

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

CRM-M-43561-2021

Date of Decision: 14.10.2021

Gurmeet Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J.

By this petition, the petitioner seeks the concession of 'pre-arrest bail' upon FIR no. 51 having been registered at Police Station City Batala, District, Gurdaspur, on 29.04.2021, alleging therein the commission of offences punishable under the provisions of Sections 420/120-B of the IPC.

2. Learned counsel for the petitioner first points to Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II, which he has reproduced in paragraph 7 of the petition, the relevant parts of which he points to as follows:-

“.....2.2.(a) (Recoveries from Pensions).....

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XXXX

XXXX

XXXX

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(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or

judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that—

XXXX XXXX XXXX XXXX XXXX

(3) No such judicial proceedings, if not instituted while the officer was in service whether before the retirement or during his employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation:- For the purpose of this rule-

(a) A departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) A judicial proceedings shall be deemed to be instituted:-

(i) In the case of criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) In the case of civil proceeding, on the date of presentation of the plaint in the court.”

3. He also refers to Rule 11 of the Punjab Civil Services

(Punishment and Appeal), Rules 1970, which has also been reproduced in paragraph 6 of the petition and which reads as follows:-

“11. PUNISHMENT AND APPEAL

- (i) The Punjab Civil Services (Punishment and Appeal), Rules 1970, shall apply to the members. The departmental action against retired employees shall be taken as provided in Punjab C.S.R. Volume-II Rule 2.2 (b). Amendment provided vide RCS letter No. 1746, dated 11.02.2005.*
- (ii) Authority empowered to impose penalty and appellate authority in respect of categories of posts in service shall be as specified against that category in Appendix III.”*

4. Thus, the contention of learned counsel is that with even judicial proceedings in the case of a Government servant being governed by the Punjab Civil Services Rules and Rule 2.2 (b) of Volume-II thereof, stipulating as it does, no judicial proceedings can be instituted against the petitioner qua any alleged offence committed more than 4 years after the petitioners' retirement, with the petitioner in fact having retired in 2010 from service in the Primary Cooperative Agricultural Development Bank Limited, which is an instrumentality of the State and consequently, the FIR itself, registered in the year 2021 qua an offence (which is also denied by the petitioner), that allegedly occurred in the year 2005, is not maintainable and actually deserves to be quashed and therefore, 'vide this petition', the petitioner deserves to be admitted to bail under the provisions of Section 438

of the Cr.P.C.

5. He next submits that even looking at the allegations against the petitioner as per the FIR, they are to the effect that the petitioner gave a incorrect report as regards the land of the 'loanee' (Yudbhir Singh), falling outside municipal limits and therefore 'made' the 'loanee' eligible for a rural house construction loan. As per learned counsel that is not an act/action that the petitioner can be held criminally liable for, only because he inadvertently may not have correctly found out that the property in question actually fell within municipal limits at that stage, with it even not ascertained now as to whether it was actually falling within such limits at the time in question.

6. Learned counsel next submits that it being a very old case, the petitioner in any case deserves to be admitted to anticipatory bail on that ground alone.

He has further submitted that in fact the co-accused of the petitioner, i.e. the 'loanee', Yudbhir Singh, in fact had been admitted to bail by the learned Sessions Judge, Gurdaspur, vide her order dated 11.05.2021 (copy Annexure P-4), despite which, thereafter, a similar petition filed by the petitioner was dismissed by that very court on 27.07.2021.

7. Having considered the aforesaid arguments, whereas this court may have been otherwise inclined to at least admit the petitioner to interim bail, however, a perusal of the order of the learned Sessions Judge, Gurdaspur, dated 27.07.2021, dismissing a similar petition filed before that court, shows that it was so dismissed after notice had been duly issued to the State and after the stand of the State had been duly brought to the notice of that court.

8. As per the said order, it was the stand of the State that the petitioner-accused having been posted as a Field Officer with the complainant bank, had depicted the property in question to be falling within the limits of Village Shukarpura instead of within the limits of Municipal Committee, Batala, and had thereby deliberately facilitated his co-accused, Yudhbhir Singh ('loanee'), to obtain a rural house construction loan.

9. Other than that, it has also been noticed by the learned Sessions Judge that in fact it would seem that the co-accused, i.e Yudhbhir Singh, was in fact trapped into taking a loan by the petitioner; and that Yudhbhir Singh had already filed a civil suit seeking a declaration that the mortgage deed got executed from him was void and illegal and without any consideration, with him further seeking a decree of permanent injunction restraining the complainant bank from using coercive machinery to recover the loan.

Hence, holding that the present petitioners' case was different to that of Yudhbhir Singh, who had been admitted to anticipatory bail earlier, the present petitioners' petition was dismissed by that court.

10. Hence, on the merits of the matter, at least I would not be inclined to admit the petitioner to anticipatory bail, in view of the allegations made on behalf of the respondent-State even before the learned Sessions Judge when the petitioner filed a similar petition before that court.

It is to be noticed that learned counsel for the petitioner has submitted that the civil suit has been filed by the 'loanee' only to try and wriggle out of his own complicity and his own role in the matter, whereas actually it was he who depicted his property to be within a rural area. However, *prime facie*, the petitioner seemingly being guilty of having

deliberately filed a false report to facilitate a loan from a public sector bank, where such loan was actually not due, as a Field Officer whose duty was to determine the true facts, to repeat, I would not entertain this petition, *prima facie* at least he deliberately having given a false report.

11. Coming then to the argument of learned counsel in terms of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II.

Though obviously the said rule specifically postulates that even criminal proceedings would not be initiated if a period of more than 04 years has elapsed on the date of the complaint (or the report of the police officer on which the Magistrate takes cognizance as per the Explanation to the 3rd proviso to the said Rule), yet, in the opinion of this court, that provision in the statutory rules would only be for the purpose of departmental proceedings qua pension admissible to a Government servant, and therefore if any departmental or judicial proceedings, including criminal proceedings are instituted after a period of 4 years has elapsed in terms of Rule 2.2, no cut in pension can be imposed on the former employee.

12. As regards criminal proceedings for the purpose of any offences punishable under the Indian Penal Code or any other statute governing penalties qua criminal offences, it would be the Code of Criminal Procedure, 1973, that would need to be followed; and with admittedly the offences alleged to have been committed, as per the FIR, being punishable under the provisions of Sections 420/120-B of the IPC, and a punishment of upto 7 years having been provided in respect of such an offence (Section 420 of the IPC), then there would be no limitation even for any court to take cognizance of such offence, in terms of Sections 468 and 469 of the Cr.P.C.,

with the period of limitation for any court to take cognizance of a criminal offence, to apply only if the punishment imposed for such offence is for a term of upto 3 years imprisonment.

13. Hence, in view of the above, I would find no ground to entertain this petition, which is consequently, dismissed.

14. However, nothing stated hereinabove shall be considered as regards the merits of the case against the petitioner or his co-accused, with all such observations having been made only in the context of a petition filed under the provisions of Section 438 of the Cr.P.C.

Naturally, if the petitioner is arrested and thereafter makes any application under the provisions of Section 439 of the said Code, such petition would also be considered wholly on its own merits.

October 14, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.