IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRL. MISC. No.M-17291 OF 2015
DATE OF DECISION : 11 AUGUST, 2017

Harish Kumar

…. Petitioner

Versus

State of Punjab

…. Respondent

CRL. MISC. No.M-19828 OF 2015

Ajay Kumar and another

…. Petitioners

Versus

State of Haryana

…. Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. R. C. Tacoria, Advocate for the petitioners.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. Deepak Sabherwal Advocate
for HSAMB, Panchkula CRM-M-17291-2015.

Mr. Rajesh Hooda, Advocate
for respondent No.2 in CRM-M-17291-2015.

Mr. Vikas Suri, Senior Standing Counsel for ESIC.

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A. B. CHAUDHARI, J.

The petitioners have filed the present petitions under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.1114 dated 25.12.2014 registered under Sections 409 and 34 IPC at Police Station Hisar City, District Hisar.

Heard learned counsel for the rival parties at length and perused the record with their assistance.

The petitioners Harish Kumar, Ajay Kumar and Ramesh Kumar have been running Friends Security Service for providing manpower on outsource basis. There was a tender for the said purpose issued by the Haryana State Agriculture Marketing Board (in short, "the Board") and the petitioners' aforesaid firm got the same for Hisar zone and Kaithal District. The FIR in question was lodged by the Marketing Board with the allegations that these three petitioners, who are partners of the firm i.e. Friends Security Services, were allotted the area of Hisar zone for providing manpower from 01.11.2013 to 31.03.2014. There was specific agreement that the EPF, ESI and Service Tax dues so also the salaries of the employees will be paid by the petitioners' firm as per the date stipulated for the purpose. The Board used to make payment of the salaries of the employees and those statutory dues namely EPF, ESI and Service Tax to the petitioners firm. However, the petitioners did not make payment of the statutory dues to EPF, ESI organization and Service Tax Department (i.e. respondents No.2, 3 and 4 respectively in CRM-M-17291 of 2015). Thus the petitioners misappropriated the said amount payable to the Government/Government organization, required to be paid under statutory law. Hence the offences were registered against the petitioners.

Petitioner-Harish Kumar also lodged an FIR bearing No.0021 dated 22.03.2015 under Sections 406, 420 and 120-B IPC at P.S. Sector-20, Panchkula and stated therein that the officers of the Board pressurized the petitioner-Harish Kumar to make deposit of the salaries of the employees and the dues in the personal accounts of the officers or their subordinates and their relatives and money was thus deposited in the personal accounts of the officers themselves. In the FIR the details were given about the various payments deposited in the accounts of officers or their subordinates and relatives. The extract of the accounts of the banks have also been found part of the record. During the course of hearing the investigating officer Shri Munish Sehgal, HPS, Assistant Commissioner of Police (Traffic), Panchkula filed his status report lastly on 23.03.2017, stating in para 17 that the said act of acceptance of amount in personal accounts of the employees of the Board was at the most irregularity and therefore the departmental proceedings were recommended by the concerned enquiry officer. However, thereafter the statement was made that the enquiry was handed over to Special Investigating Team. This Court is however surprised with the said answer in the sense as to how public servants, accepting huge money from their contractor in their personal accounts rather then the accounts of the Board that too to the extent of ₹33,20,762/-, can be given exemption by terming their act of accepting huge amount as irregularity. Prima facie, show that the same must be held to be embezzlement or misappropriation by the public servants.

Be that as it may, this Court is presently concerned with FIR No.1114 dated 25.12.2014 against the petitioners.

Learned counsel for the petitioners in both these petitions vehemently argued that insofar as Ajay Kumar and Ramesh Kumar are concerned they have no role to play, except that they were partners and merely because they were partner of the firm as alleged by the complainant, no offence could be registered against them. He further argued that at the relevant time Ajay Kumar and Ramesh Kumar were not the partners and there was no occasion for registering offences against them.

Arguing counsel for the petitioner Harish Kumar argued that the petitioner has submitted bank guarantee with the Board itself. At any rate the petitioner has lodged FIR against the officers of the Board who have taken the money from the petitioners' firm by getting the same deposited in their personal accounts. The counsel for the petitioners then argued that insofar as the EPF, ESI and Service Tax are concerned, the dues have been paid and there is hardly any amount that remained against the petitioners' firm. Thus, the petitioners have not committed any offence.

Learned counsel for the petitioners has invited my attention to large number of documents filed in the petition about the various payments made and has also furnished some accounts. Learned counsel for the petitioners has submitted that the mediation was ordered by this Court and EPF, ESI did not cooperate in the mediation. According to learned counsel for the petitioners, at any rate, petitioner-Harish Kumar has deposited amount with the concerned and there is no occasion to arrest the petitioners. He therefore, prayed for confirmation of anticipatory bail order as the petitioner-Harish Kumar has joined the investigation and continued to cooperate with the police.

Per contra, learned counsel for the EPF vehemently opposed the petition for anticipatory bail and contended that the petitioners' firm has adopted typical attitude of not allowing the search of the documents, and on the contrary has been evading the inspection of documents by shifting from one place to another. Despite service of notices on him the petitioner has not been responding and on the contrary deliberately suppressing the documents for finding out the exact amount of PF dues. That is why the anticipatory bail cannot be granting to them. The petitioner has not paid EPF dues which are to the extent of ₹72,82,439/- and ESI dues to the extent of ₹34,63,713/-.

Learned counsel for the ESI submits that not even a pie has been paid by the petitioners despite the fact when the amount due is ₹34,63,713/-. Learned counsel for the EPF then contended that the total amount due towards EPF is ₹78,40,282/- out of which ₹6,27,155/- has been paid and the balance amount of ₹72,82,439/- remained unpaid. The petitioner is telling lie and has no intention to pay back the dues to the department.

Learned counsel for the Marketing Board as well as learned State counsel vehemently opposed the anticipatory bail and submitted that even service tax of ₹46,01,471/- is due and amount of ₹24,66,738/- is still not paid. Therefore, they prayed for dismissal of both these petitions.

I have gone through the entire record and have seen all earlier orders made by this Court. On 25.05.2015, the petitioner-Harish Kumar has expressed his willingness to settle the accounts and acting thereon this Court had granted him *ad interim* order of anticipatory bail. The said order continued with the promise of the petitioner-Harish Kumar to settle the accounts. In order dated 02.03.2016 again willingness of the petitioner for settling the accounts was recorded and the interim order was continued. This Court continued the interim order again vide order dated 26.05.2016 with a great hope that the petitioner would settle all the accounts and instead of ordering his arrest he should be given a chance to settle the accounts. Then orders dated 25.10.2017 and 10.11.2016 were also passed and interim order was extended and in the meanwhile mediation also continued. The mediation did not succeed with the allegations and counter allegations made by the parties. The petitioner-Harish Kumar thus continued to enjoy the interim order made by this Court without settling the accounts. The admitted fact, however, remains that the petitioner is not willing to show his documents/accounts and all papers to the Provident Fund Department and has been avoiding the scrutiny by the department to find out the exact dues towards the petitioner and firm. There are reason to accept the statement by the EPF that out of ₹78,40,282/- the petitioner paid only ₹6,27,155/- and the balance amount is ₹72,82,439/- and as per ESI Department out of total amount of ₹34,63,713/- the petitioner has not paid a single pie and insofar as the service tax is concerned he still has to pay ₹24,66,738/-. The petitioner is relying on the bank guarantee of ₹50,00,000/- with the marketing board. The petitioner thus played game of hide and seek. The serious aspect of the matter is that the dues towards EPF, ESI and service tax were recovered by him with the salaries of the employees from the

Marketing Board. Though he was liable to deposit those amounts every month with these departments, he committed a breach of trust by not depositing the same with the departments concerned as an agent of the Board and misappropriated the said amount and now is not willing to disclose all the details. One can understand that statutory dues were not paid by the Board to him. But having collected those statutory dues from the Board along with salaries of the employees, the intention to commit the criminal offences or the presence of *mens rea* is writ large. Even now the petitioner has not deposited the huge amount due to the department. The petitioner-Harish Kumar has thus clearly committed fraud/cheating and breach of trust and offence under Section 409 IPC, which is punishable imprisonment for life. This Court, is therefore unable to continue the relief of anticipatory bail to such petitioner.

Insofar as the other petitioners i.e. Ajay Kumar and Ramesh Kumar are concerned, I find that they are prima facie equally guilty of the offence which has been committed by the firm as well as Harish Kumar. This is clear from the investigation that has been made by the concerned investigating officer, who has clearly reported that they have been running the firm along with Harish Kumar and thus have equal participation in the crime. There is no reason to disbelieve the investigation report to that effect made by the investigating officer. In my opinion, therefore merely because these two petitioners i.e. Ajay Kumar and Ramesh Kumar are behind the curtain, it cannot be said that they have no role to play when the investigating officer has found that they have played equally the same role as partners of the firm.

In the light of the discussion above, I find that, *prima facie*, case is made out by the prosecution against all the petitioners. In the result, I find that none of the petitioners deserve any relief. Hence I make the following order:

ORDER

(i) CRL. MISC. No.M-17291 OF 2015 and CRL. MISC. No.M-19828 OF 2015 are dismissed.

(ii) Interim orders made in both the petitions are vacated.

11 AUGUST, 2017 **(A. B. CHAUDHARI)**
'raj' **JUDGE**

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No