.

3. Notice in this case was issued on 1-5-2007 and on the asking of the Court, Mr. M. C. Berry, Senior Deputy Advocate General, Punjab, had accepted notice on behalf of the State. Learned State counsel was requested to keep the record ready. The petitioner was not granted any interim protection.

4. Mr. Uday Lalit, counsel for the petitioner, refers to the allegations made in the FIR against the petitioner. It is mainly alleged against the petitioner that being a Minister for Local Government, he passed an order dated 12-8-2005, revoking the order passed by Principal Secretary, Local Government on 27-5-2005, who had annulled all the proceedings conducted by the Chairman, Ludhiana Improvement Trust. Chairman of Ludhiana Improvement Trust (for short, "the Trust") has allegedly acted in a most arbitrary and illegal manner in entering into

an agreement with M/s. Today Homes, which the Secretary had acted to annul. It is averred that the petitioner being Minister did not bother to take any action for the irregularities and illegalities done by the Chairman of the Trust and thereby wrongful loss was caused to the State exchequer and corresponding wrongful gain to M/s. Today Homes. It is made out that because of illegal procedure started by the Chairman, which was endorsed by the Minister, certain permissions were granted to M/s. Today Homes, authorising them to sell property on their own, which has resulted in a loss of Rs. 1500 crores to the State exchequer.

5. It is seen that meeting was held on 23-5-2005 by Principal Secretary where the petitioner was not present. It was decided that no further act be done in this case till policy in regard to the project was formulated. The Chairman, while ignoring this decision of the Secretary, entered into an agreement with M/s. Today Homes on 24-5-2005. The Secretary, on coming to know of this, annulled the agreement and order on 27-5-2005. On 29-6-2005, the Trust made representation to the petitioner, he being the Minister Incharge of the Department. To indicate his bona fide, the counsel says that the petitioner referred the matter for opinion to the Advocate General of the State. Reference is made to the opinion so rendered on 12-7-2005 to the effect that Secretary could not have annulled the resolution of the Trust in view of policy instructions and matter was required to be decided by the Minister at initial stage. The Secretary had also referred the case to Minister as issue related to the order passed by the Secretary. The petitioner, after considering the opinion given by the Advocate General as well as the fact that the allotment, in the meanwhile, was also challenged before the High Court by way of two writ petitions, withdrew the order passed by the Secretary. In this background, the counsel urges that bona fides on the part of the petitioner is clear in passing this order. As per the counsel, this order did not annul in any manner any order or help the Chairman of the Trust because the order was withdrawn as the matter was pending before the High Court and only decision taken till 23-5-2005 would have got revived. Statement made by the petitioner. Annexure P-11. On the floor of the house during the Assembly Session is referred to highlight this aspect. It is contended that the allegations of accepting money as made in the FIR are too vague and are identical in nature as against Captain Amrinder Singh, Ex. Chief Minister, Shri H. S. Hanspal and Mr. P. S. Sibia. A fact that the prosecution has itself said that Mr. H. S. Hanspal, similarly placed is not needed is highlighted and so also the fact that arrest of Captain Amrinder Singh is stayed by this Court. It is also urged that a number of co-accused mentioned in the FIR are released either on bail or anticipatory bail and as such, the petitioner would not deserve any different treatment. Referring to the main allegation, the counsel has highlighted that Rs. 100 crores, as mentioned in the FIR, were allegedly needed by A.I.C.C. and the City Centre Project was allegedly identified as a source to get this amount. From this, the counsel would say that it cannot be said that this amount was bribe by M/s. Today Homes either to the petitioner or his co-accused. It is also pointed

out that the enquiry was ordered by the then Government and the Trust was also suspended/superseded.

It is pleaded that the petitioner is prepared to abide by any condition and would co-operate with the investigation.

6. Going into the background, for which the provisions of Section 438, Cr. P.C. came to be legislated, the counsel would refer to the observations of the Law Commission, as noted in the case of *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, . It may be of benefit to notice the same which is as under:

39.9. The suggestion for directing the " release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

7. Referring to the need for making provision for anticipatory bail, it is observed in *Gurbaksh Singh Sibbia's* case (supra) that the powerful processes of criminal law can be perverted for achieving extraneous ends and the police, being not free agents within the sphere of their duty, can cause great amount of inconvenience, harassment and humiliation and that in order to cater for all such situations, the power to grant anticipatory bail was introduced into the Code of 1973. The relevant observations of the Hon'ble Supreme Court are as under:

No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-froid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even

take the form of the parading of a respectable person in hand-cuffs, apparently on way to a Court of justice. The foul deed is done when an adversary, is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

8. Accordingly, it is submitted that a case of grant of pre-arrest bail to the petitioner as an interim measure is made out. Mr. Berry has opposed the prayer of the petitioner with full vehemence. He would say that the petitioner being Minister Incharge of the Department is the main accused and it is because of his action that the Chairman of the Trust was sheltered and had acted in a most illegal and arbitray manner to cause loss to the State exchequer. As per Mr. Berry, the petitioner has facilitated the crime, which has even resulted M/s. Today Homes indulging in selling 22% of the land (5 acres) costing Rs. 1000 crores. To justify the need for custodial interrogation of the petitioner. Mr. Berry submits that investigation has revealed that sum of Rs. one crore was paid to the petitioner and this amount is to be recovered. As per the counsel, it is also required to be investigated as to how much more amount in fact had exchanged hands, which is very essential to unearth the complete extent of scam. The learned Counsel has referred to the investigation conducted so far whereby the statement of Manmohan Singh S.E. has been recorded on 22-4-2007. One Rameshwar Dutt Awasthi, who was working as Sub-Divisional Officer, at the Trust, is also a witness to payment of Rs. one crore and his statements u/s 161, Cr. P.C. and subsequently u/s 164, Cr. P.C. is also recorded. State counsel, however, was fair to say that there is no statement of Manmohan Singh, S.E. as such, but this is a result of investigation and is noticed in the Zimni recorded by the Investigating Officer. He has placed strong reliance on State Rep. By the C.B.I. v. Anil Sharma AIR 1977 SC 3806 , K.K. Jerath Vs. Union Territory, Chandigarh and Others, ; Directorate of Enforcement Vs. Ashok Kumar Jain, , Dhani Ram Chaudhary v. State of Haryana 2000 (2) RCR 270 (Criminal and Charan Dass Shorewala v. State of Haryana 2001 (2) RCR 188Referring to the observations of the Hon"ble Supreme Court in Anil Sharma's case (supra), it is urged that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order u/s 438 of the Code. In Er. K. K. Jerath's case (supra), Hon"ble Supreme Court has observed that while considering the petition for grant of bail, necessarily if public interest requires detention of a citizen in custody for investigation, the same could be considered and rejected as otherwise there could be hurdles in investigation even resulting in tampering of evidence. Ashok Kumar Jain's case (supra) was a case where the accused had sought pre-arrest bail on the ground of ill health and while declining the prayer, a condition was imposed that his arrest be subjected to the opinion of Cardiologists. The Hon"ble Supreme Court disapproved this and observed that such condition impairs efficient functioning of investigating authority to ensure fair and free investigation. Dhani Ram

Chaudhary's case (supra) was a case where this Court felt that he being a public servant should be interrogated in custody.

9. As noticed above, the main reason advanced by learned State counsel to seek permission for custodial interrogation of the petitioner is the recovery of amount. The counsel for the petitioner says that this piece of evidence is engineered only to make a case of taking the petitioner in custody. As per him, the case was argued before the Sessions Court on 23-4-2007 when it was deferred for hearing on the next day i.e. 24-4-2007. The aspect of payment of Rs. one crore was then disclosed on the basis of Zimni recorded by the Investigating Officer containing the statement allegedly made by Manmohan Singh, S.E. on 22-4-2007. Even statement of Remeshwar Dutt Awasthi was also recorded on 24-4-2007 and his statement u/s 164, Cr. P.C. is dated 11-5-2007. No doubt, the custodial interrogation is qualitatively different than questioning a suspect who has a favourable order protecting him but still this aspect has to be weighed keeping in view the aspect of his liberty. The provision incorporating the grant of anticipatory bail was legislated mainly because sometime influential persons tried to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them confined in jail for some days. The reason, as noticed by the Law Commission, was that with the accentuation of political rivalry, this tendency is showing signs of steady increase. Where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. The Hon'ble Supreme Court in Babu Singh and Others Vs. State of U.P., , has observed that the correct legal approach in regard to grant of bail has been clouded in the past by focus on the ferocity of the crime to the neglect of the real purposes of bail or jail and indifferent to many other sensitive and sensible circumstances which deserve judicial notice. As noticed by the Hon'ble Supreme Court, the Courts have often acted intuitively or reacted traditionally, so much so the fate of applicants for bail at the High Court level and in the Supreme Court, has largely hinged on the hunch of the bench as an expression of "judicial discretion". The Supreme Court accordingly advocated a scientific treatment in the decision making. The consideration of grant or denial of bail would involve issues like liberty, justice, public safety and some other considerations. Personal liberty is deprived when bail is refused and it cannot be disputed that this is too precious a value as per our constitutional system and recognized under Article 21 of the Constitution of India. As rightly noticed by the Hon'ble Supreme Court that crucial power to negate is a great trust exercisable not casually but judiciary with lively concern for the cost to the individual and the community. The discretion of grant of bail, which generally inviting consideration of the Courts is if the accused person will appear for trial or not ? This requirement is tested on the consideration relating to nature of the accusation, nature of evidence in support, severity of the punishment which conviction may entail etc. Nothing is pleaded before me to say that the petitioner is likely to free

from justice. Rather, no apprehension-in this regard is expressed. Also the petitioner is not to be punished at this stage, which would follow, if he is found guilty after trial. In *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*, , the Supreme Court noticed that the basic rule is bail not jail except where there are circumstances suggestive of fleeing from justice. This may be more relevant for grant of regular bail but cannot be ignored from consideration while considering the grant of pre-arrest bail.

10. Having regard to the respective submissions made and keeping in view the requirement of right of the investigating agencies to conduct a proper and fair investigation on one hand and liberty of the person involved, on the other, it is required to be decided whether there is any need for custodial interrogation? The recovery of amount and interrogation to unearth the scam are the two major concerns of the investigating agency. The petitioner can be directed to join the investigation and he can be interrogated. Requirement of taking the petitioner in custody for interrogation is to be seen having regard to the background of political colour being given. The political differences, even if not vendetta, are noticeable in this case. The petitioner is a political rival of the party, which is ruling in the State and some of the considerations, as noticed by the Law Commission, may seem to be attracted in this case. Statement of two persons, one of whom was in police custody showing payment of money to the petitioner is the main ground pressed to seek custody of the petitioner. Custody of the petitioner may not appear justified when there is no plea that the petitioner is likely to abscond. There would as such, be no justification to ask the petitioner to first submit to custody, remain in prison for some time and then apply for bail the allegation made against him of accepting money may be true but equally may have been managed also. No such allegation of this payment is found to be made in the FIR. As per the counsel for the petitioner, the prosecution does not seem to be very clear about even purpose of payment of Rs. 100 crores. At one place, it is stated to be meant for AICC etc. whereas at another place it is allegedly paid to the individuals (including the petitioner) so named. Thus, different indications are available from the FIR about the purpose of the payment though FIR is in detail and appears to have been recorded after investigation on charge of Government. No material is disclosed as to why one of the alleged recipient is being let off without investigation. The main reason generally considered to deny bail is the likelihood of such a person, fleeing from justice, which is not pleaded in this case. The Hon"ble Supreme Court in *Babu Singh* case (supra) also noticed the legal principle and practice of considering the likelihood of such applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail

discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in Irrelevance. There is no criminal record of the petitioner, which would justify the denial of protection sought by him.

11. Taking all this into consideration, no case appears to be made out-for custodial interrogation of the petitioners. Accordingly, as an interim measure, the arrest of the petitioners is stayed subject to following conditions:

i. The petitioners would appear and join investigation before the Investigating Officer on 22-5-2007 at 10 a.m. They shall make themselves available for interrogation by the Investigating Officer as and when required.

ii. The petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

iii. The petitioners shall not leave India without prior permission.

Adjourned to 30-5-2007.

12. It is made clear that any opinion expressed above would not be construed as an opinion on the merits of the case and whatsoever is noticed above is for the purpose of making the order and aimed at noticing the contentions raised.