IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.M-46787 of 2019(O&M)
Date of Decision: December 09, 2019

Surinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.R.S.Randhawa, Advocate
for the petitioner.

Mr.K.S.Aulakh, DAG, Punjab.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 438 Cr.P.C for grant of pre-arrest bail in case FIR No.10 dated 21.06.2019 under Sections 409, 420, 465, 467, 468, 471, 120-B IPC and Section 7, 13(1)(a) read with 13(2) of the Prevention of Corruption Act, 1988, Police station Vigilance Bureau, SAS Nagar Mohali.

The allegations in the FIR are that on 25.01.2010 a consortium namely M/s HGCL – Neeraj – Supreme Infrastructure Ltd. was awarded a tender for four-laning of a stretch of 26.90 kilometers from Doraha to Ludhiana-Ferozepur (south Bypass Ludhiana) along with fly-over, underpasses, Railway Over-bridges, Canal-lining, etc. by the Punjab Infrastructure Development Board. To guarantee the completion of work, a performance security of Rs.16,40,80,800/- and an additional performance security of Rs.53,78,46,664/- were deposited by the contractor. In 2013 retention money of Rs.8 crores was released to the contractor on deposit of bank guarantee of the equivalent amount. The contractor deposited bank guarantee of Axis Bank Mumbai with validity upto 13.03.2015 in the office of XEN Ludhiana. The validity of the said bank guarantee was later extended upto 12.03.2016. Before the expiry of the period of its validity the bank guarantee was to be further extended uptil 13.03.2017. Ajitpal Singh Brar XEN wrote two letters dated 07.01.2016 and 23.02.2016 to partners of the firm to extend the bank guarantees. Copies of the same were not sent to the Axis Bank, Mumbai. If the copies of the letters had been sent to Axis Bank, Mumbai with a request to encash the bank guarantee before the date of expiry of its validity i.e. 12.03.2016 the bank guarantee could have been encashed. It was only on 11.03.2016 i.e., one day before the expiry of its validity that Ajitpal Singh Brar XEN wrote letters to Axis Bank, Mumbai to encash the bank guarantee knowing full well that the letter would not reach Mumbai in one day. He further wrote letters dated 08.04.2016 and 16.05.2016 to Axis Bank Mumbai for encashment of the bank guarantee after the validity of the Bank guarantees had already expired. On office copy of the letter dated 15.05.2016 Ajitpal Singh Brar XEN in collusion with the petitioner got the petitioner to endorse "*extended upto 18.06.2017. Hence, may file.*" It is alleged that there was no basis for the petitioner to record as above as there was no letter or document either from the Contractor or the Bank regarding extension of the said Bank guarantee of Rs.8 crores upto 18.06.2017. The said endorsement was made by the petitioner only to mislead the senior officers of the Department.

As per the FIR there were a total of 18 other bank guarantees (for an amount approximately Rs.21,85,63,762/-) which were expiring either on 12.12.2015 or 13.12.2015. Ajitpal Singh Brar XEN initially sent letters for extending the period of those bank guarantees for one year i.e. upto 13.12.2016 to the partners of the Company through ordinary post with copy to the Axis Bank, Mumbai that in case the above bank guarantees are not extended then the same be encashed. The letter was received by the bank on 15.12.2015 after the expiry of the period of the validity of these 18 bank guarantees. Thereafter, he sent reminders on 07.01.2016, 11.01.2016 and 08.04.2016 to the Axis Bank Mumbai to encash the bank guarantees though the same had already expired on 12.12.2015 and 13.12.2015. These letters were a mere formality as the same had been issued after the expiry of the period of validity of these bank guarantees. As per procedure if the bank guarantees were not extended for one year before the expiry of their validity those bank guarantees had to be forfeited. However, Ajitpal Singh Brar XEN in collusion with the partners of the Company and with malafide intent and in order to extend personal benefit to the contractors and financial loss to the department did not do so.

Ld. Counsel for the petitioner has argued that the petitioner is not in any way responsible for any loss. He had no knowledge that co-accused Ajitpal Singh Brar had connived with the private contractor. It was Ajitpal Singh Brar who in order to help the private contractor had failed to get the bank guarantees encashed within time. The petitioner was in possession of the concerned files of the bank guarantees which were valid till 12.12.2015 and 13.12.2015. He had handed over the same to XEN Ajitpal Singh Brar for getting them extended from the concerned Bank. Ajitpal Singh Brar had personally gone to Mumbai to get the bank guarantees extended. He informed that the Bank guarantee No. 139401000001959 dated 10.10.2013 had been extended from 12.03.2016 to

18.06.2017. The said bank guarantee was deposited by the XEN in the record. The petitioner in good faith on the directions of the XEN made a note accordingly on the office file that the bank guarantee stood extended till 13.06.2017. He further submitted that the said endorsement was made by him after the period of the validity of the bank guarantee had expired. By then in any event the bank guarantee could not have been encashed. He argued that the petitioner retired from service on attaining the age of superannuation in January, 2017. Even after the retirement of the petitioner, XEN Ajitpal Singh Brar kept on presenting fake bank guarantees from time to time. He even managed to get a letter from the Bank certifying the genuineness of the bank guarantees. No one, not even the successor Divisional Superintendents were able to detect this fraud. It was only much later in June 2018 after Ajit Pal Singh Brar went on deputation to National Highways and Infrastructure Development Corporation Ltd. that the scam came to light. He argued that the petitioner is ready and willing to cooperate with the Investigating Agency. He argued that the larger scam in fact involves XEN Ajitpal Singh Brar and the Contractor in which the petitioner has no role.

Ld. Counsel for the respondent on the other hand contended that the petitioner who was the Divisional Superintendent was responsible for personally dealing with all the confidential work in the Divisional Office and was the custodian of the bank guarantees. He was duty bound to ensure implementation of all Rules and Procedures. As per B&R Manual of Orders, the Divisional Superintendent is responsible "*to personally deal with all confidential work in the divisional office and to keep such confidential record with him as if entrusted by the Divisional Officer*". If the XEN did not get the bank guarantees encashed before the due date, it was the duty of the petitioner to bring it to the notice of the senior officers i.e. Superintending Engineer and Chief Engineer, but he did not do so, as he had connived with the partners and Directors of the said Company.

In the present case, the allegations are that bank guarantees amounting to about Rs.29 crores were allowed to lapse without being encashed even though their period of validity had not been extended. Further, fake bank guarantees were furnished from time to time. Though, the primary allegations are against Ajit Pal Singh Brar XEN who failed to encash the bank guarantees and the Contractor who presented fake documents regarding extension of bank guarantees and thereby caused loss to the department but the petitioner also cannot be absolved of any liability. Apart from the specific allegation against him of making an endorsement "*extended upto 18.06.2017. Hence, may file.*" on the copy of the letter dated 15.05.2016 in respect of the bank guarantee of Rs.8 crore, he cannot escape his responsibility for not raising any objection to the non-renewal of the bank guarantees. The Department has suffered a huge loss of about Rs.29 crores

There is no ground to grant the concession of anticipatory bail to the petitioner.

Petition dismissed.

December 09, 2019 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No