

**203/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 01.02.2018

(i) CRM-M-46597 of 2017(O&M)

Shiv Shambhu Sharma

...Petitioner

Versus

State of Haryana

...Respondent

(ii) CRM-M-1906 of 2018(O&M)

Lal Chand and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.J.S.Bedi, Sr. Advocate
with Mr. Sunil Sihag, Advocate
for the petitioner (In CRM-M-46597-2017)

Mr. Rakesh Nagpal, Advocate
for the petitioners(In CRM-M-1906-2018).

Mr. Himmat Singh, DAG, Haryana.

Mr. N.S.Shekhawat, Advocate
Mr. Satbir Gill, Advocate and Mr. J.S.Thind, Advocate
for the complainant-farmers (in both the petitions)

ARVIND SINGH SANGWAN, J. (ORAL)

This judgment shall dispose of both the aforesaid petitions as
the same arises out of the same FIR.

Prayer in these petitions are for grant of anticipatory bail to the
petitioners in case FIR No.15 dated 17.01.2017 under Sections 406, 420,
120-B, 506 IPC registered at Police Station Ellenabad (Sirsa).

Brief facts of the case are that on a written complaint given by

the President, Aarti Association Ellenabad (Commission Agent, Ellenabad) regarding the fraud committed on by Mani Ram Joshi, Subhash and Mangi Lal who have purchased paddy crop from the farmers and then they ran away, the FIR was registered which is reproduced below:-

“I am the president of Arhti Association Anaj Mandi, Ellenabad, District Sirsa. In our Mandi, the owners of Aditya Enterprises namely Mangi Lal Sharma and Subhash Sharma has purchased paddy worth of Rs.5 crores (approx.) and ran away 5 to 6 days prior along with sale consideration after committing a fraud. The main role in this fraud is played by Mani Ram Joshi, Mani Ram Joshi had helped the accused in this fraud by hatching a planned conspiracy. Now Subhash and Mangi Lal had ran away from the spot and Mani Ram Joshi, who is a conspirator, has a complete knowledge about them and he is in touch with them.”

CRM-M-46597 of 2017

Counsel for the petitioner submits that at the first instance, the petitioner was not named in the FIR and the police arrested co-accused- Mangi Lal Sharma who has made a disclosure statement giving the names of Mani Ram, Subhash, Mohit Sharma, Sunder Dalal, Tara Chand, Lal Chand and Shiv Dutt Sharma and has not named the petitioner. It is further submitted that thereafter, co-accused Subhash was arrested and in his disclosure statement, the name of petitioner surfaced along with co-accused Mangi Lal. Counsel for the petitioner has further submitted that on an earlier occasion, CRM-M-4951 of 2017 was filed by Mangi Lal and others and vide order dated 28.02.2017, a Special Investigation Team (for short 'SIT') was ordered to be constituted by the Director General of Police, Haryana. Vide this order, certain points were made for the determination of the Special Investigation Team. Counsel for the petitioner further submitted

that during that petition, a reply was filed by the Investigating Officer, Raj Kumar, SI and later on, for the violation of the said order, a contempt petition has been filed in this Court and on account of that, Investigating Officer, Raj Kumar, SI has involved the petitioner falsely. Counsel for the petitioner has further submitted that when the petitioner has filed the bail application before the Additional Sessions Judge, a reply dated 13.11.2017 was filed on behalf of the police and in that reply, there was no reference of any statement made under Section 161 Cr.P.C. However, later on, alongwith challan, the statements of two persons, Deepak and Mohinder dated 20.10.2017, under Section 161 Cr.P.C. were submitted and as per the statement made by Mohinder, the petitioner had taken his godown on rent @ Rs.22,500/- and the petitioner-Shiv Shambhu Sharma had stocked 4200 bags of paddy crop in his godown in November, 2016 and he has taken away the crop in January, 2017. Similar statement was made by Deepak Kumar. Counsel for the petitioners further submitted that both the statements were recorded by the same Investigating Officer, Raj Kumar, SI by giving a back date. It is further submitted that despite the fact that SIT has been constituted, still the investigation was being carried out by Raj Kumar, SI, whereas, the same was required to be done by the Senior Superintendent of Police. Counsel for the petitioner has further submitted that during the course of investigation, even the total quantity of paddy has been increased without any explanation. Lastly, it is submitted on behalf of the petitioner that in pursuance to the order dated 07.12.2017, the petitioner has joined the investigation.

CRM-M-1906 of 2018

The prayer in this petition is for grant of anticipatory bail to

other co-accused namely, Lal Chand, Tara Chand and Sunder Lal @
Sunder .

Counsel for the petitioners has submitted that the petitioners were not named in the FIR and have been involved in the petition on the disclosure statements of the other co-accused and have no connection with the commission of crime.

Learned State counsel, on instructions from Inspector Sukhdev Singh, has submitted that the petitioner though has joined the investigation in CRM-M-46597 of 2017 but is not cooperating as he has not disclosed about the places of storage of the crop as well as the names of the persons to whom the paddy crop was sold and has also not disclosed the total payment received by selling the paddy crop and therefore, the petitioner is not entitled to grant of anticipatory bail.

Learned State counsel further submitted that in pursuance to order dated 28.02.2017, passed in CRM-M-4951 of 2017, a Special Investigation Team was constituted under the order of Director General of Police, Haryana and further investigation was carried out under the supervision of the SIT. Counsel for the State has further submitted that in the present case, there are 103 aggrieved farmers, whose crop was taken by the accused persons and there are number of other Aartis (Commission Agents) who has lodged the complaint, forming basis of the FIR. Learned State counsel has further submitted that one of co-accused Mani Ram has filed the anticipatory bail application, which has been dismissed by the Hon'ble Supreme Court of India and has placed on record the order dated 15.11.2017 passed in SLP (Criminal) No.8370 of 2017, vide which, the Hon'ble Supreme Court has dismissed the Special Leave Petition of co-

accused Mani Ram. It is further submitted that in the FIR, the information was given regarding commission of fraud with the farmers as well as Commission Agents, by their association and SIT is now conducting the investigation in accordance with law and there is direct evidence against the petitioner as two witness, namely, Mohinder and Deepak have submitted also affidavits.

Counsel for the State has also opposed the allegations against the Investigating Officer, SI Raj Kumar that he is not acting impartially. It is submitted that since SI Raj Kumar was initially conducting the investigation i.e. prior to constitution of Special Investigation Team, therefore, he was also made a member of SIT later on as he has partly conducted the investigation. Secondly, the counsel for the petitioner has referred to Section 173 Cr.P.C. report submitted against co-accused Subhash Chander, in which, the affidavits of witnesses, Mohinder Kumar and Deepak Kumar are also part of this report. A perusal of police file shows that the stamp papers were purchased on 23.10.2017 as per the endorsement made on the backside of these documents and the same were also attested on the same date and therefore, on the face of it, no fault can be found in this regard.

Learned State counsel further submitted that all the zimnis (proceeding recorded by the police during the investigation) have been recorded by the SIT.

Counsel for the State has shown the original record of the proceeding undertaken by SIT regarding the joining of the accused person. These proceedings were written by Sukhdev Singh, SHO, Police Station Ellenabad on 16.12.2017 after joining petitioner-Shiv Shambhu Sharma in the investigation and this proceeding was also attested by Inspector -Ajay

Kumar, Incharge, Crime Branch, Sirsa. Similarly, again proceedings were written by Inspector Sukhdev Singh, SHO, Police Station, Ellenabad on 19.12.2017 and attested by Inspector/Incharge CIA, Sirsa. Therefore, the allegation of the petitioner that despite the constitution of SIT, SI Raj Kumar is still conducting the investigation is not correct as per the police record.

Learned counsels for the complainants has also opposed the prayer for bail and has submitted that in fact, the petitioners have stocked the paddy crop after procuring the same from the other co-accused Mani Ram, Subhash and Mangi Lal and have sold the same in Rajasthan and other places and till date, there is neither recovery of the paddy crop nor the sale proceeds received in the tune of Rs.2 crores. It is further submitted that 103 farmers are the victims of this fraud committed by the accused persons and even the number of Aartis (Commission Agents) are also victims and their association has got the FIR registered.

It is also submitted that the SIT was found comprising of Superintendent of Police, Sirsa, DSP Head Quarter and Incharge SIT staff Sirsa and later on, SI Raj Kumar was also included in the SIT. Learned counsel for the complainants further submitted that it has come on the record by way of the statement of the complainants that petitioner-Shiv Shambhu has sold 4200 bags of paddy value of which is about 2 crores of rupees and in the investigation, amount is yet to be recovered. It is also submitted that the petitioner has committed fraud with large number of farmers and Aartis. With regard to the accused namely, Lal Chand and others, it has further submitted that they have sold the crop worth Rs.7 lacs, 12 lacs and 10 lacs each and evidence has come on record that they have

also sold the paddy of the farmers and not paid the price of the same,
therefore, they are not entitled to concession of anticipatory bail.

After hearing learned counsel for the parties, I find no merit in
the present petition.

During the investigation which is being conducted by the SIT,
evidence has come on record regarding the fraud committed by the
petitioner i.e. Shiv Shambhu-petitioner in CRM-M-46597 of 2017 and three
petitioners in CRM-M-1906 of 2018 namely, Lal Chand, Tara Chand and
Sunder Lal @ Sunder Lal Sharma. Mere fact that some irregularity was
committed by SI Raj Kumar or that contempt petition is filed will not make
the investigation doubtful as the same is being done by the SIT and on a
perusal of the police record submitted by the SIT, it is apparent that the
same is being recorded and attested by the other members of SIT.

Since, there are serious allegation against the petitioners for
committing fraud with poor farmers and huge amount is to be recovered
from the petitioners and the anticipatory bail application of co-accused
Mani Ram has been dismissed by Hon'ble the Supreme Court, they are not
entitled to the discretionary relief of anticipatory bail as custodial
interrogation of all the petitioners is required. Therefore, I find no merit in
both the petitions praying for anticipatory bail and the same are dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

01.02.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No