

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

CRM-M-9646-2017 (O&M)
Date of Decision:-26.7.2019

Govind Sarda ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S. Rai, Senior Advocate with
Mr. Anurag Arora, Advocate and
Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. Deepak Sabharwal, Additional Advocate General, Haryana,
assisted by Mr. Jagdish Manchanda;
Mr. Ankit Kohli and Mr. Karambir Singh Nalwa, Advocates.

Mr. Deepak Balyan, Advocate for the respondent-HAFED.

GURVINDER SINGH GILL, J.

1. The petitioner Govind Sarda has filed this petition (second petition) seeking grant of anticipatory bail in respect of case registered vide FIR No.115 dated 21.3.2014 at Police Station Ambala City, District Ambala, Haryana under Sections 406, 420 and 120-B of Indian Penal Code, 1860.
2. The FIR was registered at the instance of District Manager, HAFED, Ambala City, the gist of which is that 'M/s J.K. Jute Mills' had supplied 1300 gunny bales, which did not even bear the marking of brand 'J.K. Jute Mills' and were either bearing marking of some other brand or were not bearing any

marking at all. HAFED informed about the matter to Director General, Food and Supplies, Haryana (DGFS), who constituted a committee. The said committee visited Rail Head, Ambala and inspected the condition of bales and it was found that the bales do not contain markings of the agency. It is alleged that the mill had cheated HAFED and caused wrongful loss to HAFED while causing wrongful gain to itself by supplying old, mutilated, torn and unbranded gunny bales.

3. This case has a chequered history and infact the petitioner had earlier also moved an application for grant of anticipatory bail, which was dismissed by this Court vide order dated 30.3.2015 (Annexure P-14). Some of the undisputed facts as extracted from written submissions, may be stated chronologically as follows:-

27.08.2013 HAFED sent its requirement for 75,000 jute gunny bales for Rabi 2014-15 marketing season to the Director General, Food and Supplies, Haryana (DGF&S) vide letter dated 27.08.2013 and as per the norms/guidelines applicable, an advance payment of Rs.159.29 crores was also sent to the DGF&S in the shape of demand drafts in favour of the Director General Supplies and Disposals (DGS&D), Government of India, Kolkata in the year September, 2013, and December, 2013.

04.09.2013 The Food and Supplies Department, Haryana placed an indent for the supplies of gunny bales with the DGS&D vide letter dated 04.09.2013.

- 09.01.2014 The DGS&D, Government of India, placed an order for supply of 2600 gunny bales to HAFED with M/s Juggilal Kamlapat Jute Mills Company Limited @ JK Jute Mills Company Limited, Kanpur vide supply order No.C-3/3266/JK/2014/0088 dated 09.01.2014. In accordance with the said order, the said JK Jute Mills Company Limited dispatched gunny bales to Rail Head, Ambala in two lots of 1300 gunny bales each in January 2014 and March 2014.
- 26.01.2014 First lot of 1300 bales was supplied by JK Jute Mills Co. Ltd. against the Supply Order dated 09.01.2014, which was transferred by HAFED, Amabala to HAFED, Kurukshetra directly from the Rail Head.
- 15.03.2014 A complaint was received by HAFED from the Secretary, JK Jute Mills Mazdoor Ekta Union, Kanpur, vide a letter dated 15.03.2014 regarding dispatch of old mutilated, torn and unbranded jute bales to HAFED.
- 18.03.2014 Committee constituted by DGF&S, Haryana inspected the gunny bales on receipt of the same at Ambala on 18.03.2014, under complete videography.
- In the said inspection, it was noticed that the second lot which was received on 18.03.2014, which should have contained 1300 bales, was in fact having only 1293 bales.
- 19.03.2014 It was noticed that the bales which were inspected did not have the required lead seal and markings as were required

under the instructions and guidelines of the competent authority i.e. DGS&D. Therefore all the 1293 gunny bales were rejected vide letter dated 19.03.2014 (Annexure P-5).

21.03.2014 HAFED got registered FIR bearing No.115/2014 (Annexure P-1) against the said JK Jute Mills Co. Ltd. on 21.03.2014 under sections 406/420 of the IPC at P.S. Ambala City for committing cheating and having caused wrongful loss intentionally to HAFED by supplying old, mutilated, torn and unbranded gunny bales.

22.03.2014 HAFED also inspected the first lot which was supplied by JK Jute Mills Company Limited and it was also found that the same was not meeting the standards and the specifications as laid down by DGS&D. Accordingly these 1300 gunny bales of first lot were also rejected and JK Jute Mills Company Limited as well as DGS&D, Government of India were informed vide letter dated 22.03.2014 by HAFED.

07.04.2014 As a counter blast to the said rejection of bales, the said JK Jute Mills Company Limited filed a recovery suit bearing No.137/2014 (Annexure P-6) on 07.04.2014 before the Hon'ble High Court at Calcutta challenging the said rejection of the jute bales and prayed for joint inspection of the gunny bales in the presence of the said JK Jute Mills Company Limited.

07.05.2014 The Hon'ble High Court at Calcutta, on an application bearing GA No.1166/2014, passed an order dated 07.05.2014 directing the HAFED to conduct the inspection in accordance with the contract.

Further, the Hon'ble High Court at Calcutta, on applications filed by the JK Jute Mills Company Limited and by JK Jute Mill Mazdoor Ekta Union directed to complete full inspection in accordance with the contract by 10.06.2014. It was directed that the inspection shall be jointly made by the parties according to the contract. Further, it was directed that till the time the final decision is not taken and communicated with regard to rejection or partial rejection of the goods, HAFED will not take any step against the plaintiffs. An interim order passed earlier on 09.04.2014 was accordingly modified to said extent.

16.05.2014 The Hon'ble High Court at Calcutta in the civil suit bearing CS No.137/2014 directed that the following line be added in the order dated 07.05.2014.

“The inspection of bags and segregation report should be filed in Court by 20th June, 2014.”

09.06.2014
to

13.06.2014 In compliance of the order of Hon'ble High Court at Calcutta, a joint inspection team again carried out inspection at Ambala, Pehowa and Sahabad. As per the inspection

report of DGS&D, all 2593 gunny bales as supplied by the JK Jute Mills Company Limited were found to be not in conformity with the description as mentioned in the quality assurance certificate, as issued by the office of Director, Quality Assurance, DGS&D, Kanpur and the bales bore markings of different jute mills and of previous crop years i.e. 2012-13 and 2013-14. Hence the same were rejected.

27.06.2014 The JK Jute Mills Company Limited filed a contempt application with case title Nandlal Giya and Anr. Vs. P.K. Kanchan and Ors., bearing CC No.66/2014 on 27.06.2014 before Hon'ble High Court at Calcutta alleging defiance of the order dated 07.05.2014 and 16.05.2014 of the Hon'ble Court by not having held a full 'joint' inspection and segregation of the jute bags.

04.07.2014 The Hon'ble High Court at Calcutta in the aforesaid contempt petition bearing No.66/2014 vide order dated 04.07.2014 clarified that inspection has to be made of bales as well as of bags.

Sept., 2014
to

Nov., 2014 A fresh joint inspection was therefore carried out between the said period in accordance with the directions of the Hon'ble High Court at Calcutta and the inspection reports were submitted to the Hon'ble High Court on 28.11.2014.

The contempt petition bearing No.66/2014 was disposed off vide order dated 28.11.2014.

In accordance with the directions in the said fresh joint inspection, 2,23,440 bags were declared 'unusable', and the remaining 10,73,060 bags were declared 'usable' by the committee subject to certain conditions.

30.03.2015 Applications filed by accused seeking Anticipatory Bail were rejected by the Ld. Sessions Court. Accused had thereafter approached this Court but even this Court dismissed their applications vide order dated 30.03.2015 (Annexure P-14).

02.4.2015 Govind Sarda (petitioner) & Aditya Sarda obtained Transit Bail from Kolkata.

06.04.2015 The Jute Commissioner addressed a letter to DM, HAFED advising that the entire lot received by HAFED was unacceptable and therefore should not be used by consignee/HAFED as not only the bags were not manufactured by JKJMCL but also bore markings of different jute mills pertaining to different crop years.

09.04.2015 The Hon'ble High Court at Calcutta directed on 09.04.2015 that the orders passed in the Civil Suit will not fetter the hands of any Criminal Court to make any order in accordance with law.

05.05.2015 The matter was placed before the Board of directors of HAFED in its meeting held on 05.05.2015 and the DGS&D,

Government of India was informed regarding the decision taken by the HAFED vide letter dated 22.06.2015 and was further requested to issue instructions to JK Jute Mills Company Limited to the following effect:-

- “i. For immediate replacement of the 2,23,440 bags found unusable / rejected during joint inspection at its own cost specifying time limit of such replacement. M/s J.K. Jute Mills Co. Ltd. will first supply the requisite quantity of new bales / bags F.O.R. Ambala / Kurukshetra to HAFED and only thereafter will lift back the un-usable / rejected 2,23,440 bags at their cost.
- ii. To submit an undertaking to replace, more bags amongst 10,73,060 usable / acceptable bags, found defective / un-usable or not conforming to BIS specifications, if any, during its use by HAFED, as mentioned in the re-joint inspection reports; and
- iii. To recover from M/s JK Jute Mills Company Limited and remit to HAFED, the expenditure incurred by HAFED on inspection and interest on the entire cost of gunny bags from the date of its receipt i.e. 26.01.2014/8.03.2014 to 31.03.2015.”

08.05.2015 There was a submission from the side of counsel for HAFED before the Hon’ble High Court at Calcutta as recorded vide order dated 08.05.2015 (Annexure P-8) in which the counsel for HAFED submitted that HAFED will accept the goods according to the inspection report.

- 22.06.2015 In terms of the statement given before the Hon'ble High Court at Calcutta, vide letter dated 22.06.2015 as addressed to the DGS&D, HAFED requested to recover the actual cost of 2,23,440 rejected bags from JK Jute Mills Company Limited and to remit the amount to HAFED along with expenditure incurred by HAFED and interest on the entire cost of gunny bales from the date of its receipt calculated upto 31.03.2015.
- 17.09.2015 A contempt petition being CC No.209/2015 filed by the JK Jute Mills Company Limited before the Calcutta High Court for violation of its order dated 08.05.2015.
- 08.10.2015 In pursuance to the aforesaid letters dated 22.06.2015 and 03.10.2015 as issued by the HAFED herein a joint meeting was convened by the DGS&D at Kolkata wherein the representative of JK Jute Mills Company Limited contended for the first time they are not in position to replace the said goods since the Mill / factory is lying closed and it was conveyed by DGS&D that the cost of rejected bags along with cost of seven bales found short would be refunded to the HAFED and the DGS&D would issue necessary directions to allow JK Jute Mills Company Limited to lift the rejected goods.
- 27.11.2015 DGS&D at Kolkata conveyed its decision vide letter dated 27.11.2015 (Annexure P-12) to pay the cost of sub standard 446 bales plus 440 bags along with the cost of seven bales

received short from the side of JK Jute Mills Company Limited, through a demand draft to HAFED.

08.03.2016 An amount of Rs.92,73,824/- was received on 08.03.2016 through a DD dated 24.02.2016 by HAFED.

In compliance of the order dated 08.05.2015 passed by the Hon'ble High Court at Calcutta, HAFED intended to use 10,73,060 bags in the RMS (Rabi Marketing Season) 2016-17 only after inspecting the same to categorically identify as to whether the bags meet out the specification as laid down by the BIS (Bureau of Indian Standard) for packaging of wheat during RMS 2016-17.

16.03.2016 The DGS&D at Kolkata was therefore requested vide letter dated 16.03.2016 to depute an officer to associate with the officers of the Jute Commissioner of India (JCI), Food Corporation of India (FCI), DGF&S-Haryana and HAFED for inspection of these gunny bags. Besides it, the Director General, BIS was also requested to depute an officer for the said inspection.

21.03.2016
to

28.03.2016 The aforesaid inter agency inspection was carried out from 21.03.2016 to 28.03.2016 at Ambala, Shahabad and Pehowa (Kurukshetra) by a committee of offices of FCI, F&S Department, Haryana and HAFED as per the terms and conditions mentioned in the supply order dated 09.01.2014

and the specifications laid down by the BIS for jute gunny bags meant for packaging of wheat / rice or similar food grains.

08.04.2016 The Hon'ble High Court at Calcutta in the aforesaid contempt petition bearing No. CC 209/2015 vide order dated 08.04.2016 inter alia directed that "the alleged contemnor will not act beyond the inspection report and will only act in terms thereof. If money has been properly refunded in relation to the rejected bags, the bags may be made over to the petitioners as expeditiously as possible."

20.04.2016 In view of the findings of the inter agency inspection report, a rejection memo in respect of remaining 10,73,060 bags was issued on 20.04.2016 to the DGS&D at Kolkata, Government of India with a copy to JK Jute Mills Company Limited, Kanpur along with the claim of storage costs, other expenses and penal interest @ 18% upto 31.03.2016 amounting to Rs.6.99 crores.

The DGS&D vide letter dated 06.05.2016 forwarded the said letter dated 20.04.2016 of HAFED to JK Jute Mills Company Limited for information and necessary action with a copy to HAFED.

27.04.2016 A letter dated 27.04.2016 was received from the Inspector/IO of Ambala City Police Station asking the District Manager, HAFED, Ambala to keep 1293 bales supplied by the JK Jute Mills Company Limited safe in

HAFED godowns being the case property in FIR/Case No.115/2014, till the final decision of the case.

- 22.06.2016 Another contempt petition bearing CC 70/2016 was filed by JK Jute Mills Company Limited alleging that order dated 08.04.2016 of the Hon'ble High Court at Calcutta had not been complied with.
- 17.08.2016 The accused challenged dismissal of their petitions for anticipatory bail by the Hon'ble Punjab & Haryana High Court by filing Special Leave Petition (Crl) No.3269/2015 in the Hon'ble Supreme Court of India against the said order dated 30.03.2015. Hon'ble Supreme Court granted anticipatory bail to co-accused Damodar Parshad Bhattar vide order dated 17.8.2016 (Annexure P-16) passed in Special Leave Petition (Crl.) No.3269 of 2015 while dismissing the Special Leave Petition (Crl.) No.4009 of 2015 filed by Govind Sarda as he preferred to withdraw the petition.
- 03.11.2016 The proclaimed Offenders namely Laxmi Narain, SK Singh, LN Rathi filed anticipatory bail applications which were rejected by Addl. Session Court, Ambala.
- 11.11.2016 In the contempt petitions, Calcutta High Court appointed Joint Receiver to lift the bags and take them their custody. The Receivers were directed to file their report by 07.12.2016.

02.02.2017 Govind Sarda filed second bail application, CRM-M- 9646 of 2017 before the Hon'ble Punjab & Haryana High Court for grant of anticipatory bail.

4. The learned counsel for the petitioner has submitted that since he is neither named in the FIR and nor can be said to be related to the firm 'M/s J.K. Jute Mills Company Limited', in any manner, and is not a director of the said firm, therefore, he cannot be held liable for loss allegedly caused to HAFED. It has further been submitted that, in any case, the contract pertaining to supply of 2600 bales (each containing 500 jute bags) was between DGS&D and M/s Jugilal Kamalapat Jute Mills Co. Ltd. as would be evident from Annexure P-3 and that HAFED had not privity of contract with M/s J.K. Jute Mills and that HAFED had made payment to DGS&D, which was to procure the jute bags and that in these circumstance it cannot be said that M/s J.K. Jute Mills had cheated the complainant HAFED, in any manner.
5. The learned counsel has pointed out that infact out of the total 13 lacs bags, as many as 10,73,060 bags were found to be usable as per joint inspection carried out under the directions of Hon'ble High Court of Calcutta and only 2,23,440 bags were found to be unusable. It has further been submitted that the value of the said unusable 2,23,440 bags worked out to Rs.92,73,824/- and since an amount of Rs.1,14,40,505/- had already been withheld by the Controller of Accounts, Directorate of Supplies and Disposal, Calcutta, the aforesaid amount of Rs.92,73,824/- out of the withheld amount was refunded to the Assistant Controller, Food Accounts for Director Food and Supplies, Haryana vide demand draft sent vide letter dated 26.2.2016 (Annexure P-13), being the recovery amount on account of value of substandard jute bags including shortage of jute bags. It has thus been

submitted that since the amount in respect of the alleged torn, mutilated, defective and unbranded bags had already been paid back to the quarter concerned, therefore, it cannot be said that any loss had been caused to the complainant by the petitioner.

6. It has further been submitted that although it was in the year 2016 i.e. much after lodging of the FIR that the remaining jute bags numbering 10,73,060 had been declared to be defective, but it is now in the year 2018 that a civil suit has been filed i.e. after more than four years of the lodging of the FIR, claiming recovery of Rs.6.99 crores against J.K. Jute Mills.
7. Opposing the petition, the learned State counsel has submitted that 2,600 bales of jute bags were supplied by way of two consignments of 1,300 bales each. When the first consignment was received on 26.1.2014, it was noticed that the jute bags supplied were mutilated, torn and unbranded and consequently a committee was constituted by Director General, Food and Supplies, Haryana, which inspected the bags. The second consignment of 1,300 bales was received on 18.3.2014 and upon inspection it was found that there was shortage of 7 bales and only 1,293 bales had been received and which too, on inspection, were found to be torn, mutilated, defective and unbranded and were rejected and M/s J.K. Jute Mills was duly informed. It has further been submitted that thereafter 'M/s J.K. Jute Mills' instituted a recovery suit in Hon'ble High Court of Calcutta challenging the rejection of jute bales and when pursuant to directions of Hon'ble High Court of Calcutta, a joint inspection of bags was conducted, 2,23,440 bags were found to be unusable while the remaining 10,73,060 bags were found to be usable subject to certain conditions. However, subsequently even the remaining bags were also found unacceptable and the Jute Commissioner

vide his letter dated 6.4.2015 had conveyed the same to HAFED directing that the said bags be not used as the bags in question were not only found to be not manufactured by M/s J.K. Jute Mills and Company Limited but also of different mills pertaining to different crop years. Subsequently, another inspection was jointly conducted wherein all the agents concerned were associated i.e. DGS&D, Jute Commissioner, FCI, DGF&S-Haryana and HAFED and pursuant to said inter agency inspection, a rejection memo in respect of remaining 10,73,060 bags was issued on 20.4.2016.

8. Upon considering rival submissions, it is noticed that HAFED has received back only a part of the payment in respect of the defective jute bags i.e. Rs.92,73,824/- in respect of 2,23,440 bags only and had incurred a loss in respect of the remaining amount qua 10,73,060 bags, which had not been made good, and the said loss had occurred on account of the defective bags having intentionally been supplied by the company, with which the petitioner was closely associated. Bearing in mind the aforesaid facts and circumstances and the enormity of scam, no special case for grant of anticipatory bail is made out. Further, in the present case, this Court has already considered an anticipatory bail application filed on behalf of the petitioner on merits and had dismissed the same vide detailed order passed on 30.3.2015 and ever since said dismissal there has been no substantial change of circumstances, so as to warrant grant of anticipatory bail.
9. There is no merit in this second anticipatory bail application and the same is dismissed.

26.7.2019

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No