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

**CRM-M-16405-2020
Date of Decision: 21.07.2020**

Gurbachan Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

Copy of an application dated 20.07.2020, seeking permission to place on record certain documents being Annexures P-7 to P-10, has been sent by mail by Ld. Counsel for the petitioner.

On submission of Ld. Counsel for the petitioner, the documents mentioned therein being VAT-R1 Returns, Lease Deed, Surety Bond and disclosure statement of the petitioner himself, are permitted to be placed on record, from Annexures P-7 to P-10. Let the same be numbered.

Application stands disposed off.

CRM-M-16405-2020

[1]. This is a petition for regular bail under Section 439 Cr.P.C. filed on behalf of the petitioner in case FIR No.98 dated 03.03.2019, under Sections 406, 420, 409 and 120-B of the IPC, registered at Police Station City Kaithal, District Kaithal.

[2]. The petitioner happens to be the Proprietor of the Firm "M/s

Haryana Agro Foods” in whose favour an agreement for shelling rice was executed by the complainant, namely, Haryana State Co-operative Supply and Marketing Federation Limited, Kaithal, Haryana (for short 'HAFED'). It was alleged in the FIR that the complainant/HAFED had procured paddy from the Grain Market, Kaithal and given 39735 quintals from it for custom milling to the petitioner's Firm, but the said Firm did not adhere to the terms and conditions of the agreement and on physical verification by the Committee, it was found that 26855.812 quintals of paddy equivalent to 17993.394 quintals of rice had been misappropriated in connivance with guarantors of the petitioner's Firm resulting into a financial loss to the tune of approximately ₹6,27,91,179/-.

[3]. Contention of Ld. Senior Counsel appearing for the petitioner is that he is a victim of circumstances in the present case in which the fraud and defalcation was actually committed by the guarantors, who had only used the petitioner as a Pawn in-furtherance of their sinister and criminal designs. His version in this regard is that he is actually a Mechanic by profession and was running his own business of mechanical works under the name and style of “M/s Laxmi Agriculture Implements Works” situated at New Karnal Road, Kaithal and was subjected to certain inducement by partners of the Firm M/s Kissan Rice Land Private Limited, Kaithal (for short 'Kissan Rice Land'). His further submission in this regard is that he had no connection with or expertise in the rice shelling business. But one Ashok Kumar son of Satya Pal, a partner in the firm Kissan Rice Land, who used to come to the petitioner, in connection with welding works of his sheller, had induced him to venture into that business by representing that his own sheller business running under the name of Kissan Rice Land had

been closed as the Government was not giving paddy to the said Firm. Consequently, the petitioner was induced to give his name as the proprietor of another Firm to whom the HAFED Authorities would have no restriction in providing the paddy for shelling, and that such work would be done by Ashok Kumar and his partners themselves, who already had remained engaged in shelling business, and a fixed amount would be passed-on to the petitioner, as his share in profits.

[4]. Ld. Senior Counsel for the petitioner has drawn attention of the Court to Clause 5(e)(v) of the guidelines in the Policy concerning Paddy Procurement and its Milling during Kharif Marketing Season 2018-19, which reads as under:-

“v) Premises of a defaulter miller will be treated as defaulter and no such mill even if leased out to any third party by the defaulter owner/previous lessee will be eligible for allotment.”

[5]. Further, according to the Ld. Senior Counsel for the petitioner the firm, Kissan Rice Land, of which Ashok Kumar and his brothers were partners, had, in view of the aforesaid guidelines, been disqualified for being considered for any fresh shelling agreement, as it had defaulted in its obligations in pursuance of certain previous agreements. As such, even the premises of Kissan Rice Land was to be treated as a 'defaulter' and no agreement for milling at the said premises could be executed. To overcome this hurdle a sham Proprietorship Firm under the name of “M/s Haryana Agro Foods” of which the petitioner was shown as the Proprietor was got created and agreement for shelling by the said Firm was got executed from the HAFED Authorities, which, according to the petitioner was out and out the result of active connivance between the concerned Officers of HAFED

and the partners of the firm-M/s Kissan Rice Land, which had already been declared as disqualified being a 'defaulter'. The connivence in this regard is clear when notice is taken of the fact that HAFED Officers had turned a blind eye to the premises in which M/s Haryana Agro Foods was to do the shelling, was the same as the defaulter premises of M/s Kissan Rice Land. According to the petitioner, fraud in this regard becomes palpable from the fact that the Surety Bond to indemnify any loss caused to the Government by M/s Haryana Agro Foods, Kaithal, was executed by none other than Ashok Garg, Sushil Kumar and Tarsem Chand, all sons of Satya Pal, who were by their own admission the partners/owners of the defaulting Firm M/s Kissan Rice Land, which is clear from the relevant document (Annexure P-9). Annexure P-8 happens to be the Lease Deed purportedly issued by the aforesaid partner Ashok Kumar along with his nephew (Sunil Kumar son of his brother and partner Tarsem Chand) and a recital of the Lease Deed goes to show that the lease money was to be paid by the Lessee only after the end of each year, which stipulation itself exposes the sham nature of the document. The petitioner has also placed on record copies of his VAT-R1 Returns for the years 2012-14 (Annexure P-7) to support his contention that his actual business is that of mechanical works concerning agricultural implements. Lastly, Ld. Senior Counsel for the petitioner has submitted that during the course of investigation, his client had honestly disclosed all these facts to the Investigating Officer, and his disclosure statement in this regard (Annexure P-10) is also a part of the challan papers and that at this stage his client is even willing to turn Approver for the State to ensure that the real masterminds behind the fraud played by the partners/owners of Kissan Rice Land as also the conniving Officers of HAFED are logically brought to

book, since challan in the case has been submitted only against private individuals and none of the conniving Officers of HAFED has been roped in. It is further submitted that the fraud and corruption of the HAFED Officers involved in this case is so deep-rooted that no statutory recovery proceedings against the co-accused persons, who had stood guarantors for the prospective losses to be incurred in the matter by HAFED, have been initiated till now to the best of the petitioner's knowledge.

[6]. After considering the aforesaid submissions raised on behalf of the petitioner, who, by now, has remained in detention for nearly 11 months since his arrest on 07.09.2019, and against whom the challan has already been submitted after completion of investigation long ago, and further in view of the fact that the other accused persons in the case, who in the given circumstances would appear to be the real masterminds behind the conspiracy, had been granted bail by the Ld. Additional Sessions Judge, Kaithal, long ago, this Court is of the opinion that further detention of the petitioner for an indefinite period at this stage is not justified. He is, therefore, ordered to be released on regular bail, subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[7]. A copy of this order be sent to the Managing Director, HAFED Corporate Office, Sector-5, Panchkula to draw his attention to the fact that no recovery proceedings in accordance with law appear to have been initiated against the guarantors, who are the co-accused persons in this case apparently on account of the alleged connivance imputed to certain officers of his establishment, so that the needful by way of identifying and bringing those Officers to book, as well as for effecting recovery from the guarantors

is done at the earliest.

[8]. Disposed off.

21.07.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No