IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-17292 of 2015
Date of decision:- July 20, 2015

Nitin Sharma

.....Petitioner..

Vs.

State of Haryana

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. P.S. Ahluwalia, Advocate, for the petitioner.

Mr. Rohit Arya, AAG, Haryana.

Mr. Aman Arora, Advocate, for the complainant-HPCL.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

Instant petition has been preferred under Section 439 of the Code of Criminal Procedure (for short, 'Code') seeking regular bail during the pendency of trial, in case FIR No. 336, dated 28.07.2010 (Annexure P-1), under Sections 403, 405, 408, 409, 411, 413, 467, 468, 471, 420, 477, 477-A and 120-B IPC, Police Station Model Town Panipat, District Panipat.

2. Instant case stands registered at the instance of Sanjay Kaushik, Senior Regional Manager (for short, 'S.R.M.') of Hindustan

Petroleum Corporation Ltd., Panipat (for brevity, 'HPCL'). Complainant's company is duly incorporated under the Indian Companies Act, 1956 and is engaged in refining, distribution and marketing of petroleum products across the country having its registered office at Sector 17, Jamshedji TATA road, Mumbai and regional office at E-22, Industrial Area, Court Road, Panipat. Complainant has retail/LPG Regional Offices got implants at various locations including at Panipat. Nitin Sharma, Proprietor of M/s Krishna Gas Agency and is a LPG Dealer of HPCL whereas Parveen Pushkar employed as Manager Finance with the complainant at Panipat Retail Regional Office during the year July, 2004 to April 2009 and being overall incharge of finance department at Panipat, he is responsible for all the financial matters and transaction. Ms. Poonam Puri was a contract worker and was engaged as a casual Clerk in the Finance Department of HPCL at Panipat during the years 2003 to March 13, 2010. Nitin Sharma being dealer of the complainant used to uplift LPG filled gas cylinders from LPG bottling plants of the complainant for sale and distribution to the consumers. The general practice being adopted for receiving payments against these up-liftments was that distributor had to make the payment in the concerned LPG bottling plants. However, in the case of Nitin Sharma, complainant had extended the facilities of making payment through cheques drawn in favour of complainant. He used to take supply against these payments from Jind Bahadurgarh Bottling plants of complainant. In the month of April 2010, it revealed that he had made short payment of ₹49.41 lacs against upliftments of product of complainant's company during the period March, 2008 when he was accosted, it transpired that in collusion with Parveen Pushkar and Ms. Poonam Puri hatched a conspiracy to defraud the complainant's company. As and when he used to issue cheques in favour of complainant towards valuable consideration of LPG refills, other accused forestalled the presentation of these cheques to the bankers of the complainant for collection. They conspired with Nitin Sharma and stopped complainant from realizing the valuable consideration of ₹49.41 lacs. Accused made a payment of ₹29.49 lacs out of the aforesaid amount with further promise to make the balance payment at the earliest. As a result of irregularity committed by Nitin Sharma, complainant's company undertook elaborate reconciliation activity of transactions/accounts of Nitin Sharma. During reconciliation, number of financial irregularities and violations in procedures/system and guidelines came to the fore, in respect of period 2007 to 2009 and it revealed that an amount of ₹7.16 crores approximately remained unpaid by Nitin Sharma. Although, he issued cheques in favour of complainant but all the three persons named above forestalled the presentation of said cheques for collection to the bankers of complainant. Nitin Sharma also expressed his willingness to pay ₹50 lacs to the complainant's company as soon as possible and balance amount in monthly installment of ₹5 lacs subject to audit of account and settlement.

3. Contention of learned counsel for petitioner is that though

FIR was registered way back in the year 2010 and inquiries were conducted by various officers to come to the conclusion that dispute between parties is of civil nature. On November 17, 2014, petitioner was arrested and since then he is in custody. The investigation of this case stands concluded with the presentation of final report submitted by investigating agency under Section 173 of the Code. So, in the given circumstances, no useful purpose would be served by continuous incarceration of petitioner in the case. He also undertakes to cooperate with the trial and to abide by all terms and conditions, in case, he is granted concession of bail.

4. On the other hand, learned State counsel has ebulliently argued that petitioner is main accused in the case in hand, who in connivance with his co-accused siphoned more than ₹7.16 crores and caused wrongful loss to complainant's company. Thus, he does not deserve the concession of bail.

5. A deep thought has been given by this Court to the rival submissions made by learned counsel for the parties besides going through the records.

6. It is an undisputed fact that petitioner is proprietor of M/s Krishna Gas Agency and is a LPG dealer of HPCL whereas his co-accused Parveen Pushkar was posted as Manager Finance with complainant's corporation and embezzled a total sum of ₹7.16 crores along with his co-accused. Modus operandi adopted by petitioner in connivance with his co-accused was that *"as and when cheques were received by complainant from Nitin Sharma for supply of LPG to him, Parveen Pushkar and Ms. Poonam Puri chose to issue*

manual bank deposit slips in place of system generated bank deposits slips, so as to avoid presentation of cheques issued by Nitin Sharma to the bankers of complainant for collection". Moreover, petitioner has agreed to pay a sum of ₹50 lakhs, which also leads to show that he actively participated in siphoning the amount in question. The mere fact that he is in custody since November 17, 2014, is itself no ground to grant the concession of bail.

7. Taking into consideration the seriousness and gravity of offence, this Court does not deem it a fit case to grant the concession of bail. As such, petition stands dismissed.

July 20, 2015 **(JASPAL SINGH)**
sonika **JUDGE**