

S.No.272

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

**CRM-M-29801 of 2018 (O&M)
Date of Decision:13.12.2018**

Rakesh Kumar Petitioner

Vs.

State of Punjab Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vipin Mahajan, Advocate
 for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Sarbjit Singh Khaira, Advocate for
Mr. Prabhdeep Singh, BDPO, Gurdaspur.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.78 dated 27.06.2018 registered under Sections 409/418/420 IPC at Police Station Sadar Gurdaspur, District Gurdaspur, Punjab.

The allegations against the petitioner is that he has withdrawn money from the account of the Gram Panchayat and he has not submitted the utilisation certificate for that. It is contended by the learned counsel for the petitioner that before lodging of the FIR, an inquiry was, statedly; conducted. On the basis of that inquiry only, the FIR was got lodged. However, the petitioner was not associated with that inquiry. Feeling constrained, the petitioner had even filed a suit for mandatory injunction directing the Department to join the petitioner in the said proceedings.

However, on one hand the Department got itself proceeded ex parte and on the other hand, wrote letter to the Police to register an FIR against the petitioner.

The Sub Divisional Officer (Panchayati Raj) and the BDPO of the concerned area were directed to remain present before the Court; to explain as to why the petitioner was not joined in the proceedings. However, both of them have submitted before the Court that they have, in fact, joined the office after the said inquiry had already been done. Therefore, they would not be in a position to personally answer as to why the petitioner was not joined in that inquiry. However, certain postal receipts have been produced to show that the petitioner was called through registered letters to join the inquiry.

On merits, counsel for the petitioner has contended that the money was deposited in the Bank account of the Gram Panchayat. The persons authorised to operate the account were three in number, i.e. the petitioner being Sarpanch, the BDPO concerned and the Secretary of the Gram Panchayat. Therefore, there was no possibility of the petitioner embezzling money by withdrawing the same himself from the account of the Gram Panchayat. It is further contended that the said Panchayat Secretary, who is the custodian of the record; or for that matter; the BDPO are not even made accused in the present FIR. Hence, the case against the petitioner is totally concocted.

Vide order dated 18.07.2018, notice of motion was issued in the case and the petitioner was directed to join the investigation.

Counsel for the petitioner submits that the petitioner has already joined investigation.

Counsel for the State, being instructed by ASI Gurnam Singh, Police Station Sadar, Gurdaspur, also submits that the petitioner has joined the investigation.

Be that as it may, in view of the above submissions of the learned counsel for the petitioner, but without commenting any further on the merits of the case, the present petition is allowed. The interim order dated 18.07.2018 is made absolute.

December 13, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No