

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

CRM No. M-6320 of 2016 (O&M)

Date of decision:- July 22, 2016

Arun Kumar

.....Petitioner..

Vs.

State of Haryana and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Sandeep Singh Jattan, Advocate,
for the petitioner.

Ms. Neelam Kashyap, DAG, Haryana.

Mr. Avnish Mittal, Advocate,
for respondent No.2.

JASPAL SINGH, J. (Oral)

CRM-21342-2016

Allowed as prayed for.

CRM-21343-2016

This is an application moved by complainant-Sushil Kumar @ Ashok Kumar for impleading himself as party of the instant petition as respondent No.2.

Learned counsel for the petitioner has no objection, in case, application is allowed. Accordingly, Sushil Kumar @ Ashok Kumar-applicant is ordered to be impleaded as respondent No.2.

Accordingly, application is allowed and Sushil Kumar @

Ashok Kumar-applicant is ordered to be impleaded as respondent No.2.

Amended memo of parties is taken on record.

CRM stands disposed of.

Main case

Reply by way of affidavit of Sh. Suresh Kaushik, HPS, Assistant Commissioner of Police, Ambala Cantt on behalf of respondent-State has been filed in Court today.

2. Instant petition has been moved under Section 438 of the Code of Criminal Procedure (for short, "Cr.P.C.") by Arun Kumar, seeking pre-arrest bail, feeling apprehension of his arrest, in case FIR No.343, dated 25.10.2015, under Sections 406, 420, 506 and later on added Section 409 IPC, Police Station Ambala, District Ambala.

3. At the time of issuance of notice of motion vide order dated February 23, 2016, this Court has passed the following order:-

“Prayer is for grant of anticipatory bail in case FIR No.343 dated 25.10.2015 under Sections 406,420, 506 IPC and 409 IPC (added later on) PS Ambala Cantt, Distt.Ambala.

It is stated that complainant-Sushil Kumar is proprietor of M/s S.S. Enterprises, which firm was dishonestly induced to deliver 1400 quintals of sugar by a proprietorship firm under the name and style of M/s Mukh Ram Chander Pertisthan and who in turn sold the same to two proprietorship firms at Chandigarh and received the sale price without factually paying back to the legal claimant i.e. the complainant's firm.

It is contended that entire allegations are regarding firm M/s Mukh Ram Chander Pertisthan owned by co-accused Rajiv Kumar who is brother of present accused-petitioner. Only allegations against petitioner are of supervising the business of the accused firm. It is next contended that initially before addition of offence under Section 409 IPC the petitioner was arrested and released on bail after 20 days. Since the main accused Rajiv Kumar was released on "Default Bail" even under Section 409 IPC, the thrust of arrest has now been diverted towards the present accused-petitioner. It is further contended that refund of Rs.34 lacs by way of cheques, which were dishonored, were issued by co-accused Rajiv Kumar and as such petitioner has no role under Section 409 IPC. In any case the petitioner has already joined investigation earlier and his custody is no longer required after addition of offence under Section 409 IPC.

Notice of motion for 5.4.2016.

Till the next date, in the event of arrest, the petitioner shall be released on bail on furnishing adequate bail and surety bonds to the satisfaction of the Arresting/Investigating Officer/Trial Court. Petitioner shall appear before the I.O., as and when called upon for investigation and shall also be bound by all the conditions stipulated in Section 438(2) Cr.P.C. "

4. During the course of arguments, it has emerged that initially the case was registered under Sections 406 and 420 IPC only and the petitioner was arrested on 03.11.2015. He was subjected to

custodial interrogation and released on bail on 27.11.2015 by the ld. Additional Sessions Judge, Ambala (Annexure P-2). Subsequently, offence under Section 409 IPC was added, which necessitated the filing of an application under Section 438 Cr.P.C. Accordingly, application was moved before the Sessions Court but that was declined and thereafter, the petitioner has approached this Court by way of instant petition. Since, the petitioner was earlier arrested and subsequently released on bail, his further custodial interrogation is not at all required.

5. Taking into consideration the aforesaid facts of the case, interim order dated February 23, 2016, is made absolute, subject to the conditions envisaged under Section 438 (2) Cr.P.C.

July 22, 2016
sonika

(JASPAL SINGH)
JUDGE