IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

Crl. Misc. No.M-5873 of 2017 (O&M)
Date of Decision: November 15, 2017

Namit Arora and another

......PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

(2)

Crl. Misc. No.M-30044 of 2016 (O&M)

Vinod Sirohi

......PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. A.S. Cheema, Advocate
for the petitioners in CRM-M-5873-2017.

Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Advocate
for the petitioner in CRM-M-30044-2016.

Mr. Deepak Grewal, D.A.G. Haryana.

Mr. Vivek Goyal, Advocate for
the complainant in CRM-M-5873-2017.

Mr. B.S. Rana, Senior Advocate with
Mr. Parveen Kaushik, Advocate
for the complainant in CRM-M-30040-2016.

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SURINDER GUPTA, J.(Oral)

Both the aforementioned petitions have been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioners in case FIR No.0031 dated 27.01.2016 registered for the offences punishable under Sections 406, 420, 506 read with Section 120-B of Indian Penal Code, at Police Station Butana, District Karnal.

Heard.

FIR was registered on the complaint of Sunder Lal son of Hukam Chand, Proprietor of M/s Pawan Trading Company on his behalf and on behalf of some other Commissioner Agents dealing in various agricultural products including paddy in the area of Nigdhu, Butana, Karnal. As per the complainant, they have been cheated by Managing Director of Bush Foods Overseas Private Limited, Sonipat (later referred to as 'Bush Foods Ltd.'). They named several persons including the petitioners in the FIR. As per the complainant, he and various other firms were supplying the paddy and receiving payments up to the year 2013 but all of a sudden, Managing Director, Director and Chairman of Bush Foods Ltd. became dishonest and did not make the payment for the paddy, they had purchased. The matter was put off on one pretext or the other. Later on Hassad Food Company purchased 69.5% share of Bush Food Ltd. on 28.03.2013 for consideration of ₹750 crores. Managing Director Vir Karan Awasthy is holding 30.5 % share of Bush Foods Ltd. while the remining shares were held by Khaleed Abdel Rahman Radi, Mr. A. Fadi Al Jacuni, Mz. Naseer Mohd. MF Al Hajri. At present Hassad Food Company through its new Board of Directors is looking after the affairs of Bush Foods Ltd. and were required to honour their commitment and make timely payments to complainant firms for supply of their paddy. After waiting for long period, payments were not made and the complainant firms have been cheated to the tune of ₹6,86,00,462/-.

Learned counsel for the petitioners have argued that as per the complainant firms, the payments were being regularly made by Bush Foods Ltd. up to the year 2013. The present FIR was registered in the year 2016. Hassad Food Company had purchased share of Bush Foods Ltd. on 28.03.2013 and the petitioners, who were Additional Directors of Bush Foods Ltd. resigned from its management w.e.f. 28.03.2013. The allegation against the petitioners is that he had purchased 30% share of Bush Foods Ltd. As per term 8.2.3 of Share Purchase Subscription and Shareholders Agreement between Bush Foods Ltd. and Standard Chartered Pvt. Equity, Mauritius (Annexure P-2), two Directors of the company shall be nominee of investors collectively, who shall not be responsible for day to day management of the company and shall not be liable for any failure of the company to comply with law. As per term 8.20 of the agreement, the day to day management of the company shall be delegated to the Managing Director. As is clear from Form No.32, petitioner Rahul Raisurana was Additional Director in the category of professional and he was Non-Executive Director and similar was the status of petitioner Namit Arora and Vinod Sirohi. The petitioners have joined the investigation. Insolvency petitions of Bush Foods Ltd are pending before Delhi High Court, where all the accounts of the company have been frozen and official liquidator was appointed in January, 2015. Despite knowing all these facts, the complainant-firms have lodged this FIR on 27.01.2016.

Learned State counsel and learned counsel for the complainant have argued that petitioners Namit Arora and Rahul Raisurana have purchased 30% share of Bush Foods Ltd. by paying ₹110 crores and earned more than 200 crores during the period of two years and then left in the year 2013 by selling their 30% shares to Hassad Food Company. The petitioner have also cheated M/s Hassad Food Company, who lodged FIR against them. An amount of ₹30 crores was due on Bush Foods Ltd. when the petitioners Namit Arora and Rahul Raisurana left and resigned from its Directorship. As such, they cannot escape their liability towards complainant(s), who were guarantors to the farmers, who had been supplying their crops to Bush Foods Ltd. About Vinod Sirohi, it has been argued that he was transacting the business on behalf of Bush Foods Ltd. and its Directors Vikram Awasthi and Ritika Awasthy. He was also authorised signatory of Bush Foods Ltd. and issued cheques of ₹3 crores under his signatures and the same when presented to the bank, got dishonoured.

On perusal of the paper book and submissions of learned counsel for the petitioners, complainant and learned State counsel, I find that it is a case where the complainant firms were having business transactions with Bush Foods Ltd. The paddy was being supplied of Bush Foods Ltd. and the payments were being made regularly up to the year 2013. The problem arose when Bush Foods Ltd was sold to M/s Hassad Food Company. It appears that amount worth ₹6 crores is still outstanding towards Bush Food Ltd. and the question which arise for consideration is as to whether the petitioners in their personal capacity are liable to pay this amount or it is the liability of Bush Foods Ltd. It is not disputed that Delhi High Court in insolvency petitions, has frozen all the accounts of Bush Foods Ltd. and appointed an official liquidator, who will look after all the outstanding claims against the company. Petitioners Namit Arora, Rahul Raisurana and Vinod Sirohi were the Additional Directors in their capacity as a professional and the business of the company was to be looked after by the Managing Director as per the terms of Share Purchase Subscription and Shareholders Agreement. They also ceased to be directors of Bush Food Ltd. in the year 2013.

Keeping in view the above facts but without expressing any opinion on merits of the case, both these petitions are allowed. Order dated 22.02.2017 passed in CRM-M-5873-2017 and order dated 27.03.2017 passed in CRM-M-30044-2016 are made absolute till the presentation of challan, subject to the following terms:-

(i) that the petitioners shall make themselves available for interrogation by the police as and when required;

(ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the petitioners shall not leave India without the prior permission of the Court.

(iv) that the petitioners will seek regular bail on the presentation of challan in Court, which the trial Court will decide on the basis of evidence collected during investigation.

(SURINDER GUPTA)
November 15, 2017 **JUDGE**
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No