

**In the High Court of Punjab and Haryana at Chandigarh**

**Crl. Misc. No. M-34566 of 2015  
Date of Decision: 8.10.2015.**

Aarti Joshi

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr. B.S.Jaswal, Advocate  
for the petitioner.

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**SABINA, J.**

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail in FIR No. 124 dated 27.8.2015 under Section 406 of the Indian Penal Code, 1860, registered at Police Station Beas, District Amritsar.

Prosecution story, in brief, is that paddy was handed for custom milling to M/s Hari Om Rice Mill for the year 2011-2012. As per the agreement, 40818 bags of paddy weighing 14286.30 quintal were entrusted to the mill on 19.11.2011. The mill was required to deliver 9591.82 quintal rice. However, the mill delivered 8095 bags weighing 4032.53 quintal rice to Food Corporation of India ('FCI' for short) upto the stipulated period. The remaining paddy weighing 8267.35 quintal was not delivered by the mill. Thus, paddy worth ₹ 1,27,13,944/- had been misappropriated by the mill.

Learned counsel for the petitioner has submitted that initially husband of the petitioner was partner of the mill. After the death of her husband, petitioner became partner of the mill. As per Annexure P-2, a certificate had been issued by the Corporation that 1429 metric tonnes paddy had been stored with M/s Hari Om

Rice Mill, Rayya. The party had delivered 100% milled rice to the FCI. Learned counsel has further submitted that the dispute could be said to be purely civil in nature. As per the agreement, the matter had been adjudicated by the Arbitrator. There was delay in lodging the FIR and the mill was inspected after a long delay. In support of his arguments, learned counsel has placed reliance on ***Kailash Verma versus Punjab State Civil Supplies Corporation and another 2005(1) RCR (Criminal) 727, Tarsem Lal versus State of Punjab, 2006(3) RCR (Criminal) 889, Baldev Kishan and others versus State of Punjab 2006(4) RCR (Criminal) 492*** and ***Chitranjan Mohan Vashisht versus Nirmal Singh 1986(2) RCR (Criminal) 556.***

In the present case, the allegations levelled against the petitioner are serious in nature. As per the prosecution story, the mill had been handed over paddy for milling. However, the mill had not delivered the entire rice to FCI after milling. In fact, the mill had misappropriated ₹ 1,27,13,944/-. During the course of arguments, it has further transpired that the matter was referred to Arbitration and the Arbitrator has passed an award against the mill and execution proceedings are pending. Thus, it is evident that the certificate (Annexure P-2) must have been considered by the Arbitrator while passing the award against the mill. Hence, at this stage, no reliance can be placed on Annexure P-2.

Hon'ble Apex Court in '***State of Orissa and others versus Ujjal Kumar Burdhan 2012(2) R.C.R. (Criminal) 467***', has held as under:-

*“Further, the impugned order also notes that in view of the arbitration agreement between the agent and the*

*Government, all the alleged violations fell within the purview of Arbitration and Conciliation Act, 1996 and therefore, the respondent could not be held liable for any criminal offence. This observation is against the well settled principle of law that the existence of an arbitration agreement cannot take the criminal acts out of the jurisdiction of the courts of law. On this aspect, in S.W. Palanitkar & Ors. Vs. State of Bihar & Anr.3, this Court has echoed the following views:*

*"22. Looking to the complaint and the grievances made by the complainant therein and having regard to the agreement, it is clear that the dispute and grievances arise out of the said agreement. Clause 29 of the agreement provides for reference to arbitration in case of disputes or controversy between the parties and the said clause is wide enough to cover almost all sorts of disputes arising out of the agreement. As a matter of fact, it is also brought to our notice that the complainant issued a notice dated 3-10-1997 to the appellants invoking this arbitration clause claiming Rs.15 lakhs. It is thereafter the present complaint was filed. For the alleged breach of the agreement in relation to commercial transaction, it is open to the Respondent 2 to proceed against the appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an*

*act constituting a criminal offence is made out even prima facie."*

In the case of '**State of Punjab versus Pritam Chand and others 2009(3) R.C.R. (Criminal) 376**', the Hon'ble Apex Court has held as under:-

*"9. These aspects were not considered by the trial Court and, therefore, the High Court should not have in a summary manner dismissed the appeal after having recorded that a criminal case may arise even when breach of contract is also there and there is no bar for prosecution under the criminal law. Having said so, the High Court came to an abrupt conclusion because two views are possible as to whether the allegation made was of a civil dispute or of a criminal nature no interference was called for. The approach is clearly erroneous. Therefore, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration in accordance with law."*

Since in the present case, as per the prosecution case huge amount had been misappropriated by the mill, no ground for grant of anticipatory bail to the petitioner is made out. Petitioner might be required for custodial interrogation. The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

Dismissed.

**(SABINA)  
JUDGE**

**October 08, 2015**  
**Gurpreet**