

HIGH COURT OF PUNJAB AND HARYANA
Bench: Hon'ble Mr. Justice Anoop Chitkara
Date of Decision: 23.01.2024

CRM-M-65546-2023

Ashok ChanderPetitioner

Versus

State of PunjabRespondents

Legislation:

Sections 409, 420, 467, 468, 471, 120-B, 201 of the Indian Penal Code (IPC),
Sections 13(1)(d), 13(2) of the Prevention of Corruption Act 1988,
Section 438 of the Criminal Procedure Code
Section 3D(2) of the National Highway Act 1956,

Subject: Anticipatory bail application in a case involving corruption and falsification of land records in connection with compensation under land acquisition for National Highway 70 (Now NH-3).

Headnotes:

Anticipatory Bail – Denial of anticipatory bail in a case involving economic offences and corruption – Petitioner, a revenue official (Patwari) involved in a land compensation fraud under the National Highway Act 1956 – Custodial interrogation necessary to uncover the extent of the conspiracy and financial implications – Bail denied due to the gravity of the offences and the need for a thorough investigation. [Paras 1, 3, 5, 9]

Economic Offences – Seriousness of economic offences and their impact on public interest and national economy – Economic offences involving deliberate and calculated actions for personal gain, considered grave and detrimental to societal and national interests – Importance of rigorous investigation in such cases emphasized. [Paras 11, 14]

Judicial Precedents – Reference to various Supreme Court rulings underscoring the importance of custodial interrogation in serious offences, especially economic crimes – Emphasis on balancing individual liberty with societal interests and the integrity of investigations – Precedents highlight the need for discretion in granting anticipatory bail based on the nature of the accusation, evidence, and severity of punishment. [Paras 10, 11, 12, 13, 14, 15, 16]

Role of Revenue Officials in Land Compensation Frauds – Specific mention of the petitioner's role as a Patwari in falsifying land nature reports, leading to illegal financial gains and government losses –

Illustration of how misuse of official position can facilitate significant economic crimes and corruption. [Paras 5, 7, 8]

Decision – High Court’s decision to deny anticipatory bail based on the seriousness of the allegations, the need for custodial interrogation, and the precedents set by the Supreme Court – Observations made in the judgment not to influence the trial court’s decision on regular bail or the merits of the case. [Para 17, 18]

Referred Cases:

- Sumitha Pradeep v. Arun Kumar CK, 2022 SCC OnLine SC 1529
- State of Gujarat v. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364
- State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187
- Jai Prakash Singh v. State of Bihar and another, (2012) 4 SCC 379
- Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439
- P. Chidambaram v. Directorate of Enforcement, 2019 9 SCC 24
- Central Bureau of Investigation v. Santosh Karnani, Cr.A 1148 of 2023
- R

ANOOP CHITKARA, J.

FI R No.	Dated	Police Station	Sections
1	10.02.2017	Economic Offences Wing, Vigilance Bureau, Ludhiana	409, 420, 467, 468, 471, 120-B IPC and Sections 13(1)(d), 13(2) of Prevention of Corruption Act 1988 (later on added section 201 IPC)

1. The petitioner, who was a Patwari and was responsible for providing correct factual details as per the ground reality, allegedly conspired with the then SDM-cumCALA Anand Kumar Sharma and some of the beneficiaries and gave false reports, is now apprehending arrest in the FIR captioned above, and has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 09.01.2024, this Court had stayed the petitioner's arrest, however interim bail was not granted because the State had strongly opposed the interim bail and they wanted custodial interrogation of the petitioner.
4. The facts of the case are being taken from the reply dated 16.01.2024, which reads as follows: -
 1. That it is pertinent to mention here that the FIR No. 01 dated 10.02.2017, registered Under Section 409, 420, 467, 468, 471, 120-B IPC and Section 13 (1) (d), 13 (2) of the Prevention of Corruption Act 1988, at Police Station Economic Offences Wing, Punjab, Vigilance Bureau Ludhiana, was initially registered after Vigilance enquiry no. 09/2016 Jalandhar. Earlier 13 accused were nominated in this FIR and the role played by other 15 suspects was to be investigated. Thereafter, during the course of investigation a SIT was constituted to investigate the said matter by the then Chief Director Vigilance Bureau Punjab vide its office order dated 25.05.2018. The said SIT investigated the matter and filed cancellation report before the Hon'ble Special Court of Dr. Ajit Atri, Ludhiana on 13.06.2019.
 2. That the Hon'ble Special Court of Dr. Ajit Atri, Ludhiana had directed to further investigate the said FIR vide its order dated 05.04.2022. That as per the direction of this Hon'ble court the case was further investigated especially in the light of following 13 points.
 - a) Whether any permission was sought from the Municipal Committee, Hoshiarpur/ administration prior to publication of notification no.3-A for the development of the colonies or not and what is the exact time of the development of colony if any?
 - b) Whether the proper procedure for the change in the nature of the land has been followed before issuance of the variation certificates and when the change in the nature of land was applied in each such case and when the necessary procedure was followed in each case of change of the nature of the land ? Whether owner of the land moved any written application before the SDM with regard to change in nature of the land or not and whether these application were entered in the diary by assigning the numbers? Apart from this, whether the nature of the land could be changed after publication of the notification no.3-A, 3-D, 3G or not and if it was possible, then what procedure was to be adopted for this purpose?. In how many cases the nature of the land is changed after the notification 3A, 3-D and 3G?
 - c) Whether the land in question has been sold or purchased after publication of notification no.3-A and subsequent notifications in pursuance to some conspiracy by the accused? The number of the sale

- deeds executed and registered immediately before and after the issuance of the notification/s, the market rate of the area prior to those sale deeds and the market rate of the area after the issuance of the notifications?
- d) In how many cases the applications for the change in the nature of the land were received, in how many cases such application were allowed and in how many cases the applications were not allowed? The entire process followed for the change of the nature of the land?
 - e) To what extent the amount of compensation was increased on change of nature of the land on sale/purchase of land in question after the publication of notification no.3-A?
 - f) On what basis, the amount of compensation was calculated?
 - g) To how many persons the compensation was disbursed and at what rate, who purchased land after the publication of notification 3-A?
 - h) What were the guidelines of the M.O.R.T.H regarding the aspect of sale/purchase of the land during the process of acquisition?
 - i) What were the responsibilities of the CALA regarding the issue of sale/purchase of the land and whether CALA carried out his responsibilities as outlined in the M.O.R.T.H guidelines?
 - j) Whether the proper procedure was followed by CALA in determination of the compensation to be paid to the land owners?
 - k) Whether the change of the nature of land in question influenced the rates of compensation, if yes, then how much loss was caused by this to the State?
 - l) Whether the CALA determined the rates of compensation bases on nature of the land and market value as on the date of notification issued under section 3-A of the N.H. Act 1956 or not?
 - m) Whether the criteria followed for deciding the market value of the lands was based on the parameters provided by the law?

3. That, in order to comply with the directions of the Hon'ble court under order dated 05.04.2022, a Special Investigation Team (SIT) was constituted. Thereafter, during the course of further investigation by the said SIT, new facts have been discovered regarding the gravity of offence committed by the accused in the said matter. After perusal of the case documents by the SIT, it has come to notice that Draft 3A schedule was prepared by the survey company Louis Berger group and same was sent to office of XEN PWD Hoshiarpur (Project Director). Thereafter the same draft 3A Schedule was further sent to the office of co-accused Anand Sagar Sharma who was the then SDM-cum-CALA Hoshiarpur by XEN PWD Hoshiarpur vide office letter no. 903 dated 19-01-2015 for verification of khasras. It is pertinent to mention here that the accused Anand sagar sharma the then SDM-cum-CALA Hoshiarpur intentionally

and with malafide kept the said Draft 3A schedule pending in his office for about four months and fraudulently changed the khasra numbers of five villages namely Khwaspur/Piplanwala, Dagana Kalan, Dagana Khurd,

Hardokhanpur and Bassijana in the 3A schedule. By doing this he illegally created a new road alignment falling in the above mentioned five villages. That, in order to prove this illegal road alignment, the present SIT compared both the draft 3A schedule prepared by Louis burger company and 3A schedule prepared by the accused and then SDM cum CALA Anand sagar sharma along with mentioned khasra numbers in both and map showing the road alignments through concerned Revenue officials. (Copy of the comparison report and map attached herewith as annexure-

1).

4. That after the creation of new road alignment in the above mentioned five villages the accused Anand Sagar Sharma the then SDM-cum-CALA Hoshiarpur involved his near and close persons namely Harpinder Singh etc. That accused Harpinder Singh started purchasing the agricultural land in villages Khwaspur and Hardokhanpur in is own name and in the name of his family members/relatives/close associates. Thereafter, in coonivance and conspiracy with accused Anand sagar sharma, the accused Harpinder Singh and other accused mentioned in this FIR received compensation on colony/residential rates, which is totally unfair and illegal in the eyes of law. It is worth while to mention here that the present SIT while during the course of investigation obtained reports from the concerned departments to verify and investigate the facts as following:

(i) The SIT obtained report dated 04/10/2023 from the office of District town planner Hoshiarpur and as per this report/record no CLU/Lay out/Site FIN plan/NOC were issued by the then office. In fact there is no communication between any of the accused who filed application under 3C and the Office of District town planner with regard to same. It is crystal clear from the report of DTP dated 04/10/2023 that there is no basic facility like street lights/drainage system/water supply etc. available even as on date as per the record. (Copy of the report dated 04/10/2023 is attached as annexure- 2).

(ii) That during the course of investigation the report from PSPCL was also obtained. While in the said report dated 10/10/2023 it is specifically mentioned that none of the accused who filed application under 3C has applied for issuance/installation of the electricity meter nor the same has been issued by the department as per the office record. (The copy of said PSPCL report dated 10/10/2023 is attached as annexure-3)

(iii) That the current/latest report from the revenue department was also obtained by the SIT during the course of investigation and as per the said report dated 21/09/2023 there is no colony/residential area in the said land described by the accused while filing application under 3C. Even the said area is surrounded by agricultural land with crops as well.

(The copy of revenue report dated 21/09/2023 is attached as annexure-4).

5. That as per the law laid down in the National Highway Act 1956 under section 3D(2);-

“On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.” But the accused and the then SDM cum CALA Anand sagar sharma, in connivance and conspiracy with other accused and by abusing process of law kept transferring the ownership titles in the changed khasra numbers in 3A schedule by him even after notification under 3D/3G, even when the names of actual owners of the land were already published in the notification under 3D/3G, in order to give compensation to other accused and conspirators in this matter. It is also pertinent to mention here that during the course of investigation the actual owners of the land came forward and got recorded their statements that the accused have cheated and defrauded them and their compensation amount has been grabbed by them, in connivance and conspiracy with each other.

6. Detail of sequentially published notifications regarding the acquisition of land under National Highway 70 (NowNH-3) (Jalandhar-Chintpurani) as following:

Sr. No.	Notifications	Date of publication in newspaper
1.	3A	14.07.2015
2.	3D	10.11.2015 & 11.11.2015
3.	3G	01.12.2015

5. The petitioner seeks bail on parity with co-accused Anand Kumar Sharma, the then SDM-cum-CALA, to whom a Co-ordinate Bench of this Court had granted bail in 2017. The petitioner also seeks bail by saying that he was just a Patwari and not a beneficiary and that he worked under the orders of SDM, the main accused. Petitioner’s next ground is that initially, a cancellation report was filed, and after that, it was the trial Court who ordered further investigation; as such, two views were possible, one favouring the accused and the other view favouring the prosecution, the petitioner also entitled to bail on this ground. The petitioner also seeks bail on the judicial precedents as mentioned in paragraphs 5 & 6 of the present petition.

6. The state has vehemently opposed the present petition. It seeks custodial interrogation of the petitioner to know how many other officials were involved in connivance with Anand Kumar Sharma and how the investigation was scuttled. It was at that instance of trial Court that further investigation was ordered. Now, the present government is absolutely against corruption, and investigation is being conducted most fairly; they need custodial interrogation of the petitioner to unearth the truth and find the involvement of other government officials. The state has opposed the bail by referring to para 7 of the reply, in which the role of the petitioner has been mentioned, and the same reads as follows:-

“7. That the accused/petitioner was working as revenue official (Patwari) at Hoshiarpur. The accused/petitioner is aware of the rules and working of the revenue department and in particular being Patwari, he was aware of the law laid down in the National Highway Act 1956 under section 3D(2) as explained in the para no.5 above. That the co-accused namely Paramjit Sachdeva purchased the land in villages Naloyia, Hoshiarpur after thenotification of 3D and 3G.. The said land was agricultural in nature but the said co-accused Paramjit Sachdeva moved claim application stating the land commercial in nature having 3 shops on it. The accused/petitioner gave the false report in favour of the claimant and co-accused Paramjit sachdeva as the land was agricultural in nature. The accused/petitioner also ignored the collector rates available at that time as well. That after the proceedings of 3D/3G (notification) the accused/petitioner, in connivance and conspiracy with co-accused Anand Sagar Sharma (the then SDM-cum-CALA Hoshiarpur), co-accused and the then Nayab Tehsildar namely Manjit Singh, approved the mutation and got transferred the title of land in the name of co-accused Paramjit Sachdeva and thereafter the said Paramjit Sachdeva got transferred the amount of Rs. 80,21,558/- in his bank account bearing no.023605001447 (ICICI). That by the act of accused/petitioner co-accused Paramjit Sachdeva got transferred a huge amount as mentioned above in his name becoming new land owner by the outcome of this conspiracy and thereafter illegally. It is also worth while to mention here that the coaccused Paramjit Sachdeva had mentioned his agricultural land as commercial land which was false as the land was not commercial. But the said Application was considered by the accused/petitioner while submitting the report wrongly mentioning this land commercial in nature. The accused/petitioner also ignored the collector rates which were available at that time. This way the accused/petitioner having mala fide intention and mensrea cheated and defrauded actual owners who were not aware of the land acquisition proceedings going on. The accused/petitioner caused a huge financial loss to the government exchequer.”

7. I have heard counsel for the parties and gone through the record.

8. The Petitioner's ground for bail on parity with Anand Kumar Sharma has no legal footings. It is for the reasons that SDM Anand Kumar Sharma got bail in 2017 when the investigating officers had just commenced the investigation and as per the State, was biased. Later on, the same officers had concluded the investigation, and the State filed a cancellation report, and the concerned Special Judge did not accept it and ordered further investigation. Now, the new investigators have found sufficient evidence against the accused including the petitioner. In addition to that, the Petitioner was supposed to give a verification report about the nature of land at the ground level, which was different from the role of Anand Kumar Sharma-SDM; as such, he is not entitled to bail on parity. To answer the Petitioner's subsequent argument that once the cancellation report was filed, as such, the Petitioner is entitled to bail on jurisprudence that two views are possible, is also without any substance for the reason that because there was no proper investigation and the investigator was in a hurry to close the matter and it is the Court which directed the investigate to look after the matter again. The Petitioner, who was an employee of the revenue department and posted as a Patwari and thus, was supposed to know about the nature of the land. Knowing this, he did not point out the correct nature of the land and showed the agricultural land as residential land, which entitled the beneficiary to compensation which was more than for what they were entitled to. The investigator has collected the evidence that one Paramjit Sachdeva got compensation of Rs.80 lacs, to which he was not entitled to that extent. In addition to that, the Petitioner also helped approve the mutation despite notification issued under Sections 3D & 3G of the National Highway Act 1956. If the petitioner, who was working as a Patwari, had given correct reports, they would not have been able to cheat the government and it is the petitioner who was primarily responsible to do his official duties properly which he failed to do, and not to be sold off, as such he is not entitled to bail on parity.
9. Given above, it is not a case for anticipatory bail and petitioner's custodial interrogation is required to find out involvement of other persons and amount of money which was paid to him and its recovery.

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 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....."

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 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.

13. In InJai 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 entangled 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.
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. All the interim orders including order 09-01-2024, stand vacated.

All pending applications, if any, also stand disposed.

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