

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

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**CRM-M-25168-2020(O&M)
Date of Order:31.08.2020**

SANJEEV KUMAR

..Petitioner

Versus

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

Ms. Deepali Puri, Advocate,
for the complainant.

ANIL KSHETARPAL, J(Oral)

The petitioner prays for grant of pre-arrest bail in a criminal case arising from FIR No. 40 dated 15.04.2020 registered under section 407, 420 and 120-B IPC at Police Station Nihal Singh Wala, District Moga, Punjab.

This court vide order dated 10.07.2020 passed in CRM-M-16091-2020, has already dismissed the similar petition filed by co-accused.

The order dated 10.07.2020 is extracted as under:-

“This order shall dispose of Criminal Misc. No. M-16091 of 2020 (“Rajeev Kumar v. State of Punjab”) and Criminal Misc. No. M-17732 of 2020 (“Kaifi v. State of Punjab”).

In both the petitions, the petitioners have prayed for grant of pre-arrest bail in a case arising from FIR No. 40 dated 15.04.2020 registered under Sections 407, 420 & 120-B IPC at Police Station Nihal Singh Wala, District Moga. Learned counsel for the petitioner in Criminal Misc. No. M-16091 of 2020 has annexed translation of the FIR, which reads as under:

*“Food and Supplies Association, District Moga.
To
The Deputy Commissioner,*

Moga.

Subject: Regarding shifting of paddy. M/S Akshit Agro Foods, M/S Surya Agro Foods and M/S Keshav Agro Foods, Nihal Singh Wala Road, Bagha Purana. Purchase agency PunGrain Paddy Year 2019-20.

Sir,

Respectfully that Sh. Krishan Kumar son of Sh. Tarsem Lal resident of Nihal Singh Wala, District Moga owner/Partner M/S Akshit Agro Foods, M/S Surya Agro Foods and M/S Keshav Agro Foods, Nihal Singh Wala Road, Bagha Purana went missing alongwith family on 11.03.2020 and as per the letter of Food & Supplies Department District Moga bearing No A-2-2020-21 dated 12.03.2020, different teams through Assistant Food and Supply Officers were put on duty to make factual enquiry of the above Rice Mills (Copy Attached) because in the said Rice Mills paddy of Pun Grain agency of Year 2019-20 was stored, which was purchased through the CCL Limit of Punjab Government. The above staff vide letter memo No. 188 dated 12.03.2020 after factual enquiry submitted the report to District Office Moga (Copy Attached).

As per this report on counting of the Paddy Stock of above Rice Mills from outside 124107 Bags 4653.99 tons were found in shortage. After this vide District Office letter No. A-2-2020/2131 dated 13.03.2020 through Head Office, Chandigarh, Memo No 2CH(2295)-2020/514 dated 13.03.2020 instructions were issued/approved and the teams were prepared to shift the Paddy from above Rice Mills (Copies of the Letter Attached) and in addition your letter No. 2461/MA/MC-4 dated 14.03.2020, Tehsildar Bagha Purana was given the Duty as Duty Magistrate to get the paddy Shifted (Copy attached).

Thereafter, Duty Magistrate through the teams and in the presence of custodian Staff on 15.03.2020 as per above approval started the shifting of paddy. The entire work of Paddy Shifting was being done as per Govt. instructions. Above Krishan Kumar in order to create hindrance in shifting of paddy and to save himself from legal action started making complaints against the appointed staff for shifting the Paddy. He leveled false and baseless allegations upon the employees which had no grain of truth because that person earlier wrote a false suicide note against suspected Persons and went alongwith the family and later on with the help of Police he was

searched and in the press conference he admitted his mistake.

In addition to it said Krishan Kumar has to pay about 13 Crore to Punjab & Sind Bank and for that Bank also appointed their security on the above shellers. Above Krishan Kumar took Jaid Godwon near Grain Market Nihal Singh Wala on rent and showing Paddy stored in that obtained a Loan from Axis Bank whereas in the said Godown the required Paddy is not stored. Above Krishan Kumar has also taken huge amount on Loan from many persons privately. As per the report Sub Divisional Engineer, Smad Bhai the above shellers owe Rs. 40 Lacs to the electricity Department and for that reason on 12.03.2020 all electric connections of the above shellers were disconnected.

Yesterday, 14.04.2020 above Krishan Kumar got the work of Paddy shifting stopped by misleading the police of PS Bagha Purana which was restarted after supplying the documents of the department. It is pertinent to mention here that against the above Sheller Owners District Food and Supplies Moga has already written to Senior Superintendent of Police to register FIR but it is sorry to state that Police action is under process against above Krishan Kumar but he directly or indirectly is stopping the work of Paddy Shifting. We are apprehensive that the above persons can do silly actions while the Government work is going on. From the above, it is clear that the work is being done as per the instructions of the department and Sh. Krishan Kumar son of Sh. Tarsem Lal Nihal Singh Wala is very shrude person and he leveling false allegations against the employees/Officers and is trying to mislead the administration . Season of Purchase of wheat has started and they have to purchase the wheat from the grain markets and has to store that and in these circumstances they are facing hardship to do the Official Work and for that reason against the above person case be registered as soon as possible for misappropriating the Paddy so that the Paddy lying in above shellers can be shifted to other shellers for Milling and the department is saved from financial Loss. Yours faithfully Sd/- Jaswinder Singh, President Food & Supply Association, Sd/- Rajwant Singh, Gen. Secretary, Punjab, Sd/- Jagdeep Singh Pardhan Inspector, Sd/- Gurlal Singh, Food & Supply Association, Moga, Sd/- Charanjit Singh, Inspector, Sd/- Dev Rattan Singh Food & Supply Association, Sd/- Pardeep Singh Inspector. Alongwith his letter the

relevant documents for PV of Rice Mills and report of the Officers and other documents of Deputy Commissioner, Moga Letter No. 3745/MA/MC-4 Dated 15.04.2020 are attached. The subject of the letter is to the Superintendent of Police, Moga No. 3745/MA/MC-4 Dated 15.04.2020 for Shifting Paddy M/S Akshit Agro Foods, M/S Surya Agro and M/S Keshav Agro Foods, Nihal Singh Wala Road, Bagha Purana. Purchase agency PUNGRAIN Paddy Year 2019-20 reference your Office Letter No. 78/PC/3/20 dated 14.04.20. All the applications sent by the Concerned department/Sheller Owners for leveling allegations against each other for misappropriating the Paddy lying in the said shellers were sent to you for disposal. In this regard letter No 3696/MA/MC-4 of this Office dated 11.04.2020 was sent to you with the request of District Manager, PUNGRAIN Moga to register the case against the Mill Owners and the partners. The Owner of above Mills Sh. Krishan Kumar son of Tarsem Lal, resident of Nihal Singh Wala on 10.03.2020 went missing after writing a Suicide Note and on receiving the information Teams were prepared for the factual investigation of the above Mills by the Food & Supplies Department and PUNGRAIN agency Officials. The Custodian Inspector of these Rice Mills Sh. Ratinder Singh ask the other Partners Sh. Rajeev Kumar son of Sh. Girdhari Lal resident of Saina, District Barnala through Mobile No. 8288800058 and asked them to join in the factual investigation but the above Partner did not come present inspite of calling by PUNGRAIN Department and in the absence of the above Partners of the Mills, the factual enquiry of the Mills was conducted and it was found that from the stored Paddy Stock, there was shortage of 124107 Bags 4653.99 Tons of Paddy and in this regard information was given to Director Food & Supply Department, Chandigarh and this case is in the notice of the Govt. and orders for shifting the Paddy was passed. In case the applicant Sh. Krishan Kumar wants some concessions in these Orders then he could file appeal against the Orders but the applicant has not filed any appeal. In this regard vide Letter No. 2461/MA/MC-4 dated 14.03.20 of this Office Tehsildar Bagha Purana was appointed as Duty Magistrate to get the work of remaining Paddy shifting done. Now during shifting Sh. Krishan Kumar is creating obstacles in shifting the Paddy by making written complaints against the appointed staff. Yesterday

on 14.04.2020 during the Paddy lifting SHO, Bagha Purana without taking any orders from the competent authority in connivance with the applicant stopped the work of shifting. Now the Office Bearers of District and Food Supply Association Moga, has brought to the notice of undersigned that Mill owner Krishan Kumar owes huge amount to the persons privately and on the report of Assistant Engineer PSPCL, Sub Division Smad Bhai, the above owners of the Mills owe Rs. 42 Lacs to the electricity department and 12.03.2020 the electric connection of the above shellers were disconnected. The Office Bearers has brought to the notice that applicant Sh. Krishan Kumar son of Tarsem Lal resident of Nihal Singh Wala is very shrewd and clever person and he is trying to mislead the administration and case be registered as soon as possible against him for misappropriating the Paddy lying in the above shellers and to shift the remaining Paddy. The request of District Manager, PUNGRAIN, Moga and Food & Supply Association Moga, through application dated 15.04.2020 alongwith attached documents are sent to you and is requested that as per Legal requirement Criminal case be registered the above Sheller owners and in case the immediate action is not taken its bad effect will be on the purchase of Wheat, which is starting from 17.04.20 and as per the Order of the Director, Food and Supply Department, Chandigarh vide memo No. 2CH(2295)-2020/514 dated 13.03.2020 for shifting the Paddy from the above shellers to the other shellers, Police help be ordered. Sd/- Deputy Commissioner, Moga. On this letter SSP, Moga ordered SHO-NSW to register the case Relevant Sections of Law and investigate and Special Report be sent to me before 9 PM today Sd/- SSP, Moga dated 15.04.2020. On receiving the above letter and relevant documents and the order of SSP case under Section 407, 420, 120-B IPC against M/S Akshit Agro Foods, M/S Surya Agro Foods and M/S Keshav Agro Foods, Partners Kaffi wife of Krishan Kumar, Krishan Kumar son of Tarsem Lal, resident of Nihal Singh Wala, Rajeev Kumar, Sanjeev Kumar sons of Girdhari Lal, resident of Sehna, District Barnala was registered. Information on PCR was supplied. Special Reports through CT Amandeep Sharma 1090/Moga to Illaqa Magistrate and Officers are being sent. File and investigation handed over to ASI Beant Singh 229/FZR.”

Mr. Vinod Ghai, Senior Advocate, assisted by Ms. Kanika Ahuja, Advocate, represents the petitioner-Rajeev Kumar in Criminal Misc. No. M-16091 of 2020, whereas Mr. R.S.Rai, Senior Advocate, assisted by Mr. Vishal Thakur, Advocate, represents the petitioner-Kaifi in Criminal Misc. No. M-17732 of 2020.

Mr. R.S.Rai, while drawing attention of the Court to the FIR, has submitted that all the allegations are against Krishan Kumar son of Tarsem Lal and the petitioner-Kaifi has been implicated only because she is a partner in the partnership firm M/s Akshit Agro Foods. He further submitted that petitioner-Kaifi is a dormant partner and it is provided in the partnership deed itself that she would not be responsible for any criminal action which may be initiated against the firm. He further submitted that in the FIR, it has been projected that 18,115 paddy bags were found short, whereas now it is being claimed that 6,765 bags of paddy worth more than ₹ 65,00,000/- are missing. He, hence, submitted that the petitioner should be granted the concession of pre-arrest bail.

Mr. Vinod Ghai, Senior Advocate, has submitted that petitioner-Rajeev Kumar was a passive partner having only 10% share in the partnership firm, M/s Keshav Agro Foods. He submitted that Krishan Kumar is the only active partner of the firm.

On the other hand, learned counsel appearing for the State of Punjab has submitted that not only a large quantity of paddy belonging to a government agency has been syphoned off, even public money amounting to more than ₹ 4,00,00,000/- given as loan by the bank has also come under a cloud. He further submitted that custodial interrogation of the petitioners would be required to find out as to how the paddy belonging to PUNGRAIN was mortgaged with Punjab & Sind Bank against cash credit limit of ₹ 3,25,00,000/- and term loan of ₹ 90,00,000/- apart from embezzling 6,765 bags of paddy.

This Court has considered the submissions of learned counsel for the parties and with their able assistance, gone through the documents filed.

As regards the petition for grant of pre-arrest bail by the petitioner-Kaifi, it will be noted that she is not only a partner in the firm M/s Akshat Agro Foods, but also the wife of Krishan Kumar. A huge quantity of paddy which belonged to a government agency, kept in joint custody, has been syphoned off. Still further, a loan has been availed by the firms against the stock of paddy which belonged to the government and not to the partnership firms. Krishan Kumar is yet to be arrested.

With regard to the argument of learned counsel for the petitioner-Kaifi that she is not liable for any criminal action in view of Clause (11) of the partnership deed, it will be noted that the partners of the firm cannot, by inter-se agreement, absolve one of them from the action to be initiated for alleged criminal offence. Initial prerogative is with the prosecuting agency to examine whether a particular partner is liable to be prosecuted or not or in other words involved the crime or not. Subsequently, this fact would be examined by the Court when the accused is produced and tried before the Court. Hence, Clause (11) of the deed of partnership cannot absolve the petitioner-Kaifi.

Next argument of learned senior counsel with regard to difference in the stand of the officials of the PUNGRAIN regarding shortage of paddy, it will be noted that the Public Prosecutor has admitted during the hearing of the bail application that shortage is of 6,765 paddy bags and not 18,115 paddy bags. It has been explained that the error crept in as weight of a bag of paddy, due to clerical mistake, was taken as 20 kilograms each in place of 50 kilograms each. As of now, it is the case of the prosecution that paddy worth more than ₹ 65,00,000/- has been syphoned off. Still further, it is also required to be examined as to how the paddy which belong to a government agency had been pledged against cash credit limit and term loan given by the Punjab & Sind Bank.

Similarly, the submission of learned senior counsel Mr. Vinod Ghai that Rajeew Kumar is only a passive partner in the firm, cannot be accepted for the same reason noted above. It is for the prosecuting agency to find out during investigation that whether a particular accused is liable to be prosecuted or not.

Keeping in view the facts of the case, this Court does not find that the petitioners have made out a case for grant of pre-arrest bail. Hence, both the petitions are dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.”

Learned counsel for the petitioner contends that the petitioner is ready to deposit his share of the misappropriated amount which comes to Rs.47,00,000/-.

In the present case, the allegations are that the huge quantity of paddy belonging to the government agency is alleged to have been misappropriated. Even, public money belonging to a nationalized bank has also been siphoned off.

Keeping in view the aforesaid facts and for the reasons recorded in the order dated 10.07.2020 passed in CRM-M-16091-2020 (Rajeev Kumar vs. State of Punjab), no ground for grant of pre-arrest bail to the petitioner is made out.

Dismissed.

August 31, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No