

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

CRM-M-31373 of 2017 (O&M)

Date of decision: December 13, 2017

Surja Ram and another

.....Petitioners

Versus

State of Punjab

.....Respondent

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

Present: Mr. Baldev Singh Sidhu, Advocate for the petitioners.

Mr. Ramandeep Sandhu, Sr. DAG Punjab.

Ms. Himani Kapila, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

This is the petition for grant of anticipatory bail filed by the petitioners, namely Surja Ram, Panchayat Secretary and Kalu Ram, Sarpanch, in FIR No.73 dated 03.08.2017, under Sections 409/34 of Indian Penal Code, 1860 and Section 13(1)C of the Prevention of Corruption Act, 1988, registered at Police Station Sadar Abohar, District Fazilka.

Learned counsel for the petitioners contended that the petitioners have joined investigation pursuant to the interim order made by this Court, on 24.08.2017 and they are cooperating with the police and therefore, there is no need to have their custody. He then invited my attention to the replication filed by the petitioners and the documents and the photographs along with the same. He contended that all the allegations are false and baseless and as a matter of fact, the

petitioners have utilised the money that was withdrawn by them for the works of Gram Panchayat. There is no substance in the allegations made by the prosecution or in the report that was submitted by the Block Development Panchayat Officer. He, therefore, prayed for confirmation of the interim order granting *ad interim* anticipatory bail to the petitioners.

Per contra, learned State counsel referred to the detailed affidavit of Rahul Bhardwaj, PPS, Deputy Superintendent of Police, Sub-Division Balluana, District Fazilka. Learned State counsel vehemently opposed the petition for grant of anticipatory bail and submitted that the petitioners have indulged in misappropriation of the public money. At any rate, learned State counsel prayed for dismissal of the petition.

Learned counsel for the petitioners submitted that no Act or Rules imposes a duty upon the Panchayat Secretary and is such that he cannot be held guilty of alleged misappropriation. In the replication, he invited my attention to Section 87 of the Punjab Panchayati Raj Act, which I have seen.

I have heard learned counsel for the rival parties at length. Block Development and Panchayat Officer, Khuian Sarver at Abohar has filed report with the police station concerned with the following allegations:-

“In the inquiry under mentioned grants were found to be embezzled on checking the record. (No.1) A grant of Rs.2,44,000/- was received in the village Churiwala

Dhanna for the repair of a gate for this Surja Ram Panchayat Secretary and Kalu Ram Sarpanch purchased the stone for Rs.16,000/- and cement and sand for Rs.34,800/- but on the site there is no stone sand and cement and nor the gate has been repaired. (2) Surja Ram Panchayat Secretary and Sarpanch Kalu Ram has withdrawn Rs.1,00,000/- from the Bank for cleaning the closed water works pipes from canal to the water works and he purchased 6000 bricks in Rs.24,600/- for repair of chamber but on the site inspection it was seen that there are no bricks nor any pipes cleaned nor the chambers has been repaired. For cleaning the pipes for repair of chambers Rs.1,24,600/- has been withdrawn from the Bank. (3) The Grant of Rs.7,00,000/- given for laying pipes from canal to water works from this on the site inspection it was found that Surja Ram Panchayat Secretary and Kalu Ram Sarpanch has purchased the PVC Pipes of Rs.5,81,033/- from this grant these pipes are lying in the village in the house of Ram Saroop but the Sarpanch and the Panchayat Secretary has withdrawn Rs.1,25,000/- from the bank for the payment of labour for laying and fitting of these pipes without getting the work started. (4) on the inquiry it was found that the grant of Rs.3,85,000/- given to the village for the construction of park that in the village no park has been constructed nor there is any place to construct park so in this way Rs.3,85,000/- has been embezzled. (5) Surja Ram Panchayat Secretary and Sarpanch Kalu Ram purchased 8 pipes 4" PVC 6 Kg/cm² for Rs.16,616/- but on the inspection of the site it was found that no pipes has been laid in the water works. So in this way a cheque of Rs.16,616/- has been issued to the firms. (6) Panchayat Secretary Surja Ram deposited Rs.62,175/- on 28.04.2017 in the Panchayat Account. The

Panchayat Secretary has deposited this money after his transfer from the village and after the appointment of administrator. (7) Meason Daya Krishan withdrew Rs.2,99,000/- from the Bank in March 2017 but in April Meason Daya Krishan deposited 80,000 + 20,000 = 1,00,000 from the amount 2,99,000/- in the bank in this way 2,44,000/- for gate repair + 1,24,600/- for cleaning the pipes and repair of chamber + 3,85,000/- grant for park + 16,616 were spent for laying pipes in water works.”

That report was made by him after making preliminary investigation and looking at the records. Thereafter, the investigation was started and it is seen from the affidavit of Rahul Bhardwaj that the petitioners had withdrawn amounts for more than 10 times but did not utilize the same and in fact, had misappropriated. He has also fairly stated in Para 6 of affidavit that some of the amounts were paid back by the petitioners to the Gram Panchayat. However, other amounts have not been paid back by them. According to him, had the petitioners paid back the entire amounts to the Gram Panchayat, the things would have been different, but then the fact that they have paid back some of the amounts shows that the petitioners knew that they had misappropriated the amounts of the Gram Panchayat. That apart, I quote Para 4 in entirety from the affidavit of the Investigating Officer, which reads thus:-

“4. That during the investigation conducted so far, the petitioners are found to have embezzled the following amounts:

(a) Rs.1,24,600/- withdrawn by the accused Kalu Ram Sarpanch from AXIS Bank for the purchase of Bricks and

the works of cleaning the pipes of water works and repair of Chambers, as per detail below:

- (i) Cheque No.73934 dated 06.02.2017 for Rs.24,600/-*
 - (ii) Cheque No.194642 dated 23.02.2017 for Rs.50,000/-*
 - (iii) Cheque No.194644 dated 02.03.2017 for Rs.50,000/-*
- (b) Rs.1,25,000/- withdrawn by the accused Kalu Ram Sarpanch from AXIS Bank for fitting of pipes of water works, as per detail below:*

- (i) Cheque No.194647 dated 20.03.2017 for Rs.1,00,000/-*
 - (ii) Cheque No.194657 dated 03.04.2017 for Rs.25,000/-*
- (c) Rs.1,02,500/- spent for purchasing of 25000 bricks for Park on 15.12.2016. Grant received of Rs.3,85,000/- for purpose of Park but there is no place for Park in the village.*
- (d) The petitioners purchased 350 4" PVC pipes for Rs.5,81,033/- (i.e. @ Rs.1660/- per pipe) from Shree Balaji Machinery Store whereas the villagers purchased one pipe for Rs.1,170/-. In this way, the petitioners embezzled Rs.1,71,533/-.*

(e) Grant received of Rs.2,44,000/- for repair of Gate. The petitioners spent Rs.50,820/- for purchasing marbles, cement and sand for repair of Gate as per detail given below, but the repair work of the gate was not gone done.

- (i) Rs.16,000/- paid to Bharat Marble for purchasing marbles through cheque No.73928 dated 04.01.2017 of AXIS Bank*
- (ii) Rs.24,820/- paid to Hans Raj & Sons for purchasing cement through cheque No.73923 dated*

06.01.2017 of AXIS Bank

(iii) Rs.10,000/- paid to Hans Raj & Sons for purchasing sand through cheque No.73929 dated 06.01.2017 of AXIS Bank.”

Reading of the above paragraph and in particular clause (d) thereof shows that 350 4” PVC pipes were purchased at the rate of ₹1,660/- per pipe while the villagers purchased the same at the rate of ₹1,170/- per pipe. Then resulting into embezzlement of ₹1,71,533/- on that amount. Strangely enough, in the replication itself, the petitioners have admitted the above fact about withdrawal of the amounts for purchase of pipes vide Para 4(d) of the para-wise reply, which reads thus:-

“4(d) It is correct that the petitioner purchased 350 4” diya for Rs.5,81,033/- at the rate of Rs.1560/- wrongly mentioned as Rs.1660/- for this quotation were duly received and was purchased at the competitive rate. It is wrong that the pipes of this quality and of this company can be purchased at a lower rate. It is only a bald allegation of embezzlement. No money has been embezzled and the pipes are lying in the house of Ram Saroop.”

It thus, clear from the above that the petitioners admitted that they had purchased pipes at the rate of ₹1,560/- per pipe as against market rate of ₹1,170/-. Acting on the admission, I find that the petitioners have made embezzlement. There is *prima-facie*, case against them as stated above.

The arguments that the duty of the Secretary is to only have the record in custody is misconceived. The misappropriation

could not have been taken place without the active participation of the Secretary.

In that view of the matter, this petition is dismissed.
Interim order dated 24.08.2017 stands vacated.

(A.B. CHAUDHARI)
JUDGE

December 13, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No