

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 17-03-2021Order delivered on 25-03-2021MCRC A No. 1739 of 2020

1. Mohan Patel S/o Late Shri Goverdhan Patel Aged About 31 Years R/o Village And Post Pirda, Police Station Basna, District Mahasamund Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station Basna, District Mahasamund Chhattisgarh.

---- Respondent

MCRC A No. 1741 of 2020

1. Hariram Choudhari S/o Late Bhagirathi Choudhari Aged About 66 Years R/o Village And Post Pirda, Police Station Basna, District Mahasamund Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station Basna, District Mahasamund Chhattisgarh

---- Respondent

For ApplicantMr. Raghvendra Pradhan, Advocate & Mr.
Vikash Pradhan, Advocate

For Respondent /State

Mr. Ravish Verma, Govt. Advocate

For Objector

Mr. Sabyasachi Bhaduri, Advocate

Hon'ble Mr. Justice Prashant Kumar Mishra

CAV Order

1. Since both the bail applications are arising out of same crime number i.e.508/2020 they are being considered and decided by this common order.
2. The applicants have preferred these bail applications for grant of anticipatory bail, as they apprehend their arrest in connection with Crime No.508/2020, registered at Police Station Basna, District Mahasamund (CG), for offence punishable under Sections 406, 409 & 420 of the Indian Penal Code.
3. As per the written complaint lodged by Shivnath Patel, Branch Manager, Branch Pirda, District Cooperative Central Bank Maryadit, Raipur, an enquiry team was constituted for enquiring irregularities in the paddy purchasing conducted by the Primary Agriculture Credit Cooperative Society Limited, Pirda. The enquiry team headed by Tahsildar made physical verification on 29-4-2020 and thereafter, a joint enquiry team conducted further enquiry and physical inspection on 28-10-2020 wherein it was found that out of total paddy procured at Pirda Center paddy amounting to Rs.90,47,139=75 and Bardana of the value of Rs.2,25,750=00 were found short for which Procurement Center Incharge Mohan Patel [Applicant in MCRCA No.1739 of 2020] and Chairman of the Pirda Society Hariram Choudhari [Applicant in MCRCA No.1741 of 2020] are responsible. Shivnath Patel was, in turn, directed by the Deputy Registrar, Cooperative Societies, Mahasamund vide its communication dated 31-10-2020 for lodging the above FIR.

4. Learned counsel for the applicants would submit that as per the agreement between the Chhattisgarh State Cooperative Marketing Federation Limited (MARKFED) and the Primary Society, the stock of paddy purchased at the procurement center should have been transported within 72 hours and further that any dispute arising out of the agreement shall be arbitrable. It is, thus, contended that *firstly*, the applicants are not responsible, if the stock of paddy was not lifted for transportation by the MARKFED; and *secondly*, lodging of FIR without proceeding to arbitrate the dispute is illegal. Learned counsel has referred to documents filed with the bail applications to submit that the applicants have written letters to the MARKFED for transportation of paddy.
5. Learned counsel for the State as also learned counsel for the objector, *per contra*, would oppose the bail applications. They would submit that the applicants were directly responsible for shortage of paddy and Bardana in the society, therefore, they cannot escape their liability. They would further submit that existence of an arbitration clause in the agreement between MARKFED and the society would not absolve the applicants if any criminal wrong has been done.
6. In the case diary, enquiry report dated 2-5-2020 of Tahsildar, Pithora and enquiry report dated 31-10-2020 of five member enquiry team are available. In the report of Tahsildar it is mentioned that the panchnama of physical verification was prepared after physical verification conducted on 19-4-2020 in presence of Chairman, Vice Chairman & Members of the society and representatives of Print & Electronic Media. During physical verification total 43153 bags of paddy was

found available, which was excess by 213 bags. When the weighment was conducted the average weight of the bags was found to be 26.791 kgs., which was falling short of paddy, which should have been contained in per bag. On calculation it was found that the total shortage was to the extent 4998 quintals equal to Rs.90,47,139=75 and likewise shortage of Bardhana amounting to Rs.2,25,750=00. The enquiry team also observed that as per clause 15.9 of the paddy procurement policy of the State Government for the subject procurement year 2019-20, dryage will not be allowed. Similarly, it was found that in clauses 34 & 35 of the bye-laws of the Society the Prabhari Samiti Prabandhak-cum-Incharge Paddy Procurement Center Mohan Patel and Society President Hariram Choudhari are responsible for the shortage.

7. Upon consideration of the reports, the Deputy Registrar, Cooperative Societies observed that the High Court in its order dated 14-8-2020 passed in WPC No.1543 of 2020 had directed that any dispute regarding the quality and quantity of paddy would be resolved in terms of the agreement between the parties and the standards & specifications provided for the same in the agreement. It was, thus, observed that in clause 12.8 of the agreement, the DCCB would be entitled to take legal action in the event irregularities are found in the work of paddy procurement. Thus, having examined the entire issue the Deputy Registrar, Cooperative Societies directed for lodging the FIR.
8. The present is not a case where few hundreds of bags or few quintals of paddy was found short. It involves shortage of

whopping quantity of paddy amounting to Rs.90,47,139=75. The physical verification and weighment was conducted in presence of office bearers of the Society, therefore, it is not a one sided enquiry.

9. In so far as agreement between MARKFED and Society is concerned, the same would be attracted only when the dispute is between the MARKFED and society and not when individual members have been held accountable for misappropriation.
10. Considering the enormity of shortage of paddy and Bardana in respect of which fraud, cheating & misappropriation has been committed, this Court is not inclined to extend the benefit of Section 438 of the Cr.P.C. to the applicants.
11. Accordingly, both the anticipatory bail applications are rejected.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri