

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-42508-2020 (O&M)

Date of decision: 31.03.2021

Dharmender

... Petitioner

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Manjeet Singh, Advocate  
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Ashwani Bhardwaj, Advocate  
for the complainant.

\*\*\*\*\*

**ARVIND SINGH SANGWAN, J. (ORAL)**

Prayer in this petition is for grant of anticipatory bail in FIR No.179 dated 25.07.2020 under Section 379, 407, 420, 465 IPC, registered at Police Station Jui Kalan, District Bhiwani.

While granting interim bail to the petitioner, following order was passed by this Court on 17.12.2020: -

*“...Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of one Ram Kishan, resident of village Kudal, it is stated that his daughter-in-law Rajesh Kumari is the Sarpanch of the village. It is further stated that a sub-centre was made for the purchase of mustard crop in the primary school of the village and the transport work*

*was allotted to one Anup Sharma by the Deputy Commissioner, Bhiwani. The Sarpanch of the village was deputed by the SDO(Civil), Loharu for supervision of the labour work and purchase of mustard crop.*

*It is further stated in the FIR that complainant Ram Kishan was acting as a Sarpanch on behalf of his daughter-in-law and had purchased the mustard crop, however, later on, it was noticed that there is a shortage of the stock and petitioner Dharmender, being driver of truck bearing registration number HR-62-A-3975, has lifted 320 bags of mustard crop for sending it to Barwala but the same did not reach there.*

*Learned counsel for the petitioner further submits that in order to cover up the loss caused by the complainant himself, the petitioner has been named as an accused.*

*Notice of motion for 09.02.2021.*

*Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.*

*In the meantime, the Superintendent of Police, Bhiwani is directed to look into the role of the complainant and to find out whether as per allegations in the FIR, he, being the assignee of the crop, is himself liable to be arraigned as an accused.*

*The Deputy Commissioner, Bhiwani is also directed to file an affidavit as to how complainant Ram Kishan is permitted to work as a Sarpanch in place of his daughter-in-law and what action has been taken against him in this regard by the authorities.*

*The affidavit be filed on or before the next date of hearing.”*

In compliance of the aforesaid order, separate replies by way of affidavits of Superintendent of Police, Bhiwani as well as Deputy Commissioner, Bhiwani have been filed.

The affidavit filed by SP, Bhiwani states that the FIR has been registered on the complaint given by Ram Kishan against Dharmender with the allegations that daughter-in-law of the complainant namely Rajesh Kumari is Sarpanch of Village Kural and there was a sub center established in the primary school for the purchase of mustard crop for the year 2020-21 and transportation work was allotted to one Anup Sharma. Sarpanch Rajesh Kumari was appointed by the Sub Divisional Officer (Civil), Loharu for supervision of the labour work and purchase of mustard crop and **the complainant was working as representative of the Sarpanch.** Later on, it was found that 320 bags containing 145 qtl 45 kgs of mustard crop, which was sent in a warehouse in Barwala in a vehicle bearing registration No.HR-39B-1020, did not reach at the place and it was the petitioner, who arranged the same. On the basis of allegations that mustard crop was found short, present FIR on account of theft of 320 bags was registered. It is further stated that during the investigation, it was found that transportation job was allotted to Anup Singh by the Deputy Commissioner, Bhiwani, who has further engaged the petitioner as sub contractor.

In the reply by way of affidavit filed by Deputy Commissioner, Bhiwani, apart from the aforesaid facts, it is stated that Gram Panchayat passed a resolution No.2 dated 16.04.2020 to authorize the Sarpanch Rajesh Kumari to purchase the mustard crop and on the same day, another resolution No.3 dated 16.04.2020 was passed, in which complainant Ram Kishan was made a member of the Committee, who was authorized to purchase the crop. Reliance is also placed on a communication sent by Manager, Loharu Cooperative Marketing Society Ltd., Lohari that for purchase of mustard crop, purchase center was

established and transportation work was allotted to Anup Singh. As per resolution, Sarpanch Rajesh Kumari was authorized to purchase the crop and deal with the labour work. In this communication, it is reported as under: -

*“The Govt. has established Purchase Center at village level for purchasing of Mustard Crop to avoid rush in the Mandis due to Covid-19 pandemic. The Purchase Center to purchase Mustard Crop was established in Village Kural by the Haryana State Ware Housing Corporation as per the letter bearing No.FP-1-2020/6227 dated 11.04.2020 of Directorate, Food, Civil Supplies and Consumer Affairs. The Cooperative Marketing Societies of Distt. Bhiwani & Charkhi Dadri were authorized to appoint Labour Agent by the District Manager, HAFED vide letter No.Hafed/DOB/Asstt (Estt)/156 dated 15.04.2020 and the work of Transport was allotted to Sh. Anup Sharma S/o Sh. Sher Singh, R/o H. No.312-A, Shiv Nagar, Bhiwani vide DC, Bhiwani letter No.A-2/2020/330-338 dated 10.04.2020 and the Sarpanch, GP Kural was appointed as Handling Agent in Purchase Center, Kural to purchase Mustard. Smt. Rajesh Kumari, Sarpanch, GP Kural was authorized by The Cooperative Marketing Society, Loharu for smooth functioning of labour work in purchase of Mustard at Village Kural and Smt. Rajesh Kumari, Sarpanch, GP Kural submitted an affidavit/agreement in this regard to The Cooperative Marketing Society, Loharu on account of security amount vide cheque No.681315 to The Cooperative Marketing Society, Loharu, The Gram Panchayat passed a resolution No.2 dated 16.04.2020*

*in this regard and the resolution was passed by full quorum and the right to purchase mustard and labour work was given to Smt. Rajesh Kumari, Sarpanch, GP Kural. The labour work in Mustard Purchase was given to Loharu Cooperative Society, Loharu and Ram Kishan S/o Sh. Mamchand, Resident of Village Kural has never been authorized to work as Sarpanch in place of his daughter-in-law. **No Deptt. has ever permitted Ram Kishan to work in place of Sarpanch Rajesh Kumari. The FIR No.0179 dated 25.07.2020 u/s 379/407/420/465 in the Police Station Jui was lodged by the Ram Kishan himself and there is no connection with the case/FIR of any other person, Ram Kishan himself has lodged the case.***

A perusal of this communication sent by Manager, Loharu Cooperative Marketing Society Ltd., Lohari belies the version of the Deputy Commissioner, Bhiwani that complainant Ram Kishan was authorized to do the purchase work and therefore, the affidavit, on the face of it, is factually incorrect. The Deputy Commissioner, Bhiwani, who is a responsible officer, is not supposed to file an affidavit in a casual manner, which is contrary to the contents of Annexure R-1, relied upon in the affidavit itself.

The affidavit even does not give correct facts. Firstly, it is stated that due to the strike in the market, purchase center was set up in the Govt. School, Kural, whereas as per letter of the Manager, The Loharu Cooperative Marketing Society Ltd., Loharu, to avoid rush in the mandis due to COVID-19 pandemic, the purchase center was established in village school. Secondly, the Deputy Commissioner has relied upon resolution No.3 dated 16.04.2020

authorizing Ram Kishan, father-in-law of the Sarpanch to be one of the member of a Committee, though he was not even a Panch, whereas other members, as per the resolution, were either Panches or Gram Sachiv, which shows that the Deputy Commissioner has not applied his mind, while filing this affidavit. Thirdly, resolution No.3, on the face of it, was never sent to the Secretary & Executive Officer, Market Committee, Loharu, which is not there in the communication (Annexure R-1), as there is no reference of resolution No.2 dated 16.04.2020 but there is no reference of resolution No.3 dated 16.04.2020, authorizing Ram Kishan, father-in-law of the Sarpanch to work on behalf of the Sarpanch and rather, in the concluding part of this affidavit, it is specifically stated that Ram Kishan himself got the FIR registered and the department never permitted him to work in place of Sarpanch, whereas to the contrary, the Deputy Commissioner is relying upon this resolution No.3, to submit that Ram Kishan, being member of the Committee, was authorized, without appreciating, resolution No.3 was passed just to give illegal powers to Ram Kishan in place of elected Sarpanch Rajesh Kumari. All this demonstrates that Deputy Commissioner has failed to exercise his powers and to keep a check on the illegal activities in the Gram Panchayat.

Despite a direction that the SP and DC should inform about action taken against Ram Kishan, both the affidavits are silent, though he himself can be transposed as an accused with the aid of Section 120-B IPC.

Even otherwise, casual approach of the Deputy Commissioner in not ensuring the women empowerment in the Panchayati Raj system needs to be depreciated. As per 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment, reservation for women in Panchayati Raj system was provided to ensure that such elected

Panches or Sarpanches will motivate the poor and illiterate women in the village to improve their quality of life, self-respect and to become self-dependent.

In the State of Haryana, where sex ratio is poorest in the country and the women in rural Haryana are subjected to domestic violence, social and cultural barriers and are prevented from socialisation, the Deputy Commissioner has failed to check the common belief in the rural area that a female Sarpanch cannot be a good leader and the male members of their family can suo motu assume their powers in a self-styled notion that only male member can work in their place. The Deputy Commissioners, in the State of Haryana, being Heads of Panchayati Raj Institutions, are required to keep a check that de jure election of the lady Sarpanch be not taken over by de-facto male members of their family.

Even otherwise, Section 19 of Haryana Panchayati Raj Act, 1994 read with Section 21 clearly defines the powers, functions and duties of a Sarpanch as well as of a Gram Panchayat. It is nowhere provided under the Haryana Panchayati Raj Act that a person, who is neither a Sarpanch nor a member of the Panchayat, can perform on behalf of the Gram Panchayat nor can be substituted as a Sarpanch, as in the instant case. Complainant Ram Kishan, while registering the FIR, has stated that he was working on behalf of Sarpanch, who is none other than his daughter-in-law Smt. Rajesh Kumari.

Therefore, I find that the complainant has no locus standi to register the FIR, as it has been so specifically stated in the communication sent by the Manager, Loharu Cooperative Marketing Society Ltd., Lohari, which has only authorized the Sarpanch to purchase and deal with the labour work in this

regard.

In view of the above, this petition is allowed and the interim bail granted to the petitioner vide order dated 17.12.2020 is made absolute subject to the conditions envisaged under Section 438 (2) Cr.P.C.

The Superintendent of Police, Bhiwani is directed to look into the allegations in the FIR and to find out if complainant Ram Kishan himself can be transposed as an accused with the aid of Section 120-B IPC.

The Deputy Commissioner, Bhiwani is also directed to ensure that in future, before filing any affidavit in the High Court, he will verify the facts of the same personally.

The Financial Commissioner-cum-Secretary to Govt. of Haryana, Department of Development and Panchayats, Haryana, Chandigarh is directed to ensure and circulate amongst all the Deputy Commissioners of the Haryana that no such permission be granted to a male person, who is neither a member of the Panchayat nor a Sarpanch to act on behalf of the lady Sarpanch. Upon communication to all the Deputy Commissioners, an information be sent to the Registrar General of this Court within a period of one month from today.

**[ ARVIND SINGH SANGWAN ]**  
**JUDGE**

31.03.2021  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No