

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

**CRM-M No.25304 of 2019 (O&M)
Date of Decision: 31.05.2019**

Sushil Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Yashwinder Singh, Deputy Advocate General, Haryana
for the respondent/State assisted by S.I. Sanjay.

Mr. Birender Singh Rana, Senior Advocate assisted by
Mr. Vivek Goyal and Ms. Divya Bajaj, Advocates
for the complainant.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for grant of pre-arrest bail to the petitioner in case FIR No.34 dated 06.02.2017 (**P-1**), under Sections 420, 406, 506, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (Section 201, IPC added later on), registered at Police Station Nissing, District Karnal.

Brief facts of the case are that a complaint dated 16.01.2017 was made by Sushil Kumar s/o Tara Chand being Director of M/s KTC Foods Pvt. Ltd., Regd. Office: 5th Milestone, Karnal Road, Nissing, District Karnal with the allegations that their Company has been doing the business

of Rice and Foodgrains etc. for the last many years. On 08.08.2016, petitioner/accused-Sushil Kumar s/o Rameshwar Dass along with co-accused Munish Kumar (both brokers) induced the complainant to sell 1000 tonnes of rice @ ₹ 4245/- per quintal to M/s KRBL Foods Limited, acting through its Directors, namely, Arun Kumar Gupta and Anil Kumar Gupta. Complainant after hiring 29 trucks supplied 8814.10 quintals of rice to M/s KRBL worth ₹ 3,74,15,853/- through Sushil Kumar (petitioner) and his co-accused Munish Kumar between the period from 11.08.2016 to 13.08.2016 and billing was to be made at Delhi, whereas the goods were to be supplied to M/s KRBL Foods, Dhuri, District Sangrur (Punjab). Both the brokers assured the complainant that the payment would be made on or before 15.08.2016, but on 23.08.2016, after several requests, flatly refused to make the payment. Consequently, the FIR was registered against aforesaid four accused, namely, Sushil Kumar (petitioner), Munish Kumar, Arun Kumar Gupta and Anil Kumar Gupta.

It is contended by learned Senior Counsel for the petitioner that as a matter of fact, the rice was purchased by M/s KRBL from one M/s Data Ram Associates, Naya Bazar, Delhi and not from the complainant; reference in this regard is made to order dated 13.06.2017 (P-5), passed in CRM-M-21304-2017, while seeking anticipatory bail by both co-accused Arun Kumar Gupta & Anil Kumar Gupta. Also contended that entire payment has already been made by both the above co-accused to the complainant and thereafter, FIR qua them has also been quashed by this Court vide order dated 15.12.2018 on the basis of compromise with the complainant. Further

contended that co-accused Munish Kumar was arrested in this case on 11.04.2019, but has been granted bail pending trial by learned Judicial Magistrate 1st Class, Karnal vide order dated 03.05.2019 (P-8), therefore, no purpose would be served by arresting the petitioner and thus, he be granted the pre-arrest bail.

On the other hand, learned State Counsel, on instructions from the police official present in the Court, opposed the bail application and submitted that petitioner along with co-accused Munish Kumar hatched a conspiracy with M/s Data Ram and received the entire consignment from M/s KTC Foods Pvt. Ltd., which was delivered to M/s KRBL, Dhuri on the pretext that same has been supplied by M/s Data Ram. Under that impression, Arun Kumar Gupta and Anil Kumar Gupta, being Directors of M/s KRBL, made payment of ₹ 3,63,00,000/- to M/s Data Ram at the first instance, who in fact, did not supply any goods to them and thereafter again to save themselves from the criminal proceedings, paid the amount to M/s KTC Foods and thus, petitioner is the mastermind of conspiracy as the entire payment, made at the first instance by M/s KRBL, has gone to the accounts of Firms, maintained by the petitioner through M/s Data Ram, therefore, his custodial interrogation is very much necessary.

Learned Senior Counsel for the complainant has also supported the case of the prosecution and submitted that they have suffered twice on account of the criminal breach of trust, cheating and forgery, committed by the petitioner along with his co-accused, thus, does not deserve any concession of pre-arrest bail.

Heard both sides and perused the paper-book.

There is sufficient material on record to indicate that on 08.08.2016, petitioner along with his co-accused Munish Kumar approached the complainant-M/s KTC Foods for supply of 1000 tonnes of rice @ ₹ 4245/- per quintal and consequently, 8814.10 quintals worth ₹ 3,74,15,853/- were supplied by hiring 29 trucks during the period from 11.08.2016 to 13.08.2016. Paper-book reveals that at first instance, the payment was made by M/s KRBL to M/s Data Ram against the purchase of rice in question. A perusal of order dated 15.12.2018 (P-6) in a quashing petition, passed by this Court, also substantiates that the matter was settled between M/s KRBL as well as complainant after receiving the payment and consequently, FIR qua Arun Kumar Gupta and Anil Kumar Gupta was quashed on the basis of compromise. Therefore, the argument that supply was received by M/s KBRL from M/s Data Ram and not from the complainant falls flat for the simple reason that had there been no supply by the complainant to M/s KRBL, then there was no occasion to make any payment and arriving at a settlement leading to passing of the aforesaid order dated 15.12.2018 by this Court.

During investigation, statement under Section 161 Cr.P.C. of co-accused Arun Kumar Gupta has been recorded on 21.01.2019 (P-7), wherein he stated that Sushil Kumar (petitioner) and co-accused Munish Kumar are the commission agents at Kaithal and both are known to him since long as their Firms have purchased the rice/paddy through them on number of occasions. Further stated that in the month of August, 2016,

around 8800 quintals of rice for an amount of ₹ 3,70,00,000/- were sold to them through petitioner-Sushil Kumar & co-accused Munish Kumar and they told that same has been procured from M/s Data Ram Associates, Naya Bazar, Delhi. Consequently, petitioner and co-accused Munish Kumar supplied the bills and account numbers of the above Firm and an amount of ₹ 3.63 Crores was deposited in their accounts after deducting a quality cut. Specifically stated that as per the bills, rice was purchased and supplied from M/s Data Ram Associates and the entire stock was transferred in their Mill at Dhuri (Punjab). Also stated that a complaint was filed against them along with Munish Kumar and petitioner-Sushil Kumar by the owner of M/s KTC Foods for not making the payment and then they came to know from petitioner-Sushil Kumar and Munish Kumar that as a matter of fact, rice had been purchased from M/s KTC Foods and not from M/s Data Ram. Consequently, the truth was revealed and they made the entire payment to M/s KTC Foods and both i.e. Arun Kumar Gupta and Anil Kumar Gupta were granted the anticipatory bail and subsequently, the FIR qua them was also quashed by this Court. Now, they are demanding their money back, which was transferred and misappropriated by M/s Data Ram as they have suffered the payment on two occasions for the goods in question. Thus, petitioner-Sushil Kumar and co-accused Munish Kumar committed fraud & cheating with M/s KRBL and M/s KTC Foods.

Proprietor of M/s Data Ram also joined the investigation and stated that he issued the bills for supply of rice in question and consequently, an amount of ₹ 3.63 Crores was transferred in their account

by M/s KRBL Foods Ltd. and for that purpose, he has charged ₹ 25,000/- for issuing the said bills to petitioner and co-accused Munish Kumar. Further stated that an amount of ₹ 2,20,00,000/- was transferred in the Firms i.e. M/s Bhole Nath Trading Company; M/s Rajender Kumar Sushil Kumar; M/s Anshul Gupta & Company; M/s Abhishek Gupta & Company, all owned by petitioner-Sushil Kumar as well as his relatives and M/s R.K. Trading Company, owned by co-accused Munish Kumar.

During the course of hearing, learned State Counsel has apprised this Court that proprietor of M/s Data Ram has also been nominated as an accused in this case.

Munish Kumar, during investigation, disclosed that he is the Proprietor of M/s R.K. Trading Company and an amount of ₹ 50 Lakh was transferred in his account and ₹ 2,20,00,000/- has been received by the Firms, maintained by the petitioner, from M/s Data Ram in different accounts by fabricating the record and even the bills, indicating the vehicle numbers, supplied by the petitioner for delivery of goods, pertain to Motorcycles, Toyota Qualis Car, School Bus etc. and not regarding the trucks.

In view of the above, it is apparently clear that petitioner has acted in a deep routed manner while committing the offence and as such, his custodial interrogation is very much necessary to unearth the modus operandi adopted by him for misappropriation of the amount of ₹ 3.63 Crores by defrauding and cheating the complainant at the first instance and thereafter, forced M/s KRBL to suffer the loss twice on account of misdeeds

of the petitioner.

The argument that co-accused Munish Kumar has been granted the bail pending trial is of no avail as petitioner is the main beneficiary having received an amount of ₹ 2,20,00,000/- and moreover, learned trial Court while passing the bail order has observed that this is a case of civil nature and involved tax evasion only, but this Court is not agreeable with the observations of the learned Magistrate. Still further, there is no reference or consideration of the statement dated 21.01.2019 (P-7), made by Arun Kumar Gupta under Section 161 Cr.P.C., while granting bail to co-accused Munish Kumar. Thus, the contentions on behalf of the petitioner is rejected.

Accordingly, there is no merit in the petition and the same is dismissed.

The above observations, made above, may not be construed as an expression of opinion on the merits of the case.

May 31, 2019

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes