2025 INSC 320

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO. 3247 OF 2025

DEVINDER KUMAR BANSAL — **Petitioner(s)**

VERSUS

THE STATE OF PUNJAB — **Respondent(s)**

O R D E R

1. Exemption Applications are allowed.

2. The High Court has denied anticipatory bail to the petitioner in connection with First Information Report No. 1 dated 08.01.2025 registered with the Vigilance Bureau, Police Station, Patiala for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and Section 61(2) of the Bharatiya Nyaya Sanhita, 2023.

3. It appears from the materials on record that the petitioner – herein is serving as Audit Inspector with the Government.

4. He is alleged to have demanded illegal gratification in connection with conducting of audit pertaining to development work undertaken during the tenure of the wife of the complainant as Sarpanch of the Gram Panchayat. It

is further alleged that the co-accused by name Prithvi Singh actually collected the bribe amount for and on behalf of the petitioner – herein for the complainant.

5. Apprehending his arrest in connection with the offence, referred to above, the petitioner prayed for anticipatory bail which the High Court declined.

6. In such circumstances, referred to above, the petitioner is here before us with the present petition.

7. We heard Ms. Sanya Kaushal, the learned counsel appearing for the petitioner and also looked into the materials on record. The learned counsel made a gallant effort to persuade us to exercise our discretion in favour of the petitioner, however, we had to convey to her with all humility at our command that she has come before us with a very weak matter.

8. The High Court in its impugned order, more particularly Para 5 has observed thus:-

> ***"On being put to notice on the previous date of hearing, learned State counsel assisted by learned counsel for the complainant has vehemently opposed the prayer for grant of anticipatory bail to the petitioner. It is submitted that co-accused Prithvi Singh was apprehended red handed while accepting the bribe and admitted that the amount was received on behalf of the petitioner. Furthermore, there was an audio recording dated 08.01.2025, which further corroborates the demand made by the petitioner. It has been argued that in the said recording, the petitioner is clearly audible confirming with co-accused Prithvi Singh whether the bribe was received in cash and further instructing him***

to transfer the amount to a third party, namely Naresh."

9. Section 7 of the Act, 1988 reads as under:

> ***"7. Public servant taking gratification other than legal remuneration in respect of an official act***
>
> **Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.**
>
> **Explanations. (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating but he is not guilty of the offence defined in this section.**
>
> ***(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.***
>
> ***(c) "Legal remuneration". The words "legal remuneration" are not restricted to***

remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

10. Section 13(1)(a) of the Act, 1988 reads as under:

"13. Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or"

11. Thus, in an offence under Section 7 of the Act, 1988, the points requiring proof are:

(i) ***that, the accused at the time of the offence was, or expected to be, a public servant;***

(ii) ***that, he accepted or retained or agreed to accept, or attempted to obtain from some person a***

gratification;

(iii) *that, such gratification was not a legal remuneration due to him;*

(iv) *that, he accepted such gratification as a motive or reward, proof of which is essential for*

(a) *doing or forbearing to do an official act, or*

(b) *showing or forbearing to show favour or disfavour to someone in exercise of his official functions, or*

(c) *rendering or attempting to render any service, or disservice to someone, with the legislative or executive government, or with any public servant.*

12. Further it is seen that, Section 7 speaks of the "attempt" to obtain a bribe as being in itself an offence. Mere demand or solicitation, therefore, by a public servant amounts to commission of an offence under Section 7 of the P.C. Act. The word "attempt" is to imply no more than a mere solicitation, which, again may be made as effectually in implicit or in explicit terms.

13. Actual exchange of a bribe is not an essential requirement to be prosecuted under this law. Further, those public servants, who do not take a bribe directly, but, through middlemen or touts, and those who take valuable things from a person with whom they have or are likely to have official dealings, are also punishable as per Sections 10 and 11 of the Act 1988 respectively.

14. We may refer to a Division Bench decision of the Calcutta High Court in the case of Ratan Moni Dey vs. Emperor reported in (1905) I.L.R. 32 Calcutta 292. The entire order is extracted hereunder:

> *"The petitioner has been convicted of attempting to obtain for himself some*

gratification other than legal remuneration as a motive or reward for doing an official act, and has been sentenced to six months' rigorous imprisonment.

A Rule was issued by this Court to show cause why the conviction and sentence passed on the petitioner should not be set aside on the ground that the facts found in the judgment do not constitute an attempt to commit an offence under Section 161 of the Indian Penal Code, and also to show cause why the sentence should not be modified.

The petitioner was a Civil Court peon and as such he had to serve summonses on the witnesses in a suit instituted by the firm in which the complainant was the head gomastha. He asked the complainant to pay him dusturi, if he wished him to serve the summonses without an identifier, and this is the act for doing which he has been convicted.

It is urged on his behalf that the facts found do not constitute an attempt to obtain the dusturi. With this argument we are unable to agree. It appears to us that the attempt was complete when the demand was made; there was nothing further for the petitioner to do to complete his attempt. He made the request, and it lay with the person from whom he demanded the money to comply with the request or not. We are in complete agreement with the opinion expressed by Mr. Justice Pearson in Empress of India v. Baldeo Sahai [(1879) I.L.R. 2 All 253] where that learned Judge lays down that to ask for a bribe is an attempt to obtain one.

The learned pleader who appeared on behalf of the petitioner quoted several cases to show what is an attempt what is not. We need not refer to these in detail. We may take

the case of the woman who was convicted of having attempted to commit suicide, reported in Queen Empress v. Ramakha [(1884) I.L.R. 8 Mad. 5]. In this case the woman had run towards a well with the intention of jumping down it. Here it was held that there was no attempt to commit suicide, and the reason is obvious. The mere running would not put an end to her life; there was some further act to be done, namely, jumping down the well, before the attempt would be complete.

In the case before us, there was nothing further for the petitioner to do; he made the request and, as we have said, whether he received the gratification or not did not depend on himself but on the person from whom it was demanded.

As regards the sentence, we are of opinion that in the circumstances of the case it is not too severe. The petitioner not only demanded the reward but refused to serve the summons if it were not paid, and also used abusive language towards the complainant.

We accordingly see no reason to interfere. The Rule is discharged.

The petitioner must be called on to surrender and to serve the remainder of the sentence."

(Emphasis supplied)

15. We may also refer to a Division Bench decision of the Bombay High Court in the case Damodar Krishna Kamli vs. State reported in 1955 Cr.L.J. 181. Justice P.B. Gajendragadkar (as His Lordship then was), speaking for the Bench, observed as under:

"...<u>If we turn to Section 161, it would be clear that a public servant would be guilty of</u>

> ***the offence of taking gratification under the said section even if he agrees to accept the prohibited gratification. It is thus not necessary in order to bring home to the public servant the charge under Section 161 to prove that he has actually accepted or obtained illegal gratification. It would be enough if it be shown that he had agreed to accept the said illegal gratification. In other words, if a proposal is made to the public servant in respect of payment of illegal gratification and the proposal is accepted by the public servant, he would be guilty under Section 161, Penal Code...***"
>
> **(Emphasis supplied)**

16. Section 161 of the I.P.C. came to be omitted at the time when the Prevention of Corruption Act, 1947 came to be repealed and the Prevention of Corruption of Act, 1988 came into force. Section 161 of the I.P.C. is *pari materia* to Section 7 of the Act, 1988.

17. Section 7 is with regard to a public servant taking gratification other than the legal remuneration in respect of an official act. On the other hand, Section 13 of the Act, 1988 is with regard to criminal misconduct by a public servant. A public servant could be said to have committed an offence of criminal misconduct, if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than the legal remuneration as a motive or reward such as mentioned in Section 7 of the Act.

18. In State of M.P. and another v. Ram Kishna Balothia and another reported in AIR 1995 SC 1198, this Court considered the nature of the right of anticipatory bail and observed as under:

> *"We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code? Also anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its nonapplication to a certain special category of offences cannot be considered as violative of Article 21."*
>
> **(Emphasis supplied)**

19. While deciding the aforesaid case, this Court referred to the 41st Report of the Indian Law Commission dated 24th September, 1969 recommending the introduction of a provision for grant of anticipatory bail wherein it has been observed that "*power to grant anticipatory bail should be exercised in very exceptional cases*".

20. The learned counsel appearing for the petitioner accused vehemently advanced the argument on the subject of life and liberty enshrined in Article 21 of the Constitution of India, by placing strong reliance on the observations made by this Court in Siddharam Satlingappa Mhetre v. State of Maharashtra reported in AIR 2011 SC 312 and submitted that unless the custodial interrogation is warranted in the facts and circumstances of the case, declining to grant anticipatory bail amounts to denial of the rights conferred upon a citizen/person under Article 21 of the Constitution. We do not find any merit in this contention of the learned counsel.

21. The parameters for grant of anticipatory bail in a serious offence like corruption are required to be

satisfied. Anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has been falsely enroped in the crime or the allegations are politically motivated or are frivolous. So far as the case at hand is concerned, it cannot be said that any exceptional circumstances have been made out by the petitioner accused for grant of anticipatory bail and there is no frivolity in the prosecution.

22. In the aforesaid context, we may refer to a pronouncement in Central Bureau of Investigation v. V. Vijay Sai Reddy reported in (2013) 7 Scale 15, wherein this Court expressed thus:

> *"28. While granting bail, the court has to keep in mind the nature of accusation, 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. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*
>
> **(Emphasis supplied)**

23. The presumption of innocence, by itself, cannot be the

sole consideration for grant of anticipatory bail. The presumption of innocence is one of the considerations, which the court should keep in mind while considering the plea for anticipatory bail. The salutary rule is to balance the cause of the accused and the cause of public justice. Over solicitous homage to the accused's liberty can, sometimes, defeat the cause of public justice.

24. If liberty is to be denied to an accused to ensure corruption free society, then the courts should not hesitate in denying such liberty. Where overwhelming considerations in the nature aforesaid require denial of anticipatory bail, it has to be denied. It is altogether a different thing to say that once the investigation is over and charge-sheet is filed, the court may consider to grant regular bail to a public servant - accused of indulging in corruption.

25. Avarice is a common frailty of mankind and Robert Walpole's famous pronouncement that all men have their price, notwithstanding the unsavoury cynicism that it suggests, is not very far from truth. As far back as more than two centuries ago, it was Burke who cautioned: "Among a people generally corrupt, liberty cannot last long". In more recent years, Romain Rolland lamented that France fell because there was corruption without indignation. Corruption has, in it, very dangerous potentialities. Corruption, a word of wide connotation has, in respect of almost all the spheres of our day to day life, all the world over, the limited meaning of allowing decisions and actions to be influenced not by the rights or wrongs of a

case but by the prospects of monetary gains or other selfish considerations.

26. If even a fraction of what was the *vox pupuli* about the magnitude of corruption to be true, then it would not be far removed from the truth, that it is the rampant corruption indulged in with impunity by highly placed persons that has led to economic unrest in this country. If one is asked to name one sole factor that effectively arrested the progress of our society to prosperity, undeniably it is corruption. If the society in a developing country faces a menace greater than even the one from the hired assassins to its law and order, then that is from the corrupt elements at the higher echelons of the Government and of the political parties.

27. In Manoj Narula v. Union of India, (2014) 9 SCC 1, this Court held that corruption erodes the fundamental tenets of the rule of law and quoted with approval its judgment in Niranjan Hemchandra Sashittal v. State of Maharashtra, (2013) 4 SCC 642 & held as under:—

> ***"16.……'26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance."***
>
> **(Emphasis supplied)**

28. In Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64, this Court held as under:—

> ***"68. Today, corruption in our country not only***

poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption….”

(Emphasis supplied)

29. In K.C. Sareen v. C.B.I., Chandigarh, (2001) 6 SCC 584, this Court observed thus:—

“12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity….”

(Emphasis supplied)

30. While approving the judgment of Subramanian Swamy v. Director, Central Bureau of Investigation, (2014) 8 SCC 682, rendered by another Constitution Bench in Manoj Narula's case, a Constitution Bench of this Court, dealing with rampant corruption, observed as under:—

“17 Recently, in Subramanian Swamy v. CBI (2014) 8 SCC 682, the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6-A of the Delhi Special

Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that : (SCC pp. 725-26, para 59)

"59. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."

And thereafter, the larger Bench further said : (SCC p. 726, para 60)

"60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."

And again : (SCC pp. 730-31, paras 71-72)
"71. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption of graft or bribe-taking or criminal misconduct under the PC Act, 1988 can be made to be treated

differently because one happens to be a junior officer and the other, a senior decision maker.

72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crime-doers and have to be tracked down by the same process of inquiry and investigation."

18. From the aforesaid authorities, it is clear as noonday that corruption has the potentiality to destroy many a progressive aspect and it has acted as the formidable enemy of the nation."

(Emphasis supplied)

31. In Neera Yadav v. Central Bureau of Investigation, (2017) 8 SCC 757, this Court observed thus:

"59. Every country feels a constant longing for good governance, righteous use of power and transparency in administration. Corruption is no longer a moral issue as it is linked with the search of wholesome governance and the society's need for re-assurance that the system functions fairly, free from corruption and nepotism. Corruption has spread its tentacles almost on all the key areas of the State and it is an impediment to the growth of investment and development of the country. If the conduct of administrative authorities is righteous and duties are performed in good faith with the vigilance and awareness that they are public trustees of people's rights, the issue of lack of accountability would themselves fade into insignificance.

60. To state the ubiquity of corruption, we may refer to the oft-quoted words of Kautilya, which reads as under:—

"Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money for themselves).

It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose."
[Ref: Kautilya's Arthasastra by R. Shamasastry, Second Edition, Page 77]

As pointed out by Paul H. Douglas in his book on "Ethics of Government", "corruption was rife in British public life till a hundred years ago and in USA till the beginning of this century. Nor can it be claimed that it has been altogether eliminated anywhere."

(Ref : Santhanam Committee Report, 1962 : Para 2.3).

61. Tackling corruption is going to be a priority task for the Government. The Government has been making constant efforts to deal with the problem of corruption. However, the constant legislative reforms and strict judicial actions have still not been able to completely uproot the deeply rooted evil of corruption. This is the area where the Government needs to be seen taking unrelenting, stern and uncompromising steps. Leaders should think of introducing good and effective leadership at the helm of affairs; only then benefits of liberalization and various programmes, welfare schemes and programmes would reach the masses. Lack of awareness and supine attitude of the public has all along been found to be to the advantage of the corrupt. Due to the uncontrolled spread of consumerism and fall in moral values, corruption has taken deep roots in the society. What is needed is a

> ***reawakening and recommitment to the basic values of tradition rooted in ancient and external wisdom. Unless people rise against bribery and corruption, society can never be rid of this disease. The people can collectively put off this evil by resisting corruption by any person, howsoever high he or she may be."***

32. In the overall view of the matter, we are convinced that the High Court rightly denied anticipatory bail to the petitioner herein.

33. The petition is accordingly dismissed.

34. However, it is needless to clarify that if the petitioner herein prays for regular bail, the same shall be considered on its own merits without being influenced in any manner by any of the observations made by this Court as this Court has only considered whether the petitioner deserves to be granted anticipatory bail or not.

35. The principles governing grant of anticipatory bail are distinct and different from the principles as regards the grant of regular bail. The considerations are different. This should be kept in mind if at all a regular bail application is filed by the petitioner herein.

36. Pending applications, if any, also stand disposed of.

……..J.
(J.B. PARDIWALA)

……..J.
(R. MAHADEVAN)

NEW DELHI;
3rd MARCH, 2025.