

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-19734 of 2015

Date of Decision: October 21, 2015

Sushank Singla @ Ashu

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Gulshan Sharma, Advocate
for the petitioner.

Mr. Gazi Mohammad, DAG, Punjab

Mr. Lalit Pathak, Advocate for the complainant.

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M.M.S. BEDI, J.

Petitioner seeks the concession of pre-arrest bail in a case of misappropriation of rice. As per the allegations in the FIR, the rice was purchased by GMT Rice Mill Pvt. Ltd., Jhoke Hari Har of which the petitioner is the sole proprietor/ Director. The full payment of the rice has not been made by the petitioner and his Company. The FIR has been registered at the instance of Gaurav Garg, owner of Gaurav Trading Company, Delhi and Gopal Singh, owner of M/s J.S. and Company, alleging

that through Uma Shanker and broker Vicky, they had come to know about the petitioner and his firm. Though the rice have been received against different assignments but the balance of sale consideration to the tune of about Rs.1.09 crores had not been paid.

Counsel for the petitioner has vehemently contended that it is a case of pure civil liability and that in order to pressurize the petitioner the process of criminal law has been abused.

I have heard learned counsel for the petitioner at length and carefully gone through the police file and seen the transactions. It is pertinent to mention that on the first date of hearing i.e. on June 12, 2015, an assurance had been given on behalf of the petitioner that he was ready and willing to join investigation and that the rice which was received from the complainant being not of good quality as per the order, the same had not been accepted by the firm of the petitioner. It was claimed that the rice had not been misappropriated and if the complainants wanted they could take the rice from the premises of the firm. Persuaded with the said statement, a Coordinate Bench of this Court had granted the concession of interim bail to the petitioner. At the time of final hearing, an affidavit of DSP (Rural) Ferozepur has been produced on record informing this Court that during the course of investigation no stock of rice was found available in the premises of M/s GMT Rice Mill Pvt. Ltd. and another case bearing FIR No. 204 of 2014 under Sections 420, 409, 406 IPC, Police Station Kalyan has been registered against him and that the District Manager of Markfed has already

got auctioned rice and paddy lying in the premises of M/s GMT Rice Mill Pvt. Ltd.. Stock has been purchased by M/s Bharat Trading Company, Nabha in auction.

No doubt, it is a case where the petitioner has failed to re-pay the price of the stock purchased by him but his intention at the time of entering into the transaction is the important factor which would determine his culpability. It is a case of mixed civil and criminal liability. No doubt, the petitioner has joined investigation but the conduct of the petitioner of having given an assurance to the Court for return of the rice, concealing the material facts and having disposed of the stocks during the pendency of the petition are indicative of the deception and intention to cheat.

Counsel for the petitioner has placed reliance on **Sanjay Chandra Vs. CBI**, (2012) 1 SCC 40, in support of his contention that the liberty of the petitioner may not be curtailed as a matter of punishment before his conviction and that he should not be refused bail at a stage where he is unconnected person merely for the purpose for giving him a taste of imprisonment as a lesson.

I have considered the contention of learned counsel for the petitioner. There is no dispute regarding legal proposition but at the same time a balance is required to be struck between the right of personal liberty and the right of investigating agency to fairly investigate the matter and arrive at a just conclusion regarding the guilt of an accused simultaneously keeping in mind the conduct, intention and the prima facie material

indicative of his criminal intent and the attempts made by him to over-reach the process of law.

In view of the above, no extraordinary exceptional circumstances exist to grant the concession of pre-arrest bail to the petitioner. The petition is dismissed.

October 21, 2015
sanjay

(M.M.S.BEDI)
JUDGE