

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mrs. Justice Manjari Nehru Kaul****Date of Decision: 30th April 2024**

CRM-M No. 17213 of 2024 & CRM-M No. 17216 of 2024

Varinder Mohan Singhal ...Petitioner**VERSUS****Central Bureau of Investigation ...Respondent****Gagandeep Singhal ...Petitioner****VERSUS****Central Bureau of Investigation ...Respondent****Legislation:**

Sections 420, 406, 403, 465, 468, 120B of the Indian Penal Code (IPC)

Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988

Section 438 of the Cr.P.C.

Section 173 of the Cr.P.C.

Subject: Petitions for anticipatory bail by Chartered Accountants implicated in financial fraud involving misrepresentation in company balance sheets submitted for bank loans.

Headnotes:

Criminal Law - Grant of Anticipatory Bail - Petitioners, chartered accountants, implicated in case FIR No.RC0052020A0011 under IPC and initially under the Prevention of Corruption Act, accused of misclassifying 'Sundry Creditors' as 'Unsecured Creditors' in company balance sheets - No direct evidence linking petitioners to intentional fraud - Cooperation with investigation noted, no custodial interrogation required - Held, petitioners entitled to anticipatory bail under established Supreme Court precedents [Paras 1-21].

Role of Accused - Analysis of petitioners' involvement suggests reliance on third-party data for audit reports - Accusations based on changes made by another accused under instructions, without petitioners' direct involvement in fraud - Held, insufficient grounds for custodial detention at this stage [Paras 2-5, 12-13].

Legal Principles on Bail - Consideration of nature of accusations, roles of accused, cooperation with investigation, lack of prior criminal history, and reliance on documentary evidence rather than conduct - Relevance of Supreme Court guidelines on anticipatory bail discussed [Paras 15-19].

Decision - Anticipatory bail granted to petitioners with conditions, including bond of ₹50 lacs each and surrender of passports - Emphasis on petitioners' non-arrest during investigation, full cooperation, and case based largely on documentary evidence [Para 21].

Referred Cases:

- Sushila Aggarwal and others vs. State (NCT of Delhi) and another (2020) 5 SCC 1
- Mahdoom Bava vs. CBI 2023 SCC Online SC 299
- Aman Preet Singh vs. CBI through Director 2021 SCC Online SC 941
- Satender Kumar Antil vs. Central Bureau of Investigation & another 2022 LiveLaw (SC) 577
- HDFC Bank Ltd. Vs. J.J. Mannan @ John Paul & another (2010) 1 SCC 679

Representing Advocates:

For Petitioners: Mr. Randeep S. Rai, Senior Advocate and Mr. Chetan Mittal, Senior Advocate with Ms. Sehej Sandhawalia and Mr. Farhad Kohli, Advocates

For Respondent: Mr. Gagandeep S. Wasu, Special Public Prosecutor for the CBI

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners in both the petitions detailed hereinabove are seeking the concession of bail under Section 438 Cr.P.C. in case FIR No.RC0052020A0011 dated 08.07.2020 under Sections 420, 406, 403 read with Section 120B of the IPC and sections 13(1)(d) and 13(2) of the

Prevention of Corruption Act, 1988 registered at Police Station ACB Chandigarh which culminated into final report under Section 173 Cr.P.C. wherein the petitioners have been summoned by the learned Special Magistrate CBI, Mohali.

2. Learned senior counsel appearing on behalf of the petitioners has reiterated the submissions made by him on the previous date of hearing that the petitioners are Chartered Accountants who have been falsely implicated in the present case without there being any evidence to link them with the crime in question. The petitioners were neither named in the initial complaint made by the Punjab National Bank nor was any specific role levelled against them at the time of registration of the FIR in question; however, they came to be nominated as accused only in the final report which was submitted under Section 173(2) Cr.P.C. by the Central Bureau of Investigation. Furthermore, even as per the reply filed by the CBI before the trial Court, the petitioners had fully cooperated with the investigation pursuant to the notice issued under Section 160 Cr.P.C., by providing the agency all the requisite and requested documentary material. Learned senior counsel submits that in the circumstances, once the petitioners had fully cooperated with the Investigating Agency and there was no flight risk attached to them, sending them in custody would be a futile exercise. While drawing the attention of this Court to the police report, he has further submitted that even therein, there was no insinuation that the petitioners had deceived or cheated the Bank or forged any documents. Additionally, as per the internal enquiry carried out by the Bank also, no incriminatory material had come against them.

3. With respect to the involvement of petitioner Gagandeep Singhal in the alleged crime, it has been submitted that it is totally unfounded as he was neither a CA/Auditor of M/s Golden Agrarian Private Ltd. (hereinafter referred to as, 'the Company') nor a partner in the accountancy firm i.e. Anil Sood & others. Therefore, he could not be held liable in the present case, especially considering that he had not signed or prepared any reports on behalf of the Company.

4. It has been further submitted by learned senior counsel that the sole allegation levelled against the petitioners is of change in the classification of 'Sundry Creditors' to 'Unsecured Creditors' in some of the balance sheets of

the Company, however, it has been asserted that the inputs in the audit report were based on the data provided by the Accountant, co-accused Chhittar Mal Saini, and the Directors of the Company itself. Moreover, it has been asserted that both these categories ('Sundry Creditors' and 'Unsecured Creditors') represent liabilities, and the change does not alter the financial standing of the Company in any manner whatsoever, much less misrepresent its assets for loan security.

5. Still further, it has been argued by the learned senior counsel for the petitioners that even as per the police report, changes in the balance sheet/audit report had been carried out by co-accused Chhittar Mal Saini, on the directions of Harinderjit Singh; therefore, the data which had been provided to the petitioners for audit reports had already been tampered with, by the Accountant of the Company i.e. Chhittar Mal Saini. The petitioners, in the circumstances, had no obligation or means to independently verify the accuracy of the data supplied to them.

6. Learned senior counsel has lastly contended that the offence(s) under the Prevention of Corruption Act, 1988 stand deleted and the only offences which now remain in the present case are under Sections 465 and 468 of the IPC, which are all triable by Magistrate and carry a maximum punishment of seven years. He has relied upon various judicial pronouncements of Hon'ble the Supreme Court in '**Sushila Aggarwal and others vs. State (NCT of Delhi) and another**' (2020) 5 SCC 1; '**Mahdoom Bava vs. CBI**' 2023 SCC Online SC 299 and '**Aman Preet Singh vs. CBI through Director**' 2021 SCC Online SC 941, and in particular to the settled ratio of law laid down by Hon'ble the Supreme Court in '**Satender Kumar Antil vs. Central Bureau of Investigation & another**' 2022 LiveLaw (SC) 577 to assert that the petitioners are entitled to the concession of anticipatory bail as it is a matter of record that they were indeed not arrested during investigation and had cooperated fully, coupled with the fact that the case of the prosecution hinges on documentary evidence which already stands provided by the petitioners to the Investigating Agency.

7. Learned Spl. Public Prosecutor for the CBI has filed short reply by way of an affidavit of Insp. Ankush Sharma today in the Court, which is taken on record subject to all just exceptions. While opposing the prayer and submissions made by the learned senior counsel for the petitioners, he has asserted that the present case involves a huge financial fraud amounting to `4834.28 lacs, where funds obtained from the Bank were misappropriated,

and hypothecated stock of the Company was disposed off clandestinely, depriving the Bank of any means to recover any amount. He has further argued that though the balance sheets/audit reports were indeed based on the data provided by the Accountant of the Company and the change in the category from 'Sundry Creditors' to 'Unsecured Creditors' was also made by co-accused Chhittar Mal Saini in the software of the Company upon directions of Harinderjit Singh, however, the petitioners could not claim immunity; being Chartered Accountants/Auditors, they had a duty to diligently prepare the reports and should have raised concerns regarding the data supplied to them by the Company.

8. However, learned Spl. Public Prosecutor for the CBI has not disputed the contents of its reply filed before the CBI Court to the effect that the accused petitioners were not arrested during investigation and had joined investigation as and when called by CBI.

9. Learned Spl. Public Prosecutor for the CBI has also argued that there is a question mark qua the maintainability of the instant petitions itself; once bailable warrants had been issued to secure their presence, the petitioners should first go and surrender and thereafter, apply for regular bail as anticipatory bail is only for the purpose of investigation and not trial. In support, reliance has been placed on '**HDFC Bank Ltd. vs. J.J. Mannan @ John Paul & another**' (2010) 1 SCC 679.

10. Learned senior counsel for the petitioners has however, controverted the reliance placed by the learned Spl. Public Prosecutor for CBI by asserting that the said ratio of law already stands overruled in the judgment rendered by a five-Judge Bench of Hon'ble the Supreme Court in **Sushila Aggarwal's case (supra)**.

11. I have heard learned counsel for the parties and perused the relevant material on record.

12. The role of the petitioners stands detailed in the summoning order dated 09.01.2024 which has been annexed as Annexure P-3. The relevant extract of the said order is reproduced as under:

"21. The CBI contends that the key figures in Audited Balance sheet as on 31.03.2015 and Provisional Balance sheet as on 30.09.2015 of M/s GAPL submitted to Bank for takeover of limits, are not matching with Audited Balance sheet as on 31.03.2015 filed with Income Tax Department. Further that Audited balance sheet as on 31.03.2015 and Provisional Balance sheet as on 30.09.2015 of M/s GAPL submitted to bank bears stamp of accused Gagandeep Shingal, CA and that the audited balance sheet of M/s GAPL as

*on 31.03.2016 and 31.03.2017 were prepared by Gagandeep Singhal though signature on the balance sheet is that of V.M.Singhal, CA having his firm in the name of Anil Sood and Co. where Gagandeep is also a partner; **on the basis of trial balance provided to him by Chittar Mal Saini, Accountant of M/s GAPL in which balances had been shown under the head "unsecured loans" which are actually "Sundry creditors"** The CBI alleges that the changes in classification of above entries were done by accused Chhittar Mal Saini in the computer software of the M/s GAPL on the directions of Harinderjit Singh and these entries were also checked by CA, Gagandeep Singhal at the time of audit of accounts.*

The CBI contends that though M/s GAPL has shown M/s Sohan Lal and Mohan Lal under the head 'unsecured loan' in its audited balance sheet as on 31.03.2017, during investigation Sh. Vijay Kumar, Partner of M/s Sohan Lal and Mohan Lal disclosed that his firm has not given any loan to M/s GAPL and M/s GAPL is Debtor in the accounts of his firm and Rs.58 Lacs are outstanding against them in their accounts. The CBI further contends that during investigation proprietor/ representatives of the firms Sh. Raj Kumar Proprietor of M/s Ram Kishan Dass Lal Chand, Gurpreet Singh Accountant in M/s H.S. Trading Co., Sh. Ravinder Pal Singla, the then proprietor of M/s Punjab Grain, Sh.Gurpreet Singh, Manager in M/s Meet Trading Co., Sadig Faridkot, Sh. Krishan Gopal, Partner in M/s Satpal Industries Faridkot, Sh. Shiv Kumar, Proprietor of M/s Shiv Kumar and Pardeep Kumar were examined and they also stated that their firms did not extended any loans to M/s GAPL instead had supplied materials related to business and were creditors of the M/s GAPL."

13. Upon a careful examination of the summoning order, it is evident that as per the case of the CBI itself the balance sheets were prepared by petitioner Gagandeep Singhal, which bore signatures of Varinder Mohan Singhal, based on the trial balance provided by coaccused Chhittar Mal Saini, Accountant of the Company; the balance sheets incorrectly categorized the balance under 'Unsecured Loans' instead of 'Sundry Creditors'. Notably, these classification changes were executed by the co-accused Chhittar Mal Saini in the computer software of the Company under the directions of Harinderjit Singh. Prima facie, the petitioners prepared the balance sheets based on these entries without knowledge of actual classifications of entries; it would be pertinent to note that the internal investigation conducted by the

complainant Bank also does not contain any allegations against the petitioners.

14. Learned Spl. Public Prosecutor for the CBI has opposed the petitioners' plea primarily on the ground of huge financial fraud involved in the case; however, while acknowledging the gravity of the offences, it would be imperative to consider the individual roles and specific allegations against the petitioners. The denial or grant of bail cannot be solely based on the magnitude of the offence alleged, other relevant factors must also be taken into account.

15. Reference can be made to the following parameters set forth by the Constitution Bench of Hon'ble the Supreme Court in **Sushila Aggarwal's case (ibid)**:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) The possibility of the applicant to flee from justice;*
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.*
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be*

prevention of harassment, humiliation and unjustified detention of the accused;

- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

16. Hon'ble the Supreme Court in **Satender Kumar Antil's case (supra)**, has outlined the following requisite conditions for grant of bail to a person accused of offences punishable with imprisonment of 07 years or less, not falling in category B and D:-

- (1) Not arrested during investigation
- (2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

17. It is noteworthy that in the present case also, the custodial interrogation of the petitioners was admittedly not sought by the respondent-CBI during investigation as the petitioners had cooperated fully by joining investigation as and when called for, and by providing necessary documentation. Therefore, in view of the law laid down in **Satender Kumar Antil's case (supra)**, there would be no justification to incarcerate the petitioners at this stage, especially considering that they are not involved in any other criminal case.

18. Additionally, since the investigation stands concluded and final report already stands presented under Section 173(2) of the Cr.P.C., there can be no apprehension or risk of any tampering with the evidence. The trial is yet to commence, coupled with the fact that the entire case of the prosecution hinges on documentary evidence which is already in possession of the CBI.

19. In similar circumstances, Hon'ble the Supreme Court in **Mahdoom Bava's case (supra)**, has observed as under:

“9. On the strength of the aforesaid allegations, which are certainly serious in nature, the prayer of the appellants for anticipatory bail is opposed vehemently by the learned Additional Solicitor General. But in our

considered view there are at least three factors which tilt the balance in favour of the appellants herein. They are:- (i) Admittedly, the CBI did not require the custodial interrogation of the appellants during the period of investigation from 29.06.2019 (date of filing of FIR) till 31.12.2021 (date of filing of the final report). Therefore, it is difficult to accept the contention that at this stage the custody of the appellants may be required;

(ii) In the reply/counter filed before the High Court, the CBI had taken a categorical stand that the Court had merely issued summons and not warrant for the appearance of the accused. In the case of Shri Deepak Gupta, CBI had taken a stand before the Special Court that “the presence of the accused is not required for the investigation but it is certainly required for trial” and that therefore he needs to be present. Therefore, all that the CBI wanted was the presence of the accused before the Trial Court to face trial. In such circumstances, to oppose the anticipatory bail request at this stage may not be proper; and

(iii) All transactions out of which the complaint had arisen, seem to have taken place during the period 2009-2010 to 2012-2013 and all are borne out by records. When the primary focus is on documentary evidence, we fail to understand as to why the appellants should now be arrested.

10. *More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.”*

20. After taking into account the totality of the facts and circumstances as enumerated hereinabove as well as the ratio of law laid down by Hon'ble the Supreme Court in its various judicial pronouncements, this Court finds merit in the prayer made by the petitioners for extending the concession of anticipatory bail to them.

21. Accordingly, the present petitions are allowed. The petitioners are directed to put in appearance before the learned Spl. Magistrate CBI, Mohali within 07 days from today. On appearance, they shall be released on bail by the Court concerned subject to the following conditions:

- (i) The petitioners shall furnish personal bonds in the sum of `50.00 lacs each with two sureties in the like amount;
- (ii) They shall surrender their passports before the court concerned.

22. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.