

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I)		CRM-M-6841-2019 (O&M) Date of Decision:-28.2.2019
Gagandeep Jand and others		... Petitioners
	Versus	
State of Punjab		... Respondent
(II)		CRM-M-6663-2019 (O&M)
Jitendera Kumar Srivastava		... Petitioner
	Versus	
State of Punjab		... Respondent
(III)		CRM-M-7093-2019 (O&M)
Satendra Kumar		... Petitioner
	Versus	
State of Punjab		... Respondent
(IV)		CRM-M-7156-2019 (O&M)
Gurpreet Singh and others		... Petitioners
	Versus	
State of Punjab		... Respondent
(V)		CRM-M-7840-2019 (O&M)
Atul Parkash Yadav		... Petitioner
	Versus	
State of Punjab		... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. Rajiv Kumar Trikha, Advocate,
for the petitioners in CRM-M-6841-2019.

Mr. Aruz Khan, Advocate,
for the petitioner in CRM-M-6663-2019.

Mr. G.S. Dhuriwala, Advocate with
Mr. Ishwar C. Garg, Advocate,
for the petitioner in CRM-M-7093-2019.

Mr. Avinish Mittal, Advocate,
for the petitioners in CRM-M-7156-2019.

Mr. Arun Walia, Senior Advocate with
Mr. Marinal Sharma, Advocate,
for the petitioners in CRM-M-7840-2019.

Mr. G.S. Bal, Senior Advocate with
Ms. Kulwant Kaur Kahlon, Advocate and
Ms. Gursimran Kaur, Advocate for the Railways.

Mr. Randhir Singh Thind, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. This order shall dispose of the aforesaid five petitions filed on behalf of the petitioners Gagandeep Jand, Bhupinder Gupta, Jitendera Kumar Srivastava, Satendra Kumar, Gurpreet Singh, Parveen Kumar, Surinder Kumar and Atul Parkash Yadav seeking grant of anticipatory bail in respect of a case registered vide FIR No.9 dated 20.12.2018 at Police Station RPF Sirhind Post, District Fatehgarh Sahib under Section 3 of Railway Property (Unlawful Possession) Act, 1966.
2. The allegations, pertain to theft/pilferage of railway property. The Northern Railway had condemned nine locomotive diesel engines, which had been put

up for sale by way of 'E-Auction'. Separate bids are invited for sale of '*ferrous items*' and '*non-ferrous items*' in respect of the locomotive engines. Ferrous items are those, which are made of iron and steel and non-ferrous articles are items other than iron and steel. 'M/s Gagandeep Steel & Industries' i.e. the firm of petitioner Gagandeep Jand was the successful bidder in respect of '*ferrous items*' pertaining to nine locomotives. As per terms and conditions, the successful bidder is to be handed over the condemned engines within the premises of the Railways shed, where the bidder is permitted to dismantle/cut the said locomotives for the purpose of segregating the '*ferrous items*' and loading the same under supervision of the railway officials. The '*non-ferrous*' scrap extracted from the said locomotive engines as well as the '*excluded*' articles like head-light, speedometer, springs, brake linings etc. are to be returned back to the Railway Authorities being not included in the 'ferrous items'.

3. While 'E-Auction' was conducted on 10.11.2018, the locomotives were handed over to the successful bidder on 20.11.2018 for the purpose of dismantling/cutting. After dismantling, the sold items were lifted from the premises of the Railway Yard on following dates:-

- (i) On 10.12.2018 : consignment in three trucks
- (ii) On 11.12.2018 : consignment in two trucks
- (iii) On 12.12.2018 : consignment in four trucks
- (iv) On 17.12.2018 : consignment in three trucks
- (v) On 18.12.2018 : consignment in three trucks

4. As per FIR, on 19.12.2018 a secret informer informed the railway police officials that on 18.12.2018 copper, aluminium and other material had been loaded alongwith scrap from Diesel Shed, Railway Station, Ludhiana in

truck bearing registration No.PB-08-CB-5137 and that the said truck was parked at Mandi Gobindgarh on the road leading from Satnam Dhaba to Prem Nagar Mills.

5. Pursuant to receipt of said information, Railway Police Officials IPR/CIB Sukhdev Raj alongwith ASI Munish Kumar, SI Ranjit Singh, SI Anil Kumar, HC Rajesh Kumar, Ct. Gurpreet Singh, Ct. Inderjit Singh and Ct. Anil Kumar proceeded to Mandi Gobindgarh, where the truck in question was found parked and a driver was seen standing near the truck. Upon inquiry the said driver disclosed his name as Lal Mani @ Muni Lal and who disclosed that the material loaded in the truck had been loaded from the work shop of Railway Station, Ludhiana from where three trucks had been loaded and which had been got weighed by the railway officials from the weighment machine installed outside. He disclosed that Kali Ram, Contractor had given him mobile No.92162-51444 of Gagandeep and had asked him to take the consignments Mandi Gobindgarh and that he (Muni Lal) had spoken to Gagandeep who had told him to park the aforesaid truck on the road leading from Satnam Dhaba to Prem Nagar Mills and that he would send his man to take the truck. The said Lal Mani @ Muni Lal further disclosed that while loading the truck they had also loaded some copper, aluminium and wires in the front portion of the truck and above that iron plates had been got loaded. The said Lal Mani @ Muni Lal stated that he had asked Kali Ram, Contractor to assure that no objectionable material was loaded, upon which Kali Ram paid an amount of ₹5,000/- to him apart from freight to which Lal Mani @ Muni Lal agreed. He specifically stated that

there is copper and aluminium covered by iron plates in the front half portion of the truck.

6. Two other persons were also apprehended near the truck and who disclosed their names as Navish Kumar and Ravinder Singh @ Rinku and who stated that they are accountants working for Gagandeep Babu and stated that they had purchased the railway articles loaded in the truck as per prescribed procedure and rules and that the material was to be unloaded at Radha Swami Satsang Bhawan Road and the copper and aluminium is to be taken back to the godown of Gagandeep situated behind J.K. Dharam Kanda. On the asking of the Railway Officials, the driver produced the documents, wherein the name of the purchaser was mentioned as 'Gagandeep Steel Industries' and the articles were referred to as scrap of nine locomotives except trolley, wheel serif and other excluded components.
7. It is further alleged that Sh. Rajesh Kumar, SSE, Diesel Shed, Ambala was requested to come to the spot. The articles were got unloaded from the truck and after removing the iron plates from the front portion, other articles lying underneath were identified to be railway diesel engine's air copper pipes, horn assembly, aluminium frame, electric wires and springs. Rajesh Kumar, SSE/LOCO/UMB segregated the copper items and informed that the same are fitted in diesel engines and that the aluminium items are used in fittings of window frames of the diesel engines. He identified the other articles to be part of the railway engines. The said articles were got weighed and found to be weighing 1150 kilograms. The copper items, the aluminium wires and electric wires were also weighed separately.

8. Navish Kumar, Accountant suffered a disclosure statement to the effect that he has been working with Gagandeep since the last two years and that Gagandeep had purchased railway engines in auction from Ludhiana and that copper and aluminium in respect of the two prior trips/consignments is lying in his godown situated near J.K. Kanta and he could get the same recovered. Ravinder Singh, Accountant also suffered a disclosure statement regarding the copper and aluminium lying in the godown of Gagandeep.
9. Pursuant to the aforesaid disclosure statements, the godown of Gagandeep Jand was searched from where stolen articles belonging to Railway Department were recovered.
10. The learned Senior counsel representing the petitioners Gagandeep Jand and Bhupinder Gupta has submitted that petitioner Gagandeep Jand had been purchasing railway scrap even on earlier occasions and that admittedly Gagandeep Jand was not present in the railway yard at the time of taking possession of the purchased scrap and, as such, cannot be connected with the allegedly stolen copper/aluminium and other excluded articles and in case any such article was found in the truck, the same could at best be the handywork of the contractor employed by the petitioner Gagandeep Jand or of the truck driver. It has further been submitted that petitioner No.4 Bhupinder Gupta, in any case, has falsely been implicated as he has nothing to do with the firm 'M/s Gagandeep Steel Industries' as 'M/s Gagandeep Steel Industries' is a sole proprietorship firm.
11. It has also been submitted that pursuant to a questionnaire submitted by the Inquiry Officer, the Senior Divisional Mechanical Engineer (Diesel),

Northern Railways, Diesel Shed, Ludhiana had furnished information vide letter dated 17.1.2019 (Annexure P-13 in CRM-M-7156 of 2019), to the effect that there was no shortage of any items removed from the auctioned locomotive engines and as such the entire case of prosecution stands demolished.

12. During the course of arguments, the learned Senior counsel also contended that infact there is no case for any custodial interrogation as the prosecution did not even chose to seek police remand in respect of some of the accused, who had been arrested and did not even seriously oppose the grant of bail in case of some of the co-accused.
13. The learned counsel for the petitioner Jitendera Kumar Srivastava has submitted that he is posted as 'Divisional Storekeeper' and looks after procurement of articles in the store and their supply and has no role to play in the auction of the locomotive engines.
14. The learned counsel for the petitioner Atul Parkash Yadav has submitted that he is posted as 'Divisional Mechanical Engineer' and is not associated with the dismantling/cutting of the locomotive engines, which is done under supervision of a committee comprising of four other officers and as such he is not directly related to the disposal of railway scrap.
15. The learned counsel for the petitioner Satendra Kumar has submitted that he is serving as SSE(G) i.e. Senior Section Engineer (General) and in that capacity can not be held responsible for theft of copper and alumunium articles.
16. The learned counsel for the petitioners Gurpreet Singh, Parveen Kumar and Surinder Kumar has submitted that they are officials of 'Railway Protection

Force' (RPF) and in that capacity, they have mainly to check the ingress and egress and movement of vehicles in railway yard and are deputed at the gate and have no role in the loading or unloading of the scrap material in the trucks, so as to be connected with the alleged theft. It has been submitted that they are part of non-technical staff and their job is mainly to check the gate passes only.

17. Opposing the petitions, the learned counsel representing the Railway Department has submitted that, in the present case, the petitioner Gagandeep Jand, Proprietor of 'M/s Gagandeep Steel Industries' is the main accused being the beneficiary and that he can not feign ignorance about the copper and aluminium articles found loaded in the truck, alongwith the purchased "ferrous items", as the petitioner Gagandeep Jand had not purchased 'non-ferrous' items or 'excluded' items. It has further been submitted that, in any case, since copper and aluminium items of Railways were also recovered from his godown, therefore, his complicity is evident.
18. The learned Senior counsel representing Railways Department has submitted that as per Section 3 of Railway Property (Unlawful Possession) Act, 1966, mere unauthorised possession of railway property itself is sufficient to attract the offence in question. It has further been submitted that the theft/pilferage of the 'non-ferrous' items and 'excluded' items from the Railway yard could not have been possible without the active involvement of the Railway officials and also the security personnel posted there, and that the disclosure statements made by Navish Kumar, Accountant and Ravinder Kumar, Accountant and also the statement of the truck driver namely Lal

Mani @ Muni Lal clearly point towards the deep rooted conspiracy of the petitioners.

19. The learned Senior counsel has further submitted that infact the present recovery could just be a tip of the iceberg and the scam of pilferage/theft of railway property might have been going on since long. The learned counsel has submitted that infact the involvement of senior ranking officials of the Railways is also evident as apparently an attempt had been made by Senior Divisional Mechanical Engineer (Diesel), Northern Railways to shield other railway officiels by making the following statement in his letter dated 17.1.2019 (Annexure P-13 with CRM-M- 7156 of 2019), the relevant extract of which read as follows:-

“As per the documents verified by the SSEs/Incharges and their statements, there is no shortge of any items removed from these 09 auctioned loco, therefore, no shortage memo of this shortage can be issued.”

20. The learned counsel has thus submitted that the custodial interrogation of the accused is very much necessary to unearth the entire scam and to expose the *modus-operandi* employed by the accused, including involvent of high ranking officials given the fact that enormity of the scam could even run into crores if found to have been continuing since long.
21. I have considered rival submissions addressed before this Court.
22. Before proceeding further, it is apposite to bear in mind the provisions of Section 3 of Railway Property (Unlawful Possession) Act, 1966, which read as follows:-

“3. Penalty for unlawful possession of railway property.—

Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawful obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—

- (a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;
- (b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.”

23. A perusal of the aforesaid provision leaves no manner of doubt that the unlawful possession of the railway property itself constitutes an offence and it is not required to be proved that the person found possessing such railway property had himself stolen such property or not.
24. In the present case, railway property in the shape of copper and aluminium having been recovered from the premises/godown of petitioner Gagandeep Jand and also from the truck in which, alongwith ‘ferrous’ scrap purchased by petitioner Gagandeep Jand from the Northern Railways, copper and aluminium items, which he never purchased were also found, clearly points towards his complicity. The fact that petitioner Gagandeep was personally not present at the Railway Yard, from where the allegedly stolen articles were loaded in the truck alongwith articles purchased by him would thus be rendered insignificant when his possession shows that he is the beneficiary.

25. As far as petitioner Bhupinder Gupta is concerned, although it is the case of prosecution that he is partner of petitioner No.1 Gagandeep Jand but a perusal of Annexure P-1, (annexed with CRM-M-6841 of 2019), does not reflect that he is a partner in the firm namely 'M/s Gagandeep Steel Industries' of Gagandeep Jand. The prosecution has not been able to show any document suggesting that petitioner Bhupinder Gupta has anything to do with 'M/s Gagandeep Steel Industries'. As such, at this stage, it may not be possible to directly connect him with the alleged theft. The petitioner Bhupinder Gupta, as such, is entitled for grant of anticipatory bail.
26. As regards the petitioner Atul Parkash Yadav, he is working as 'Divisional Mechanical Engineer' in 'Indian Railways' and while working in that senior capacity would not be directly associated with the actual process of the cutting or loading or delivery of the scrap. During the course of arguments, the learned counsel representing Railways Department informed that a committee of four members had been constituted comprising of the following members for the purpose of supervision of disposal/loading of the auctioned railways scrap:-
- (i) SSE(General) :
(Senior Section Engineer)
 - (ii) Stock Verifier
(From Accounts Branch)
 - (iii) Railway Protection Force Personnel
 - (iv) Divisional Storekeeper.
27. The "Joint notes" dated 10.12.2018, 11.12.2018, 12.12.2018, 17.12.2018 and 18.12.2018 annexed as Annexure P-5 to P-9 (in CRM-M-7156 of 2019) show that the same have been prepared by the team of aforesaid four

officials. A perusal of contents “Joint Note” would reveal that the process of delivery was undertaken in the presence of the said four-member team. The contents of Joint note dated 18.12.2018 reads as follows:

Dated : 18.12.2018

Joint Note

Sub:- Part-V Full and final delivery by whole lot of cut up of material of sold condemned 09 Nos. Of Diesel Locos against Lot No- 223291018, DO No.352, Dated 14.11.2018, E-Auction on 10.11.2018 at JUDW

Ref- Dy. CMM. N.Rly / JUDW, DO. No.- 352 dated 14.11.2018

Part-V Full and final delivery by whole lot of cut up material of sold condemned 09 no- diesel locos against Lot No- 223291018, DO No.352, Dated 14.11.2018, E-Auction on 10.11.2018 at JUDW.

The delivery started in presence undersigned with truck nos. -

1) PB-08-CB-5137, 2) PB-13-H-8100, 3) PB-04-2219.

No balance material lying on the ground relating to this lot

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
(Purchaser)	(ISA/S. Verifier SSB)	(RPF/LDH)	(SSE/GDS/LDH/ Shed)	(CDMS/LDH)

28. The aforesaid Joint Notes prepared at the time of supervising delivery do not bear signatures of Atul Parkash Yadav, Divisional Mechanical Engineer. However, the issue note has been countersigned by him. In view of the aforesaid position, it will certainly be debatable as to whether the petitioner Atul Parkash Yadav was knowing about the pilferage of the copper and aluminium articles from the Railway shed or not. The petitioner Atul Parkash Yadav, as such, is held entitled for grant of anticipatory bail.
29. Since the petitioner Jitendera Kumar Srivastava was posted as a Divisional Storekeeper and part of the above referred Four-Member committee, therefore, he can not feign ignorance about the loading of the copper,

aluminium and other excluded items in the truck, which had not been auctioned.

30. Similarly, the petitioner Satendra Kumar, being posted as Senior Section Engineer (General) was also part of the committee specially constituted for the aforesaid purpose, whose signatures are also found on the Joint Notes, would be responsible for the segregation and loading of the scrap.
31. As far as, petitioners Gurpreet Singh, Parveen Kumar and Surinder Kumar are concerned, they are also officials of the 'Indian Railways'. While Gurpreet Singh and Parveen Kumar are working as ASI, Surinder Kumar is working as a 'Stock Verifier'.
32. A perusal of the joint notes dated 10.12.2018, 11.12.2018, 12.12.2018, 17.12.2018 and 18.12.2018 reveals that the same bear their signatures. While Surender Kumar had signed on all the five Joint Notes in the capacity of 'Stock Verifier', Gurpreet Singh has signed on Joint Notes dated 10.12.2018, 11.12.2018, 12.12.2018 and Parveen Kumar has signed on Joint Notes dated 17.12.2018 and 18.12.2018. In these circumstances, the aforesaid three petitioners namely Gurpreet Singh, Surinder Kumar and Parveen Kumar, having an important role to play at the time of segregation and delivery of articles from the Railway shed cannot escape from their liability and no special case for grant of anticipatory bail is made out in respect of the petitioners Gurpreet Singh, Surinder Kumar and Parveen Kumar.
33. In view of the aforesaid discussion, this Court finds that the petitioners **Bhupinder Gupta and Atul Prakash Yadav** are entitled for grant of anticipatory bail. Consequently, the petitions on their behalf are accepted and, in the event of their arrest, they shall be released on bail subject to their

furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, they shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

34. However, there is no special case for extending the said concession qua petitioners Gagandeep Jhand, Jitender Kumar Srivastava, Satendra Kumar, Gurpreet Singh, Surinder Kumar and Parveen Kumar, bearing in mind their complicity in the matter and that their custodial interrogation could help in unearthing the entire racket and exposing possible involvement of other railway officials in the scam which may have been going on undetected since long resulting in huge loss to Railways Department. Consequently the prayer for grant of anticipatory bail on behalf of petitioners Gagandeep Jhand, Jitender Kumar Srivastava, Satendra Kumar, Gurpreet Singh, Surinder Kumar and Parveen Kumar is declined.

28.2.2019

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No