

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

**CRM-M No.42929 of 2018 (O&M)
Decided on: 30.04.2019**

Baljinder Singh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Balvinder Sangwan, Advocate
for the complainant – HAICL.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No.205 dated 04.09.2018 registered under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Sadar Ambala.

The operative part of the order dated 11.10.2018, vide which interim anticipatory bail has been granted to the petitioner, is reproduced as under:-

“...Counsel for the petitioner has submitted that as per the allegations in the FIR, the complainant – Haryana Agro Industries Corporation Limited (hereinafter to be referred to as 'the HAICL') is a procuring agency of the State Government and during the marketing season of 2014-15, the District Milling Committee allotted the firm of the petitioner i.e. M/s. Gagan Rice Mills, 5861.63 MT of

paddy for Custom Milling of Rice (CMR) as per the agreement dated 01.10.2014. It is further stated in the FIR that the rice miller had supplied 3927.29 MT of Custom Milled Rice on behalf of the complainant to Food Corporation of India (FCI) by 31.03.2015, a date which was extended by the Government upto 30.09.2015 and, thus, by not handing over the complete stock, has caused huge loss to the Government Exchequer and has committed a fraud of Rs.5,39,50,364/-.

Counsel for the petitioner has argued that the petitioner has, in fact, supplied the custom rice to Food Corporation of India by way of 137 consignments, which is equivalent to the total allotted rice. Counsel for the petitioner has relied upon the statement pertaining to the year 2014-15 (Annexure P3) to show that against the contract number by the Food Corporation of India, the said custom rice was delivered, however, the dispute arose when out of 137 consignments, 30 consignments were adjusted towards one M/s. Shiv Shakti Rice Mills instead of M/s. Gagan Rice Mills, Mirzapur, Ambala City and the petitioner has filed a criminal complaint under Sections 406, 420, 467, 468, 471 and 120-B IPC against one Anoop Gachli, District Manager, Haryana Agro Industries Corporation Limited, Darshan Dhingra, Proprietor of M/s. Shiv Dass Rice Mills and others. It is further stated that in the said complaint, statement of one Balwinder Singh, Manager, FCI, Ambala City was recorded as CWI (Annexure P4) in which it is stated that the Miller i.e. M/s. Gagan Rice Mills, has deposited/delivered 137 consignments equal to 73980 bags, underweight 36919.74 Kgs with FCI contract-wise and also proved the aforesaid statement pertaining to the year 2014-15.

Counsel for the petitioner has further submitted that even when the matter was pending before this Court for

appointment of an Arbitrator as per the terms and conditions of the clause of the agreement, the petitioner has taken a specific stand that the official of the complainant are hand-in-glove with partner of M/s. Shiv Dass Rice Mills. It is further submitted that a Civil Suit No.6 dated 10.01.2018 is also filed against the complainant levelling specific allegations against Anoop Gachli, the then District Manager, HAICL that he has colluded with M/s. Shiv Dass Rice Mills and the said suit is also pending.

Counsel for the petitioner has also submitted that on a complaint given by the petitioner, even an internal enquiry, was got conducted by the complainant – Corporation in which, on 07.08.2015, the District Manager (W) has asked an explanation from District Manager Farmers Service Centre, Ambala as to how the allotment of the vehicles for custom rice were changed from the account of M/s. Gagan Rice Mills to the account of M/s. Shiv Dass Rice Mills and if, any prior permission was taken from FCI as well as the Headquarter, in this context.

Counsel for the petitioner has also submitted that an FIR No.344 dated 26.12.2015, was registered under Sections 406 and 420 IPC by one Hardeep Singh, In-charge of the Corporation levelling allegations against the aforesaid Anoop Gachli, the then District Manager, HAICL, Ambala City, in a similar manner where the paddy stock was changed.

Counsel for the petitioner has further relied upon the order dated 27.09.2018 passed by the Managing Director of the complainant – Corporation, appointing an Arbitrator regarding the dispute between the petitioner and the complainant.

Counsel for the petitioner has also relied upon the

judgment “Kailash Verma vs Punjab State Civil Supplies Corporation and another”, 2005(1) RCR (Criminal) 727, wherein the Hon'ble Supreme Court has held that when the Government Department entrust paddy to an accused for dehusking and the same is not returned by the accused as per the agreement, it is a matter of civil nature and no offence under Section 406 IPC is made out.

Counsel for the petitioner has further placed reliance on the judgment “Punjab State Civil Supplies Corporation (PUNSUP) vs Deepak Kumar and another”, 2007(2) RCR (Criminal) 550, wherein a similar view has been taken that if there is an arbitration clause in the agreement, no offence under Section 406 IPC is made out.

In reply, counsel for the State, on instructions from the Investigating Officer, assisted by counsel for the complainant – Corporation has, however, opposed the prayer for bail. It is submitted by counsel for the State that M/s. Shiv Dass Rice Mills has given a letter in writing that on account of shortage of space, they want to transfer 13817 bags to M/s. Gagan Rice Mills through the petitioner, to which they had given no objection and thereafter, the disputed 18 consignments of Custom Mill Rice were permitted to be transferred to the premises of M/s. Gagan Rice Mills and when the petitioner handed over the same to Food Corporation of India, those consignments were adjusted in the account of M/s. Shiv Dass Rice Mills. Counsel for the complainant has also raised the arguments on the similar ground. It is also submitted that even in the civil litigation the Corporation has taken a similar stand.

In reply, counsel for the petitioner has submitted that the petitioner has got his signatures attested from the Forensic Science Laboratory, Madhuban Karnal, on the disputed letters relied upon by the Corporation and no

definite opinion has been given that it bears the signatures of the petitioner.

After hearing the counsel for the parties, considering the fact that an Arbitrator has already been appointed regarding the dispute between the parties and also in view of the fact that the role of Anoop Gachli, the then District Manager, also needs to be probed during the investigation, I find that it is not a case where custodial interrogation of the petitioner is required, at this stage. Accordingly, the petitioner is directed to appear before the Investigating Officer on 20.10.2018 at 10:00 am or on any other date or time fixed by him, to join investigation and he shall be released on interim bail subject to the following conditions:-

- 1. He shall make himself available for interrogation by a police officer as and when required;*
- 2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. He shall not leave India without previous permission of the Court.*

List again on 12.12.2018.”

Counsel for the petitioner has submitted that, in pursuance to the order dated 11.10.2018, the petitioner has appeared before the Investigating Officer and has joined the investigation.

Counsel for the State, on instructions from ASI Shambhu Lal, has not disputed the aforesaid fact and submits that the petitioner is no more required for further investigation.

In view of the above, this petition is allowed and the interim bail granted to the petitioner vide order dated 11.10.2018 is

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made absolute subject to the conditions envisaged under Section 438(2)

Cr.P.C.

(ARVIND SINGH SANGWAN)

JUDGE

30.04.2019

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Whether speaking/reasonedYes/No

Whether reportable:Yes/No