

S.No.102

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

CRM-M-43226 of 2019 (O&M)

Date of Decision:05.12.2019

Surender Mohan

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Tejinder Pal Singh, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.51 dated 29.03.2018 registered under Sections 420, 406 IPC at Police Station Sadhaura, District Yamuna Nagar.

The facts giving rise to the present petition, in nuthsell, are that the FIR was got registered on complaint of Haryana Agro Industries Corporation Limited, which is a Government of Haryana undertaking. The allegations as levelled in the FIR are that the complainant had signed an agreement for custom milling of paddy with the present petitioner. Under the said agreement, the complainant had handed over a quantity of 2368.58 MT of paddy to the petitioner. As per the agreement and as per the standards of milling, the petitioner was required to supply the specified quantity of rice after milling the paddy. The petitioner supplied only 948.83 MT of rice and failed to deliver 638.11 MT of rice, which he was under obligation to deliver. Therefore, the petitioner has embezzled the value

worth the rice which is not supplied by him, which comes to Rs.1,73,72,685.13. Besides this, gunny bags worth Rs.5.87 lakhs were also found embezzled by the petitioner. Besides this, there are certain other overhead charges. Accordingly, a total amount of Rs.2,30,54,475.93 worth the value has been embezzled by the petitioner. With these allegations, the FIR was registered against the petitioner.

Learned counsel for the petitioner has submitted that the matter is contractual in nature. The arbitration proceedings are already going on between the petitioner and the complainant. The complaint under Section 138 of NI Act also has been initiated by the complainant- Corporation for default of the cheques, which the petitioner had given in lieu of the alleged embezzled amount. Still further, even the proceedings for attachment of properties of the petitioner have been initiated. Therefore, it is submitted that the petitioner is already suffering and the rights of the parties are yet to be crystalized in the arbitration proceedings. The case is based on the documentary evidence. Therefore, the custody of the petitioner is not required. Hence, the petitioner deserves to be granted anticipatory bail.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the

Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, it is obvious that the petitioner was supplied the paddy for custom milling. This fact is not even disputed by the counsel for the petitioner; and the same is also evident from the documents on record. However, as per the agreement, the petitioner was required to supply the specified quantity of rice to the complainant-Corporation. That supply has not been made. Rather there is alleged default of more than one third of the quantity of rice which was required to be supplied by the petitioner to the complainant. Hence, it cannot be said that the offence against the petitioner are not, prima-facie, disclosed. Still further, the petitioner is facing another case of similar nature as well. Hence, at this stage, this Court does not find any mitigating circumstances in favour of the petitioner so as to show, ex-facie, innocence of the petitioner vis-a-vis the allegations levelled against him. Hence, this Court is not inclined to exercise its power under Section 438 Cr.P.C so as to grant the petitioner protection against arrest. Still further, since the matter involves intricate details of the siphoning of the paddy/rice or the amount

equivalent thereto, the custody of the petitioner may be required by the Police to unearth the actual dimensions of the fraud. Hence, if the petitioner is granted protection against the arrest at this stage, then the investigation of the case is bound to suffer.

Although counsel for the petitioner submits that the parties are in arbitration proceedings, however, this Court does not find any substance in the said argument. The arbitration proceedings, if any, can, at the best, decide the quantum of liability of the petitioner with reference to the clauses of the agreement. However, that relates only to finalising the quantum as such. But the fact that the entire quantity, as per the agreement, has not been supplied by the petitioner; is not even under dispute. Hence, the offence, already stands completed, as per the facts alleged in the case. Therefore, any proceedings in the arbitration cannot wipe out the offence or the effect of the same, if any. Hence, this Court finds the argument of the learned counsel for the petitioner to be totally irrelevant, so far as the question of grant of anticipatory bail to the petitioner is concerned.

Similarly, the argument of counsel for the petitioner; that the properties of the petitioner are under the process of attachment, therefore, he should be considered for grant of anticipatory bail, is also liable to be noticed only to be rejected. The attachment of the properties, and any consequent sale thereof, is only the consequence of the alleged crime committed by the petitioner. The petitioner cannot claim any premium upon his alleged criminal conduct as such. The consequence of attachment and sale would be, only in addition to the other aspects, which shall flow from the commission of the offence by the petitioner, if any.

In view of the above, this Court does not find any merit in the present petition and the same is dismissed.

December 05, 2019
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Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No

(RAJBIR SEHRAWAT)
JUDGE