

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

CRM-M-26596 of 2014(O&M)

Date of decision : 11.05.2015

Mulakh Raj

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Girish Agnihotri, Sr.Advocate
with Mr. Arvind Seth, Advocate
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

Mr. Akashdeep Singh, Advocate
for the complainant.

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

DARSHAN SINGH,J(Oral)

This application has been filed under Section 438 Code of Criminal Procedure, 1973 (for short Cr.P.C) for grant of the anticipatory bail in case FIR No. 116 dated 02.07.2014, under Section 409 of Indian Penal Code and

Section 13(1) Prevention of Corruption Act, 1988, Police Station Civil Lines, Batala.

2. The brief facts of the prosecution case are that petitioner Mulakh Raj was posted as Incharge of Batala Centre to look after the stocks. He retired on 31.03.2014. He did not handover the complete charge to his successor inspite of repeated letters. A committee was constituted. The stocks were verified and the shortage of 14271 bags of wheat, which have been found to be misappropriated by the petitioner having the market value of Rs.1, 44,66,609/-, was found as a result of which this case has been registered. The application of the petitioner for grant of anticipatory bail has been dismissed by the learned Special Judge, Gurdaspur. Hence this petition before this Court.

3. I have heard Mr. Girish Agnihotri, Sr. Advocate with Mr. Arvind Seth, Advocate learned counsel for the petitioner, Mr. Neeraj Yadav, learned State counsel, Mr. Akashdeep Singh, Advocate learned counsel for the complainant and have carefully gone through the record of the case.

4. Learned counsel for the petitioner contended that the petitioner has retired on 31.03.2014. Respondent no.2 has not appointed out any successor to take over the charge during the tenure of his service inspite of the request of the

petitioner. The entire stock was lying in open and if any pilferage has taken place after his retirement, the petitioner can not be made liable. He contended that it is evident from the order dated 07.08.2014 passed by this Court that it is only after the retirement of petitioner that on the basis of false allegations, the present case has been registered. The enquiry report is also of the subsequent date. Nothing was pointed out during the tenure of his service.

5. He further contended that no recovery is to be effected from the present petitioner. His pensionary benefits have already been withheld. Actually, it is a case for only the disciplinary proceedings against the petitioner and no criminal liability is made out. He further contended that learned trial Court while dismissing the application has mentioned that it is yet to be seen as to why till the retirement of the petitioner, the charge of the stock was not taken from him or it was not given by him to his successor. He further contended that the petitioner has already joined the investigation and is still ready to join the investigation. Thus, he contended that the petitioner deserves the concession of the anticipatory bail.

6. On the other hand learned State counsel assisted by Mr. Akashdeep Singh, Advocate learned counsel for the complainant contended that the petitioner has

misappropriated 12779 bags of wheat. He did not handover the charge instead of repeated reminders, which shows the malafide intention of the petitioner. His custodial interrogation is required to expose his *modus operandi*.

7. I have duly considered the aforesaid contentions.

8. It is settled principle of law that the anticipatory bail is an extra ordinary privilege which can only be granted in exceptional cases. In the instant case there is no denial to the fact that petitioner was incharge of the Batala Centre for the relevant period. He has retired on 31.3.2014 and was required to handover the complete charge of the stocks to his successor. Copy of the order Annexure R/2-1 shows that one Bodh Raj was directed to take over the charge from the petitioner vide order dated 19.2.2014 subsequently vide order dated 31.3.2014 Dinesh Gupta was ordered to take over the charge from the petitioner of the Khosla Open Plinth Jalandhar Road, Batala with respect to the wheat of PUNSUP and other articles. Copy of the FIR shows that various letters were issued to the petitioner right from 09.04.2014 to 17.06.2014 to handover the charge of the wheat and dead stock. But, he did not come present in response to the aforesaid letters to handover the charge. Thereafter, a committee was constituted, who verified the stocks and a huge misappropriation of 12779 bags was

found, due to which huge financial loss has been caused to respondent no.2.

9. I also do not find any substance in the plea raised by learned counsel for the petitioner that it was only a matter of departmental action and no criminal liability is made out, because the misappropriation of the Government property can result in criminal, civil and departmental action. The observations of the learned trial Court that it is yet to be seen as to why the charge of the stock was not taken from the petitioner or it was not given by him to his successor, are of no help to the petitioner.

10 Thus, in view of my aforesaid discussion, the petitioner has not been able to make out an exceptional case to claim the extra ordinary privilege of the anticipatory bail. Consequently, this petition has no merits and the same is hereby dismissed.

11.05.2015

s.khan

**(DARSHAN SINGH)
JUDGE**