

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

**CRM-M No.39029 of 2016(O&M)
Date of Decision: 11.05.2017**

Abhay Kumar Gupta

.....Petitioner

Versus

State of Punjab

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.S. Cheema, Sr. Advocate with
Mr. A.S. Cheema, Advocate
for the petitioner.

Mr. Shilesh Gupta, Addl, AG, Punjab.

Mr. C.S. Bagri, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

CRM No.7035 of 2017

For the reasons mentioned in the application, the same
is allowed.

Accompanying documents are taken on record.

Main case

[1]. Petitioner seeks anticipatory bail in case bearing FIR
No.176 dated 29.08.2016 registered under Sections 406, 420,
506, 120-B IPC at Police Station Mandi Gobindgarh, District
Fatehgarh Sahib.

[2]. While issuing notice of motion on 04.11.2016, following
order was passed:-

“Petitioner seeks concession of pre-arrest bail

in a case registered at the instance of Jagjiwan Singh alleging that he is running a transport company under the name of M/s Bombay Gobindgarh Roadways and supplies the vehicles for carriage purposes. The petitioner had allegedly contacted the complainant in the capacity as Manager of I.T.C Company requiring the complainant to provide vehicles for loading/unloading of potatoes and other articles with an assurance that the payments would be made. On account of payment having not been received by the complainant from the petitioner or the traders i.e. Dashmesh Traders, Anup Jassal, Navtej Singh Amloh and Mahesh Pathak and others, the complainant claims that the amount had to be paid to the complainant by the petitioners or his company.

Learned counsel for the petitioner has referred to the various bilties, documents and supplier payments, in support of his contention that the petitioner is not supposed to make any payment to the complainant but the payments are required to be made by the traders. The petitioner has been falsely implicated in the case despite their being no privity of contract for supply through the complainant.

Notice to Advocate General, Punjab for 15.12.2016.

Meanwhile, an interim direction is issued that the petitioner will join investigation on or before 12.11.2016. In case of petitioner doing so, he will be released on interim bail to the satisfaction of the arresting officer.

This order will not in any manner prejudice the right of the complainant to effect recoveries in accordance with law from the persons during the investigation.”

Thereafter, status report was filed by the ASI, Gurmeet Singh, which was taken on record.

[3]. Learned Senior Counsel for the petitioner submitted that ITC company is involved in manufacturing of chips and marketing through its brand 'Bingo' after purchasing chip graded potatoes at their factories locations without being involved in transportation of the same. Learned Senior Counsel further submitted that the traders used to bring the potatoes at their factories locations of their own by including freights and other charges on FOR (free on road) basis at their own risk. ITC company used to purchase potatoes as per quality and quantity. Company is well within its right to purchase the quality of product or to reject it. It was totally seller's responsibility to take care of quality of the product, its insurance, freight and cost of transportation till the purchase is made by the company. The company does not enter into any agreement with the transporters for hiring their vehicles. The price offered by the company is inclusive of the transportation charges.

[4]. Learned Senior Counsel further submitted that the company is not privy to any agreement to the transporters.

Payments are being made to the transporters only by the traders. Bilties used to prepare in the name of the traders. Goods are received by the company along with invoices. Bilties/invoices are raised by the suppliers. Bills are raised by the transporters, wherein column of freight is mentioned "to be billed" i.e. the amount to be borne by the suppliers. Supplier used to charge the amount from the company which is inclusive of the freight.

[5]. Learned Senior Counsel by referring to the concluding part of the FIR submitted that a mischief is sought to be played by the police itself by incorporating that the freight of the truck was used to be paid by respondent party Abhay Kumar Gupta etc. through bank accounts of Anup Jassal, Dashmesh Traders in the company account of complainant Jagjiwan Singh. Learned Senior Counsel also highlighted that the forgery has been committed by the complainant himself on the original bills submitted to the supplier for payment. In the original bills, only Anup Jassal was mentioned, whereas while supplying the copies of aforesaid bills, additional incorporation was made by the side of words 'Anup Jassal' thereby mentioning the words 'ITC Abhe 8427691858'. The aforesaid incorporation was made in the bills dated 04.02.2016, 19.02.2016, 06.03.2016 and 22.03.2016.

[6]. Learned Senior counsel further highlighted that as per bank statement of Anup Jassal, payments were only made to the trader Anup Jassal and no payment was made directly to the complainant. In all, 8 transporters were involved in supply of the goods to the company. Out of list of the transporters, only complainant was aggrieved of the payment. Rest of the suppliers felt contented with the mechanism adopted by the traders in making payment to the transporters. Learned Senior counsel again by referring to the document Annexure R-3 supplied by the complainant pointed out that one of the document pertains to sending of material to Rajkot and the receipt is conspicuously silent with regard to goods recorded in the transaction for which bill dated 05.01.2016 was issued.

[7]. Learned Senior Counsel by referring to status report given by ASI Gurmeet Singh submitted that the same is based on conjectures inasmuch as that the alleged phone calls between the petitioner and the complainant were taken to be the instances of supply of goods directly by the transporters to the company.

[8]. Learned State counsel on instructions from ASI Gurmeet Singh submitted that the documents in respect of which the forgery has been alleged were supplied to the police by the complainant himself and the Investigating Officer has not

recorded any statement of Anup Jassal in the context thereof i.e. for the verification of the documents alleged to be forged.

[9]. Learned State counsel also admitted the fact that there was no direct agreement between the petitioners and the transporters. However, learned counsel for the complainant vehemently submitted that the supply was made by the transporters directly to the company. Reference is sought to be made to the documents attached with CRM No.7035 of 2017.

[10]. At this stage, both the parties tried to make out their case with reference to the documents, veracity of which can only be decided at the appropriate stage, lest it may prejudice the case of either sides at the trial.

[11]. It appears that the company is not privy to any bilateral obligations between the company and the transporters. The payments have been made to the transporters only by the traders. The incorporation to the contrary in the concluding part of the FIR would be tested with reference to material on record at the appropriate stage. Only the complainant is aggrieved of the action, otherwise, other transporters have felt contented with the mode of payments received by them through traders.

[12]. At this stage, I am of the view that the petitioner can be given concession of anticipatory bail. In view of above, order dated 04.11.2016 is made absolute. However, petitioner shall

keep on appearing as and when required by the police to do so
and shall abide by the conditions as envisaged under Section
438(2) Cr.P.C.

11.05.2017
prince

(RAJ MOHAN SINGH)

JUDGE

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No