

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.M-13090 of 2015
Date of decision : April 27, 2015**

Shashi Mohan

...Petitioner...

versus

State of Punjab

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Prashant Vashisth, Advocate
for the petitioner.

JASPAL SINGH, J.

The instant petition has been preferred under Section 438 of the Code of Criminal Procedure (for short, 'Code') by Shashi Mohan-petitioner, seeking pre-arrest bail, feeling apprehension of his arrest, in case FIR No. 16, dated 06.03.2015, under Section 406 of IPC, registered at Police Station Fattu DHINGA, Kapurthala.

2. Shortly put, the case of prosecution unfolded by Manager Warehouse Kapurthala is that during kharif crop 2011-12, M/s Aggarwal Rice Mills, Fattu DHINGA was allotted to the Corporation, for custom milling of paddy and delivery of its resultant rice to FCI in the account of PSWC by the Punjab Food and Civil Supplies Department. Agreement in this regard was executed between said rice mills and PSWC. In pursuance of said agreement, PSWC supplied/stored 130262 bags in 'A' class gunnies weighing

45591.70 quintals paddy grade 'A' for milling from the local and adjoining 'Mandies'. Against the said stored paddy, M/s Aggarwal Rice Mills, Fattu Dzinga was required to deliver 30546.44 quintals out turn rice to FCI in the account of PSWC up to milling period fixed by the government for KMS 2011-12. The miller supplied only 17476.85 quintals resultant rice to FCI in the account of PSWC up to 31.12.2012 i.e. extended milling date by the government. Thus 13069.59 quintals rice equivalent to 19506.90 quintals corresponding to 55734 bags of paddy stocks have been left balance with said rice mill. Physical verification of the PSWC stocks in the above said mill was carried out by the complainant on 24.02.2015 for the required balance of 19506.90 quintals paddy. There were only 24207 bags of paddy and 5064 bags of rice available in the premises of the said rice mill M/s Aggarwal Rice Mills, Fattu Dzinga. 5064 bags of rice become equivalent to 10797 bags of paddy. In this way, stock found in the said sheller was lying to the tune of 35004 bags of paddy against the required balance of 55734 bags of paddy. There was shortage of 20730 bags of paddy stock of PSWC in the said rice mill i.e. 7255.50 quintals of paddy, for which present case was registered against Shashi Mohan i.e proprietor of M/s Aggarwal Rice Mills, Fattu Dzinga.

3. The contention of learned counsel for the petitioner is that petitioner has been falsely implicated in this case by concocting a false story. In fact, petitioner has entered into an agreement being proprietor of M/s Aggarwal Rice Mills for the purpose of custom milling of rice with Punjab State Warehousing Corporation. The said

agreement was reduced in to writing, which contains arbitration clause for resolving dispute, if any, arises in between the parties, in respect of the custom milling. Even, petitioner has mortgaged his land measuring 45 kanals 7 marlas in favour of corporation, the value of which is approximately ₹3.74 crores to indemnify the shortage of paddy, if any. Even, award passed by the arbitrator dated August 08, 2013 also discloses that corporation is at liberty to sale away the mortgaged property by way of public auction. Moreover, there is no misappropriation of paddy rice as has been alleged by the complainant-corporation and no offence is made out against the petitioner, if the entire case put forth by the complainant is taken on its face value. The entire case is of civil nature, which has been converted into criminal proceedings, just to put pressure upon the petitioner to make the payment of amount alleged to have been misappropriated by him. Otherwise, he is ready to join the investigation and abide by all the terms and conditions, imposed by the Court, in case, he is granted the concession of pre-arrest bail.

4. This Court has given a deep thought to the aforesaid submission made by learned counsel for the petitioner and has perused the record available.

5. There are serious and specific allegations against the petitioner that he committed cheating and fraud with complainant-corporation. He received 1,30,262 bags weighing 45591.75 quintals paddy grade 'A' for milling from the local and adjoining markets through complainant-corporation, which was stored in the rice mill of the petitioner at Fattu DHINGA. The petitioner was required to deliver

30546.44 quintals rice to FCI in the account of complainant-corporation up to milling period fixed by the government for KMS 2011-12 but the petitioner only supplied 17476.85 quintals resultant rice to FCI in the account of complainant-corporation up to December 31, 2012. So, petitioner not only committed default but also misappropriated the paddy supplied to him for custom milling. The mere fact that there is an arbitration clause in the agreement or that the petitioner has already mortgaged his agricultural land, does not *ipso facto* mean that complainant cannot proceed with the remedy provided under the IPC. It is well settled that civil as well as criminal proceedings can go simultaneously.

6. In view of the aforesaid discussions and keeping in view the serious and specific allegations, this Court does not find any merit in the instant petition. As such, the same is dismissed.

April 27, 2015
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(JASPAL SINGH)
JUDGE