CNR No. PBPO010016252018

Filing No.914/2018

Jatinder Singh vs State

Present:- Shri Mehtab Singh Chicha Advocate counsel for applicant-accused
Shri Taranbir Kaur Additional Public Prosecutor for the State

Record produced by ASI Balwinder Singh. This order of mine shall dispose of application for anticipatory bail moved on behalf of applicant-accused Jatinder Singh. The brief facts mentioned in the bail application for anticipatory bail are that the applicant is likely to be arrested and non bailable warrants have been issued against him, therefore, necessity has arisen to seek the **invocation** of section 438 of CrPC. In fact from the bare perusal of the FIR and the allegations contained in the FIR would show that the **complainant** has deliberately and mischievously exaggerated the amounts. The applicant had never mis utilized his official position and has acted in accordance with the procedure meant for spending the government money for the purpose of advertisement. The allegations in the FIR are vague. The time of alleged forgery, embezzlement/ misappropriation, advertisement in newspaper have been inflated as per allegations. Inspite of the fact that the rates were standardized and were fixed by DAVP i.e. Directorate of advertisement and visual publicity and the standard rates are fixed by the DAVP. The alleged inflated rates have not been mentioned. The specific details of the bills alleged to have been forged and fabricated are also not mentioned. The details of newspaper and electronic media regarding the publication of news items or any advertisement in the media are not mentioned. The petitioner received a call on his mobile phone from Tejinderpal Singh, DSP, Vigilance Bureau, Gurdaspur calling him to appear before him for the purpose of investigation and he was called 6 times asking him to join the investigation. he had co-operated in the investigation conducted by

Tejinderpal singh DSP. The petitioner was subjected to rigorous interrogation for long period. He was not provided any aid of a counsel during the course of investigation/ interrogation. He is a chronic patient and has also suffered epilepsy attack. It is further mentioned that after facing the interrogation, due to stress in his mind he has also suffered the attack of epilepsy. None of the auditors, who audited the bills have been arrayed as accused who had participated in the clearance of the bills for the best reasons known to the office of Vigilance Bureau. It was obligatory on the part of the court to protect the liberty of the applicant under the facts and circumstances more particularly when the present FIR is an outcome of political alliance. Some of the accused are actively associated with Bhartiya Janta Party and during the present regime of Indian National Congress the FIR has **originated** out of vendetta. Moreover Navjot Singh DSP Vigilance Bureau Unit Gurdaspur is under political pressure and in the present FIR he has loudly proclaimed himself as an investigating officer by claiming that the Ruka and FIR be sent back to him. He will carry out the investigation himself which is a material infirmity in the investigation so far carried out which shows that the investigation is not fair and is politically motivated. It is further mentioned in the application for anticipatory bail that no payment, whatsoever, can be made without pre audit conducted by the auditors of director General, Local Funds Account Punjab, Chandigarh. Thus, the present petitioner was merely a signatory of the cheque and he had discharged the duty delegated by the Chairman of Pathankot Improvement Trust vide order dated 15.07.2015. As per the procedure and practice, the bills are first presented to the Accounts Clerk, who scrutinized the same forwarded the same to the Trust Engineer, who conducts the verification, certifies on the bill that the work has been duly completed as claimed in the bill, thereafter it goes to the auditors of audit branch of Director General, Local Funds Account Punjab, who verifies the rates as per DRVP and also to verify that bills are prepared in accordance with the work done as per the report of Trust Engineer. If there is any discrepancy, the rates can be changed or the bill prepared can be reduced to a huge amount but no such thing has taken place and there is no explanation with the investigating agency for not arraying the pre-audit persons involved in the process. It is further mentioned in the bail application that there is a provision as per rule 16 of the Punjab Town Improvement Trust Rules that whenever any embezzlement or misappropriation of Trust money is discovered, the inquiry is to be conducted by the Chairman. Therefore it is a pure and simple civil matter. There was no embezzlement, no exaggeration of bills and the FIR is a politically motivated and the present applicant is not a previous convict. He has already joined the inquiry and has extended cooperation and be released on anticipatory bail on account of detailed facts given as well as the ill health of the applicant.

Initially the application was moved by complainant Press Reporter Village and Post Office Madhopur District Pathankot addressed to S.P. Vigilance Bureau, Punjab Amritsar reporting about huge money spent on advertisement on very high rate as compared to market rates in connivance with local city cable and it was alleged that he had applied under RTI and had sought the vouchers, bills and rates of advertisement given/ paid by the Improvement Trust are very high as compared to prevailing rates in the market and the advertisements were allegedly got advertised in the city cable as well as news paper for a sum of ₹3,25,67,804/-. There were only 5 to 6 auctions which were conducted from 01.04.2015 to 20.01.2016 by Improvement Trust Pathankot, whereas the rates of Advertisement in city cable is very less but the rate at which the trust got the advertisement punlished is around 8 times more than the actual prevailing rate. Out of the above mentioned amount of r.3 crore, 70% money has been spent on advertisement in city cable whereas many such advertisement in news paper are also casting shadow on the working of Improvement Trust, Pathankot. The advertisement in news papers were given in local news papers of Himachal Pradesh and Jammu & Kashmir which shows that the Advertisement in the news paper were fake and it was away of making money by the official of trust with the help of local city cable and the complainant had doubted that many of the advertisements given to city cable in fact were never aired/ advertised in the local net work and the amounts were mentioned as under:

1. 205 April month amount spend ₹ 3,21,332/-
2. 2015 May month amount spend ₹ 4,30,002
3. 2015 June month amount spend ₹28,67,456/-
4. 2015 July month amount spend ₹ 42,78,544/-
5. 2015 August month amount spend ₹ 34,96,469/-
6. 2015 September month amount spend ₹ 20,63,738/-
7. 2015 October month amount spend ₹ 22,17,470/-
8. 2015 November month amount spend ₹ 52,78,639/-
9. 2015 December month amount spend ₹ 61,58,379/-
10. 2016 January month amount spend ₹ 54,55,775/-

Total amount spend ₹ 3,25,67,804/-

The complainant further sought the matter to be inquired by independent agency as why the complete detail was not given to the informant and he alleged that it appears to be a case of huge embezzlement of money. Thereafter the Vigilance inquired about the matter and FIR was got registered by Navjot Singh DSP vigilance Gurdaspur. The contents of the FIR are that a complaint was received against the accused regarding fake advertisements and causing huge loss to the State exchequer and further the matter was inquired whether the advertisements were got published/ aired in cable net work and news papers more than the prevailing rates at the relevant time and whether any embezzlement or breach has been committed by the employees of the Improvement Trust to the government treasury in conspiracy with each other and during the course of inquiry it was found that in connivance with Jatinder Sharma who was running agency by the name of Shri Sai Advertiser was paid a sum of ₹15,87,572/- for advertisement in news papers and ₹ 1,31,70,760/- for Electronic media advertisement and in fact a total loss in this process by not getting the advertisement published /advertised/ aired and preparation of fake bills and withdrawing an amount of ₹ 1,47,58,332/- through Jatinder Sharma was found during the course of inquiry and out of the advertised news items it was found that a sum of ₹ 37,81,932/- was paid in excess to the prevailing rate for the advertisement and in fact the excess amount of the prevailing rate was not paid and the same has been embezzled. There was a total embezzlement of ₹ 3,29,77,554/- in the process. There was other agency by the name of J.K. Advertiser which was also being operated by Jatinder Sharma and another agency by the name of Media Advertisers which was also being operated by jatinder Sharma and other agencies namely Mahotra Advertiser, Anu Advertisers was being run by Surinder Mahajan who is also one of the accused in the conspiracy and in all a sum of ₹ 4,26,09,214/- has been embezzled. In fact the actual amount paid for advertisement was ₹ 42,91,776/- to Jatinder Sharma and ₹ 4,87,685/- to Surinder Mahajan and the remaining amount of ₹ 4,26,09,214/ was embezzled

I have heard learned counsel for the applicant-accused, learned Additional Public prosecutor assisted by ASI Balwinder Singh and also perused the record.

Learned counsel for the applicant-accused has contended that in the entire process it would show that the investigating agency is **hell bound to persecute** the present applicant along with the others and there are no details of the bills, vouchers in which the amount was exaggerated or the actual advertisement, press note, media advertisement was not in fact got done. There is only a hypothetical figure prepared by the investigating agency showing the concurrence of Jatinder Sharma and Surinder Mahajan and he exact bills vouchers bearing number, particulars and counter verification from the concerned advertising company to whom the amount was actually paid is not mentioned. Moreover it is a case of political vendetta and it is not for the first time that the manner in which the advertisements have been got done was continuing. No previous instance has been taken into consideration to make a distinction that the present applicant had deviated from the settled principles/ procedure. No instructions are shown that the services of private agency who associates themselves with the actual media cannot be engaged. He has further contended that under the facts and circumstances, the present applicant be enlarged on anticipatory bail.

On the other hand learned Additional Public Prosecutor duly assisted by ASI Balwinder Singh has admitted that previously also the services of the private agencies were engaged but the present private agencies had come up recently and they have been paid exaggerated amount and also the amount for which the actual media and news paper items were never got aired or advertised. Learned Additional Public Prosecutor has further contended that in the similar facts and circumstances the applications for anticipatory bail were entered by the learned Sessions Judge Pathankot and they have been dismissed. He is the main accused. He had the duty assigned to check and verify that actual work has been got done and therefore the allegations are serious. There is a total embezzlement of more than ₹ 4 crores in the process and as such the application for anticipatory bail may please be dismissed.

After having heard learned counsel for the applicant-accused, learned Additional Public Prosecutor and perusal of the record, there are communications received which have been taken in custody by the inquiry officer to show that for many bills for which the amount has been paid to the private agencies, the actual filming of advertisement or printing of advertisements in the news papers had in fact never taken place. The concerned media/ news papers have reported to the inquiry agency that no such advertisement was ever published, aired or conducted by them. It has to be seen by the investigating agency as to why the pre-audit people who had the responsibility to check and verify the facts, the documents, to conduct a scrutiny whether actually the advertisement/ the media report for the purpose of advertisement has been published and aired or not, why they have not been arrayed as accused is for the investigating officer to explain and I am not satisfied with the explanation furnished by the investigating agency. It appears to be a selective. if government treasury has been mis-utilized, breached in conspiracy, each and every part of the government section which was responsible for making sure that the amount of the government is in fact spent for which it has been meant for do not perform their duty are all responsible. There is no explanation why pre-audit agency people have not been arrayed as co-accused and even in the investigation so far carried out there is nothing to point out that the entire process was supervised by the accused facing trial only in conspiracy with the private individuals. Under the facts and circumstances I do not agree with the contentions of the learned counsel for the applicant-accused and find that allegations are very serious and I am not inclined to accept the request for releasing the applicant-accused on anticipatory bail. The application for anticipatory bail is without merit and the same is therefore dismissed. Copy of this order be sent to the quarter concerned for information. Bail application file be consigned to the records.

(Rakesh Kumar Sharma),
Vacation Judge
Pathankot/UID-PB-0133

Dated:20.06.2018
(Sawtanter Kumar)
Stenographer-II