

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 213

Criminal Miscellaneous No.M-32021 of 2014 (O & M)

Date of Decision: *March 11, 2015*

Gurmit Singh Palahi

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. J.S. Bedi, Advocate, with Mr. Sonpreet Singh, Advocate, for the petitioner.

Mr. Jaspreet Singh Sekhon, Assistant Advocate General, Punjab assisted by Mr. M.S. Kang, Advocate, for the complainant.

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Jaspal Singh, J

1. This petition has been preferred by Gurmit Singh, under Section 438 Cr.P.C., seeking pre-arrest bail feeling apprehension of his arrest in case FIR No.85 dated August 25, 2014 under Sections 420, 465, 467, 468, 471 IPC, Police Station, Sadar, Phagwara, District Kapurthala.
2. Contention of learned counsel for the petitioner is that a society by the name of National Rural Development Society (regd.), was

formed on May 03, 1983. Seven persons including petitioner were its founder member. In the year 1999, Gurbax Singh, the then Principal, resigned from his service and pursuant to his resignation, petitioner was appointed as Principal in the scale of Project Officer w.e.f. May 26, 1999. He was to render services till he attains the age of 65 years as he had quitted his pensionable Government job.

3. It has further been contended by learned counsel that complainant Jatinder Pal Singh Palahi was inducted as a member of the society in the year 2005-06 and petitioner worked with him till he was relieved on November 30, 2011. During that period, number of documents, which have been placed on file as annexures, were signed by the petitioner. Even, salary of petitioner was also being drawn under his signatures. After petitioner was relieved, complainant started lodging complaints on different grounds. Ultimately, he succeeded in registering the instant FIR. Moreover, entire case of the prosecution is based upon documents which have already been collected by the investigating agency. Petitioner has already joined investigation in compliance of order dated September 17, 2014. Allegations unfolded in the FIR are also absolutely against the documents available on file which the complainant has now alleged to be forged or fabricated.

3. Per contra, Mr. Jaspreet Singh Sekhon, Assistant Advocate General, Punjab assisted by Mr. M.S. Kang, Advocate, for the complainant has submitted that petitioner has not approached the Court

with clean hands and suppressed material facts. He has consciously played a fraud upon the Court by inserting page Nos.23 & 24 to Annexure P-1 with the petition after its filing, that too, without bringing to notice of this Court, either by placing them by way of an application or amending the petition. There is no document available on file that complainant was inducted as member by the Management in the year 2005-06. Fake document consisting of about two pages was fabricated by petitioner by adding an undated page, not signed by anyone to the certificate of list of members for the year 2005-06 in Form-II issued on April 2/4, 2005 under signatures of Registrar of Firms & Societies, Punjab. Petitioner has embezzled lakhs of rupees and for recovery thereof, custodial interrogation is required. Moreover, even as per Annexure P-2, there were three outsiders in the Committee vide which petitioner is alleged to have been appointed and his appointment is totally invalid. Even otherwise, petitioner has not unfolded in the petition that he is law abiding citizen of India. The discretion envisaged under Section 438 Cr.P.C. is extraordinary one and is to be sparingly exercised when it appears to the Court that allegations are baseless or false, and case of the petitioner does not fall within purview of Section 438 Cr.P.C.

4. Having heard learned counsel for the parties and analyzing the documents available on file and bestowing due consideration, this Court is of the considered view that a case is made out to exercise

discretion envisaged under Section 438 Cr.P.C. as the case of prosecution is entirely based upon documents which have already been collected by investigating agency and some of the documents have already been placed on record as annexures with this petition. It is evident from the record available that complainant and petitioner served the society together for a period of more than 5 years and there are number of letters issued under signatures of the complainant. Even the letter, vide which petitioner was relieved in the month of November 2011, bears his signatures. Not only this, petitioner as well as complainant were operating the account of society jointly. After petitioner stood relieved, a number of complaints, including the one, on the basis of which instant case has been registered, were lodged against each other. Infact, it appears that there is a dispute with regard to management of the society which is being given the colour of criminal litigation.

5. It is also pertinent to mention here that in compliance of order dated September 17, 2014, petitioner has already joined investigation and in the given circumstances, no further custodial interrogation of petitioner is required.

6. Accordingly, petition is allowed and order dated September 17, 2014 is made absolute, however, subject to the following conditions envisaged under Section 438(2) Cr.P.C.:-

1. That petitioner shall make himself available for interrogation by police officer as and when required;
2. That petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
3. That petitioner shall not leave India without previous permission of the Court.

March 11, 2015
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(Jaspal Singh)
Judge