IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-19031 of 2015
Date of decision:- July 20, 2015

Poonam Puri

.....Petitioner..

Vs.

State of Haryana

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. SPS Sidhu, Advocate,
for the petitioner.

Mr. Rohit Arya, AAG, Haryana.

Mr. G.S. Jaswal, Advocate,
for the complainant-HPCL.

****

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 438 read with Section 482 of the Code of Criminal Procedure (for short, 'Code') seeking pre-arrest bail, 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 as well as for setting aside order dated May 29, 2015 (Annexure P-5) passed by the Id. Additional Sessions Judge, Panipat whereby application for cancellation of pre-arrest bail filed by investigating agency has been allowed and order dated March 24, 2015 (Annexure P-2) vide which concession of pre-arrest bail granted to he petitioner has been recalled/set aside.

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 Krishana Gas Agency is a LPG Dealer of HPCL whereas Parvin 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 the complainant. He used to take supply against these payments from Jind Bahadurgarh Bottling plants of the 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 transaction/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 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. It is further the case of petitioner that Nitin Sharma was depositing local cheques for making payment of consideration in advance for LPG refills at Panipat Retail Regional Office, against cash receipts, he used to uplift supplies from Jind/Bahadurgarh Bottling Plant. Although, he was supposed to deposit cheque against amount for which, he was used to be given cash receipts. Parveen Pushkar and Ms. Poonam Puri used to issue manual bank deposit slips instead of system generated bank deposit slips so as to avoid presentation of cheques issued by respondent No.1 to the bankers. They used to deposit cheques issued by Nitin Sharma in the non-operative collection account of the company. Thus, they succeeded in implementing their illegal and wrongful designs of omitting to include all the cheques issued by Nitin Sharma. Manual deposit slips were prepared under the signatures of Parveen Pushkar and all the three connived/colluded with each other succeeded in wrongful loss to the company and wrongful gain to themselves.

4. While assailing impugned order dated May 29, 2015, it has been ebulliently argued by learned counsel for petitioner that same is wholly illegal and perverse. No reason has been assigned by ld. trial court to show the cancellation of pre-arrest bail of petitioner. There is nothing on the record or in the order to suggest as to how

and in what manner petitioner has not been cooperating with the investigating agency. Only reason ascribed by ld. Additional Sessions Judge for holding that petitioner has misused the concession of pre-arrest bail is that she did not answer the questions put forth to her by investigating agency in proper manner. In fact, investigating agency moved an application for seeking cancellation of pre-arrest bail solely on the ground that she has not been answering the questions put to her by investigating officer, which cannot be a ground for seeking cancellation of bail, as it may amount to misuse of the concession of bail. It has further been urged that in fact, there is no change of circumstances from the date, petitioner granted pre-arrest bail. There are no allegation that she ever extended any threats to a witness or that anything has been said or that she has in any manner interfered in the investigation. Moreover, she was granted concession of bail vide order dated March 24, 2015 by ld. Additional Sessions Judge while taking into consideration complete facts and circumstances of the case. Even as per the FIR, she happens to be a contract employee having no role to play in deposit or withdrawal of amount. Thus, impugned order is not sustainable in the eyes of law and deserves to be set aside .

5. As far as entitlement of petitioner for pre-arrest bail is concerned, in fact, Nitin Sharma, who is the real culprit being owner of gas agency has confessed his guilt and has agreed to repay the amount to complainant. Nitin Sharma as well as Parveen Puskhar

are already in custody. Investigation is also complete and challan has already been presented in the Court. Thus, petitioner deserves the concession of pre-arrest bail. Considering the case of petitioner from either of angle, impugned order is not sustainable.

6. Per contra, learned State counsel has strongly opposed various submissions of learned counsel for petitioner and has submitted that there is no infirmity or illegality in impugned order dated May 29, 2015 whereby pre-arrest bail granted to petitioner has been cancelled as she did not cooperate during investigation of this case, which was one of the conditions enumerated in order, vide which she was granted bail.

7. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record.

8. Undoubtedly, vide order dated March 24, 2015, petitioner was granted concession of bail subject to conditions enumerated under Section 438 (2) Cr.P.C.

9. It is an admitted fact that she was called for interrogation and investigating agency put various questions to her to which she did not reply in a proper manner. She was specifically asked whether she served complainant's company during the period October 2007 to February 2009 and she categorically stated that during the said period, she did not work with complainant's company. She simply claims that she had just taken MBA training from complainant's company in the year 2006. Though, said fact stands proved from the

statements of Parvinder Singh, Ex. Senior Regional Manager as well as that of Uttam Singh son of Vijay Singh, whose statements were recorded during the course of investigation. In fact, she is none-else but sister of Rajiv Puri, who was also working with complainant. Without her collusion/conspiracy, her co-accused could not have succeeded in siphoning a total amount of ₹7.16 crores. When she has been granted the concession of pre-arrest bail, she was supposed to disclose all the aspects pertaining to it much less her employment as contract employee with complainant. Thus, this Court is of the considered view that pre-arrest bail granted to petitioner has rightly been cancelled by Court below.

10. Similarly, taking into consideration the various aspects of the case as well as discussion, which have been narrated in the previous paragraphs of this order, she does not deserve the concession of bail. Accordingly, petition stands dismissed.

(JASPAL SINGH)
JUDGE

July 20, 2015
sonika