

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: October 09, 2017
CRM-M-26351 of 2016

Sunil Kumar alias Jony
.....Petitioner
Versus

State of Haryana
.....Respondent
CRM-M-25340 of 2016

Vinod Kumar
.....Petitioner
Versus

State of Haryana
.....Respondent
CRM-M-42817 of 2016

Rohit
.....Petitioner
Versus

State of Haryana
.....Respondent

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

Present: Mr. Jagjit Gill, Advocate
for the petitioner (in CRM-M-26351 of 2016).

Mr. Lekh Raj, Advocate
for the petitioner (in CRM-M-25340 of 2016).

Mr. K.V. Singh, Advocate
for the petitioner (in CRM-M-42817 of 2016).

Mr. Chetan Sharma, AAG Haryana.

Mr. Deepak Sabharwal, Advocate for DHBVNL.

A.B. CHAUDHARI, J (Oral)

By this common order, all these three petitions would be
disposed of.

These are three petitions for grant of anticipator bail in FIR No.279 dated 05.10.2015, under Sections 420, 465, 467, 468, 471, 409 of Indian Penal Code, 1860 and Section 7/13 of Prevention of Corruption Act, 1988, registered at Police Station Kallanwali, District Sirsa, by Vinod Kumar, Junior Engineer working with the main accused Pankaj Ganda, SDO, Sub Division Kallanwali, Sunil Kumar alias Jony and Rohit, the contractors, who performed worked in connivance with the main accused Pankaj Ganda, SDO and Vinod Kumar, Junior Engineer.

In support of these three petitions for grant of anticipatory bail, learned counsel for the petitioners vehemently contended that Pankaj Ganda main accused, according to the prosecution, has been arrested after his plea for grant of anticipatory bail failed upto Apex Court and he has also been released on regular bail. According to the learned counsel for the petitioners, there is no need to arrest present petitioners in the crime in question. At any rate, according to them, all these petitioners have joined investigation under interim orders from this Court and therefore, their custodial interrogation is not at all necessary. Hence, they are entitled to grant of anticipatory bail. They further contended that the farmers who are said to have paid the amounts have already filed civil suits in the respective Courts and therefore, the civil dispute is being sought to be converted into criminal case. They contended that none of the petitioners have collected any amount from any person or farmers and therefore, there

is a prima-facie case for grant of anticipatory bail.

Per contra, learned State counsel and learned counsel for DHBVNL opposed these petitions for grant of anticipatory bail and submitted that DHBVNL (for short 'Nigam) has been put to heavy financial losses for the present assessed at ₹22,87,645/- because of the illegal activities of Pankaj Ganda and the counsel for DHBVNL pointed out that there is evidence with the investigating machinery to show that Sunil Kumar alias Jony and Rohit who were not the authorised contractors on the panel of the Nigam had in collusion with Pankaj Ganda and Vinod Kumar collected money from the farmers whose statements have also been recorded and who have specifically pointed out that Sunil Kumar collected ₹1.18 lakhs from Pal Singh, ₹1,21,000/- from Jaspal Singh, ₹1,21,000/- from Angrej Singh, ₹1,21,000/- from Raj Kumar alias Kala and ₹2,00,000/- from Sahib Singh while Rohit collected ₹1,25,000/- from Harmeet Singh, ₹1,25,000/- from Jagtar Singh, ₹1,25,000/- from Sukhdev Singh, ₹1,50,000/- from Balwinder Singh, ₹1,30,000/- from Naib Singh, ₹1,31,000/- from Harbans Singh, ₹1,25,000/- from Gurdeep Singh, ₹1,20,000/- from Malkiat Singh, ₹1,20,000/- from Sohan Singh and ₹1,50,000/- from Dilbag Singh. Learned counsel further contended that there was no occasion with them to collect money from the farmers as the procedure is to deposit all the amounts with the Nigam, which thereafter, process their applications. However, Pankaj Ganda, in collusion with Vinod Kumar and these two unauthorized contractors

took money directly from the farmers instead of depositing the same with the Nigam and then took out materials from the godown of the Nigam and applied the same, and thus, straightway caused loss to the Nigam. He pointed out that Vinod Kumar also collected huge sums from five farmers as is clear till now and that amount is ₹6.56 lakhs from Balwinder Singh, Naib Singh, Harbans Singh, Gurdeep Singh and Malkiat Singh. There are large numbers of FIRs lodged against the petitioners in this connection. The custodial interrogation of the petitioners is necessary because the investigating machinery has to point out as to how many other persons are there from whom amounts have been collected and exact loss caused to the Nigam. All that cannot be done without custodial interrogation of the petitioners. Hence, the plea for grant of anticipatory bail is opposed.

Heard learned counsel for the rival parties at length. Following are the facts on the basis of which FIR was lodged as stated in the trial Court's order:-

“3. Brief facts of the case of the prosecution are that the instant case was registered on receipt of a letter from Executive Engineer, OP Division, Dakshin Haryana Bijli Vitran Nigam Limited, Dabwali on the allegations that Pankaj Ganda remained posted as SDO, Sub Division, Kallanwali from 25.06.2010 to 16.12.2011 and from 03.09.2012 to 25.08.2014. A special audit of Kallanwali Sub Division in respect of allocation of transformers under self execution scheme was conducted w.e.f. 01.01.2013 as per Chief Finance Officer DHBVN Hisar vide memo no.CH-63/CF/ General dated 19.12.2014. The

following irregularities were pointed out by the special audit team:-

Presenting false BA-16 nos for Rs.22,87,645/- for getting allocation of material from the S.E.O (P Circle DHBVN Sirsa and transformers from higher offices. During the course of enquiry, it was noticed that Sh. Pankaj Ganda the then SDO OP Sub Division Kallanwali presented false BA-16 numbers and amounts to the higher office at the time of sending the requirement of material. The material was allocated by the higher officer and on the basis of requirement submitted by the SDO. When these BA-16 numbers against which the material was allocated were verified from the duplicate/carbon copy of BA-16 available in the office of SDO OP Sub Division Kallanwali, it was found that BA-16 numbers and amounts presented by the office of SDO OP Sub Division Kallanwali, it was found that BA-16 numbers is mostly of meter security and fees. After getting the allocating from higher offices by SDO, the material was drawn by the respective JEs from Store through store requisitions and utilized on the work and the connections were released, so material was drawn from Store by presenting false BA-16 numbers and connections were released by over-looking all the rules and regulations of Nigam and causing the loss of Rs.12,97,6741/- as false BA-16 and Rs.989974/- as material drawn without getting deposited of amount i.e. total Rs.22,87,645/-. The consumer wise detail of false BA-16 numbers, amount detail of allocation and detail of actual consumers is provided in the Annexure-1 (page-1)

and annexure-II (pages 1 to 4).

Release of connections through unauthorised contractors without proof of purchase of material through empanelled firms. As per Nigam Sales instructions no.10/2013 clause no.2 and 3 SDO concerned should supply the list of empaneled contractors by SE/P&D against EOI-6 to the consumer through which the application should engage the contractor and thereafter the contractor will submit the cost estimates to the SDO concerned for execution of work. While scrutinizing the various cases by the audit team, it was noticed that there are 273 numbers connections during the tenure of Pankaj Ganda, SDO for which no contractor have submitted the cost estimates. In the absence of cost estimates, it is not possible to ensure that who execute the work. Whether the work is done departmentally or through some unauthorized contractors not empanelled by the Nigam. Also in most of the connections for which the cost estimates are submitted by the Contractors are not in original which creates the doubt about the workmanship, as per departmental norms. It seems that most of the connections are released departmentally or through some unauthorized contractors at the will of Pankaj Ganda SDO.

Further as per sales instructions no.10/2010, clause no.8, the empaneled contractor shall use the material through empaneled firms only, as circulated by CE/PD&C. While scrutinizing the various cases by audit team, it was noticed that there are 104 numbers cases during the tenure of Pankaj

Ganda. SDO in which the proof of purchase of material by the Contractor was not found. It seems that the allied material was not purchased at all instead departmental material was used for execution of work. The detail of such connections is enclosed. Now the Nigam Management has considered the special audit report dated 13.2.2015 and 28.7.2015 in respect of Kallanwali Sub Division and conveyed through SE/admn. DHBVN Hisar vide office memo no.Ch-15/Conf/Sr. No.360 dated 22.9.2015 to initiate criminal proceeding against Pankaj Ganda who has been found responsible for the above mentioned irregularities. In view of the directions imparted by the Nigam Management of DHBVN, it is requested to lodge the FIR against Pankaj Ganda for coming the above mentioned criminal offences.

4.As per police report co-accused Pankaj Ganda being SDO of the Nigam in connivance with the Junior Engineers and contractors Ronit Kumar and accused-petitioner Sunil Kumar had issued fake connections by preparing forged BA-17 numbers and caused loss to the Nigam worth Rs.22,87,645/-."

Upon reading of the aforesaid factual aspect in the present case, it is clear that not only that the petitioners have collected money from the farmers unauthorizedly with a clear intention to have wrongful gain and to cause financial loss to the Nigam, they have also forged documents of the Nigam. The offences are very serious as the forgery is involved apart from misappropriation of the huge amount of public money. The petitioners-Sunil Kumar alias Jony and Rohit did

not have any cause or reason in the way they have gone to the panel of the contractors to join hands with Pankaj Ganda and Vinod Kumar for their illegal activities and having wrongful gain. Thus, the loot made by Pankaj Ganda, Vinod Kumar and these two contractors cannot be examined lightly. The custodial interrogation of the petitioners is necessary to find out how many documents they have forged and how many people they have cheated and how much loss they have caused to DHBVNL. In the result, all these petitions will have to be rejected.

Hence, CRM-M-26351 of 2016, CRM-M-25340 of 2016 and CRM-M-42817 of 2016 stand dismissed. Interim orders are vacated.

(A.B. CHAUDHARI)
JUDGE

October 09, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No