IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) Nos. 1147 and 1590 of of 2020

Date of Decision 22nd Dec.,2020

Cr.MP(M) No. 1147 of 2020

Daljeet Singh ***…Petitioner***

Versus

State of H.P. ***….Respondent***

Cr.MP(M) No. 1590 of 2020

Hardeep Singh ***….Petitioner***

Versus

State of H.P. ***….Respondent***

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The Hon'ble Mr. Justice Vivek Singh Thakur, J.

Whether approved for reporting?[1]

For the Petitioner(s):	Mr. Sudhanshu Jamwal, Advocate, through Video Conferencing.
For the Respondent(s):	Mr. Raju Ram Rahi, Deputy Advocate General, through Video Conferencing.

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[1] ***Whether Reporters of Local Papers may be allowed to see the judgment? Yes***

Vivek Singh Thakur, J.

Both these petitions are being disposed of by this common judgment, as they arise out of same FIR.

2 Petitioners are partners of Happy Fruit Company, Shop No.23, Apple Market, Sector 20, Panchkula, State of Haryana. They have approached this Court for enlarging them on bail in case FIR No. 27 of 2020 dated 6.7.2020, registered at Police Station CID, Shimla under Sections 406, 420 and 506 IPC.

3 FIR, in question, has been registered on the basis of statement of one fruit grower Pappu wherein he has complained cheating with dishonest intention for misappropriation of money of apple growers by petitioners in the year 2019. According to him, petitioners are not paying the sale price of apples to complainant and other fruit growers.

4 Petitioners herein have disputed the allegations of cheating with dishonest intention for misappropriation of money of apple growers, rather, they have not disputed the outstanding liability for sale price of apple boxes supplied by complainant and others. It is further averred by petitioners that they have already credited some amount i.e. Rs.40,000/- in the account of complainant through RTGS and have also tried to pay the amount to other fruit growers by managing the funds and further that

petitioners and their firm is ready and willing to pay the outstanding amount to fruit growers including the complainant, but, due to unprecedented circumstances of pandemic of Corona virus, petitioners' firm was not able to release the entire outstanding payment in favour of complainant and other fruit growers. According to petitioners, they are keen to settle the amount within a reasonable period and as a security, petitioners are ready to pay post dated cheques in favour of complainant in order to show their bonafide and credibility. Further that petitioners' firm namely 'Happy Fruit Company and Vegetable Commission' is working as Commission Agent at Panchkula since last 30 years and has attained reputation and goodwill amongst the apple and vegetable growers of Northern India and except few instances of non-payment of amount to growers, due to unprecedented circumstances of pandemic Corona virus, there is no complaint of not releasing the outstanding liability by petitioners' firm to the farmers for the last 30 years and further that procurement of apple by Commission Agents starts from 2nd week of July of each year and it accomplishes at the end of November every year and thereafter, 50% of apple is directly sold in the apple market and rest 50% is sent to cold storages and amount to the extent of 50%, which is sent to the fruit

market, is directly sent in the accounts of Commission Agents and rest 50% amount is realized by Commission Agents by April/May of next year and thereafter only, the entire sale consideration of farmers is released in their favour till the end of April/May. But this time due to complete Lockdown on account of pandemic since March 2020, apple, which was to be released in market from the cold storages, could not fetch amount as expected in the normal circumstances and therefore, entire consideration to growers and farmers could not be released in their favour and for this reason, petitioners could not make the payment in time and seek four months' time to pay left out consideration.

5 Both petitioners have also filed their individual affidavits stating therein that during investigation, they had failed to produce bill books with respect to sale purchase of fruits/apples from the complainant and other fruit growers due to reason that same was lost during shifting of their residence to new house, but, they have undertaken the following amount to be pending for payment to fruit growers:-

S.No.	Name of the Complainant	Amount
1.	Pratap Chand	1,50,000
2	Nanak Chand	37,965
3	Kumat Ram	24,000

4	Bhupender Orchard Pappu Satpal	91,930
5	Suresh Kumar	59,630
6	Kaladevi	36,410
7	Dola Ram	55,000
8	Noor Chand	50,000
9	Ganga Ram	70,712
10	Daulat Ram	52,680
11	Ramlal Thakur	92,960
12	Roshan Lal	93,760
13	Ramesh Dilta	25,000
14	Dalip Kumar	10,000
15	Kewal Ram	85,340
16	Inder Singh	76,090
17	Mangat Ram	80,000
18	Kalidass	12,000
19	Amar Singh	80,000
20	Shyam Singh	72,000
21	Baldev Kapta	29,000
22	Parkash	65,000
23	Ram Lal	26,000
24	Shiv Bhagat	9,00,000
	TOTAL	22,75,477

6 It is further undertaken in affidavits that aforesaid amount will be released to fruit growers within four months and further that during pendency of bail applications, an amount of Rs.5,02,000/- has also been credited to the accounts of growers in order to show bonafide of petitioners. Copy of bank statement has also been placed on record to substantiate the payment

made by petitioners, indicating transfer of some amount to some fruit growers.

7 Petitioners have also placed on record photocopy of account statement to indicate that Rs.15,000/- each have been transferred by petitioners in favour of fruit growers Dalmi Ram and Shyam Singh on 24.11.2020 and thereafter Rs.10,000/- each has also been paid by petitioners to Daulat Ram, Inder Singh, Noor Chand and Dalmi Rani on 19.12.2020 and Rs.15,000/- to Partap Singh on same day i.e. 19.12.2020.

8. In the status report(s), filed on behalf of respondent/State, it is stated that petitioners have joined the investigation, but, they have not produced the original record of bill books and during investigation, statements of numerous fruit growers have been recorded wherein they have alleged non-payment of sale consideration of their apples by petitioners and as per status report(s), petitioners have made partial payment about Rs.4 lacs to fruit growers after registration of FIR and about Rs.23 lacs are yet to be paid by them to various fruit growers as evident from details supplied by petitioners. It is stated that petitioners have not made payment to fruit growers against sale of apples pertaining to years 2017, 2018 and 2019 and non-payment of sale price for more than three years clearly

indicates the ill-intention of petitioners to cheat fruit growers with dishonest intention for misappropriation of their money.

9 Considering the entire facts and circumstances of the case, I am of the considered view that at this stage, petitioners are entitled to be enlarged on bail. Therefore, the petitioners are ordered to be released on bail, subject to furnishing personal bond in the sum of Rs.1 lac each with one surety each in the like amount to the satisfaction of the trial Court, within two weeks from today, subject to the following conditions:-

(i) That the petitioners shall make themselves available during investigation as well as the trial on each and every date as and when required;

(ii) That the petitioners 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 Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(ii) That they shall not obstruct the smooth progress of the investigation as well as trial;

(iii) That they shall not jump over the bail and also shall not leave India without permission of

Court and shall keep on informing, in writing, regarding change of address, land line number and/or mobile number, if any, in advance, to concerned Police Station.

(v) That the petitioners shall not commit the offence similar to the offence to which they are accused or suspected or the commission of which they are suspected.

(vi) That petitioners shall not misuse their liberty in any manner.

10 It will be open to the prosecution to apply for imposing any such other or further condition on the petitioners as deemed necessary in the facts and circumstances of the case and in the interest of justice. It will also be open to the trial Court to impose any other or further condition on the petitioners as it may deem necessary in the interest of justice.

11 In case the petitioners violate any condition imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail in accordance with law.

12 Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No. HHC/VIG/Misc.Instructions/93-IV.7139 dated 18.3.2013.

13 Petitions stand disposed of. Any observation made in this order shall not affect the merits of case in any manner and will strictly confine for the disposal of the present petitions.

Dasti copy on usual terms.

December 22,2020 **(Vivek Singh Thakur)**
(ms) **Judge**