IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CRM-M-21261-2022 (O&M)

Rahul Anand ...Petitioner

Versus

State of Haryana ...Respondent

(2) CRM-M-26524-2022 (O&M)

Arun Kumar Garg ...Petitioner

Versus

State of Haryana ...Respondent

Date of Decision:- 26.7.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Dushyant Rana and Ms. Kavika Ahuja, Advocates,
for the petitioner in CRM-M-21261-2022.

Mr. Manish Soni, Advocate for the petitioner,
in CRM-M-26524-2022.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASP Pooja Dogra, SI Vinod Kumar and
ASI Ramesh Kumar.

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<u>GURVINDER SINGH GILL, J.</u>

1. This order shall dispose off the above mentioned two petitions filed on behalf of Rahul Anand and Arun Kumar Garg seeking grant of regular bail in a case registered against them vide FIR No. 256 dated 21.12.2021 under

Sections 406, 409, 420, 468, 471/120-B IPC at Police Station Shahzadpur, District Ambala.

2. The FIR in question was lodged at the instance of Ashok Verma, General Manager, Ambala Central Co-operative Bank Ltd., Ambala, wherein it is alleged that the petitioners in connivance with the Directors and other officials of Naraingarh Sugar Mill Ltd., Naraingarh (in short hereinafter referred to as NSML) had misappropriated huge amount of money. It is alleged that Haryana State Cooperative Bank (HARCO Bank)/District Cooperative Central Bank (DCCB) had advanced loan to NSML for clearance of dues to be paid to farmers on account of supply of sugarcane. The amounts advanced were as follows :-

(i) Loan Agreement dated 13.11.2015
Financial Year 2014-15 - ₹ 34.10 Crores
Financial Year 2015-16 - ₹ 11.11 Crores

(ii) Loan Agreement dated 19.9.2019
Financial Year 2018-19 - ₹ 60 Crores

3. It is alleged that the outstanding dues were ₹98.65 crores, apart from an interest of ₹25.16 crores. Upon an audit of accounts conducted pursuant to directions of Haryana Government, it was revealed that infact it was an amount of ₹121.21 crores, which had been siphoned off by the Controlling Management.

4. It is the case of prosecution that during the Financial Year 2014-15, Management had withdrawn cash of ₹77.50 Crores but disbursed only ₹63.37 Crores to farmers and similarly in Financial Year 2015-16, cash withdrawn by the Management was ₹50.87 Crores but only ₹ 42.02 Crores

was disbursed to Farmers. Petitioner allegedly sold molasses (a by-product of process of producing sugar from sugarcane) unauthorizedly without raising any bills and shortage of 2545.45 quintals was found. As per the agreement dated 30.09.2016, NSML was supposed to refund the revenue of energy by 30% to HARCO Bank and 70% to IREDA but from year 2018-19 to 2020-21, the Management of NSML used it for their own purposes. Petitioners purchased Bio-mass from his associated entities at higher rate of ₹3200/MT whereas the market price is ₹1500/MT. NSML has given Head Short Term Loans and Advances to Rahul Sales Ltd. in which petitioner is a Director i.e. during Financial Year 2014-15 for ₹ 25.42 Crores, Financial Year 2017-18 for ₹ 36.45 Crores and Financial Year 2018-19 for ₹18.65 Crores. Sugar stock of NSML was reduced from ₹59.5 Crores to ₹4.06 Crores from Financial Year 2017-18 to 2018-19. Cash in hand was reduced from ₹10.5 Crores to ₹11 lacs only. Amount of ₹81 Crores was pending to be recovered from various companies which was given as advances. It is also alleged in the FIR that when all the accounts of company (NSML) were audited then books, stocks, entries in the registers and transactions were not found in consonance. It is also alleged that petitioner used an amount of ₹2.86 Crores as TA/DA from NSML for his personal use. As per the FIR ₹7 Crores was spent on legal fees by NSMLL which was siphoned off by the petitioner for his own use.

5. It has been contended on behalf of the petitioner Rahul Anand that the petitioner was not holding any authority in NSML before 1.12.2016 so there is no question of siphoning of loan amount disbursed to NSML before that. It has been submitted that petitioner was appointed as a "Technical

Consultant" by NSML in December 2016. It is further submitted that when the loan of ₹ 60 Crores was given by HARCO Bank to NSML vide loan agreement dated 19.9.2019 and on 20.9.2019, it was the Deputy Commissioner, Ambala who had assumed charge as Chairman of Management of NSML. Petitioner was neither the signatory nor the authority to act on behalf of NSML as per both the loan agreements. Petitioner was not even having any authority to disburse the loan amount from the bank account of NSML to anyone and rather the petitioner gave personal guarantee vide loan agreement dated 15.10.2015 and in lieu of that the bank is recovering the amount by taking possessions of collateral securities.

6. It has been submitted on behalf of petitioners that prosecution itself in FIR admits the fact that ₹ 63.37 Crores in Financial Year 2014-2015 and ₹50.87 Crores in Financial Year 2015-16 was disbursed to farmers by NSML whereas the loan amount was only ₹45 Crores in that duration. The company had audits every year throughout the alleged period but nothing was found against petitioner. No recovery of any amount was effected from Rahul Anand and investigation stands complete qua him.

7. It has been contended on behalf of the petitioner Arun Kumar Garg that the petitioner was merely a Dummy Director in the ESOTERIC Trading Pvt. Ltd. and was neither having any knowledge nor was aware about any of the banking transactions in the said firm as the same was created and managed entirely by accused Rahul Anand, which fact is evident from the statement of witnesses and as such, the petitioner is totally innocent and has no

involvement whatsoever. It has further been submitted that the petitioner is resident of District Sangrur and is working at Mobile Shop 'World Communication' at Sangrur in association with Ashwani Kumar and has no connection or association with Rahul Anand or Nariangarh Sugar Mill.

8. The learned counsel for the petitioners have submitted that the petitioners have been behind bars for the last more than 6 months and challan already stands presented and in these circumstances, they deserve the concession of regular bail as conclusion of trial is likely to consume time inasmuch as 68 prosecution witnesses has been cited.

9. Opposing the petition, the learned State counsel has submitted that petitioner Rahul Anand who is owner of Naraingarh Sugar Mills has misappropriated the funds of Sugar Mills by constituting many firms in different names and has sold sugar produced in Naraingarh Sugar Mills to these firms and siphoned off the pending amount. Petitioner formed a new company in the name of Esoteric Trading Pvt. Ltd. Co. Chandigarh with Arun Kumar Garg as Director of the firm and thereafter Esoteric Trading Pvt. Ltd. Co. purchased sugar from NSML in huge quantity and an amount of ₹33.54 crores was outstanding against M/s Esoteric Trading Pvt. Ltd. Co. which virtually is an amount siphoned off by Rahul Anand. It has been submitted that crores of rupees from the account of NSML had been transferred to various accounts of companies situated at Delhi and Mumbai which were actually misappropriated by the accused Rahul Anand. It has been submitted that the firm Esoteric Trading Pvt. Ltd. Co. was established for the purpose of taking loans from the bank and to defraud the bank and that farmers,

employees of NSML, co-accused and all related persons stated that petitioner Rahul Anand is owner of Naraingarh Sugar Mill, Shahazadpur, District Ambala and all the activities of the sugar mill were being conducted by him. The learned State counsel referred to statements of the employees Varun Madan, Arohi, Ajay Kumar and Ashok Kumar who stated that their credit cards were illegally used by the accused-petitioner Rahul Anand pertaining to an amount of ₹46,58,568/-. It has been submitted that upon investigation, it was found that accused/petitioner and Management of NSML used the crop loan amounting to ₹45 crore approx. of ICICI Bank and Union Bank of India in the name of many farmers and NSML gave the corporate guarantee in these loans. The learned State counsel submitted that petitioner Arun Kumar, also being a beneficiary did not deserve bail.

10. I have considered rival submissions addressed before this Court.

11. It is a case where SIT has conducted extensive investigation and has been able unearth the *modus operandi* of the accused for siphoning off crores of rupees actually meant to be disbursed to farmers by way of showing sham transactions and by way of forgery. During the course of investigation, it was revealed that as per ledger accounts of Naraingarh Sugar Mills, sugar was sold to 24 different firms but a large sum is pending to be recovered from these firms that has not been deposited by these firms in the accounts of Naraingarh Sugar Mills. Naraingarh Sugar Mills has transferred amount of ₹ 50 crores approx. to six different firms without showing any entry in ledger accounts. It was also revealed that Narangarh Sugar Mills has transferred amount of ₹2.65 Crores to four firms on the pretext of purchasing

machinery from them but no machine has been purchased from them. Accused petitioner Rahul Anand had made a firm namely Esoteric Trading Pvt. Ltd., Chandigarh and sold sugar to this company without recovering dues. The company had sold the sugar to other companies and an amount received in lieu of selling sugar was transferred in the accounts of other firm instead of NSML and three of these firms are not found on given address. Petitioner Rahul Anand, who is master-mind, alongwith his associates had embezzled an amount of ₹ 123 Crores approx. of Naraingarh Sugar Mills. The details of embezzlements, as collected during investigation are as follows:-

Sugar Sales by NSML

Sr. No.	Firms	Pending dated 30.9.2021
1	Esoteric Trading Private Limited-Chd	33,54,15,205.45
2	Rahul Sales Ltd- Chandigarh	18,65,55,285.00
3	Sidnet- Amritsar	10,21,21,512.00
4	Mayank Enterprises- Jaipur	1,33,43,200.00
Sr. No. 5 to 20 not reproduced to maintain brevity		
21	Utkarsh Trading Co-Parwanoo	3,46,847.000
22	Tirath Ram Sons & Co- Chd	3,02,230.10
23	Luxmi Enterprises- Panchkula	2,67,107.00
24	M.K. Traders- Ludhiana	1,22,297.50
	Total	**69,25,35,026.95**

Money transferred by NSML to other Firms

Sr. No.	Firms/Persons	Rs.
1	Rahul Sales Limited Chandigarh Director accused-petitioner	36.55 Crore
2	Verve Biomass Pvt. Ltd. Mumbai user co-accused Suvart Khanna	03.68 Crore
3	Raghupati Commodities Pvt. Ltd. Delhi	01.00 Crore

4	Raghupati Overseas Pvt. Ltd. Delhi	05.67 Crore
5	Froto Industries New Delhi	01.10 Crore
6	Dross Energy New Delhi	67 Lakh
	Total	**48.67 Crore**

Advance for purchasing machinery

Sr. No.	Firms/Persons	Pending Rs.
1	IMT Crane Mandi Gobindgarh (PB)	15 Lakh
2	National Heavy Engineering Talegaon, Pune (MH)	10.65 Lakh
3	SAI Sidha Sugar Equipment Engineering Co. (P) Ltd. Sector-10 Bodsare, Chichwad, Pune (MH)	01.30 Crore
4	Bhushan Enterprises	01.10 Crore
	Total	**2,65,65,000/-**

Money Transferred by Esoterice Trading Pvt. Ltd. Chd. to other Firms

Sr. No.	Firms/Persons	Pending Rs.
1	CONSULTSHAH FINANCIAL SERVICES, Malad, Mumbai	1.20 Crore
2	Nicky Khamchand R/o Pooja Kasa Hill, 10" floor Khar West Mumbai	25 Lakh
3	GAE Impex Pvt. Ltd. A-I12, 3rd Floor Group Industrial AreaWazirpur Delhi	50 Lakh
4	Rally Motors 25-B/8 New Rohtak Road Karol Bagh, Delhi	18.50 Lakh
Sr. No. 5 to 27 not reproduced to maintain brevity		
28	S.R.ENTERPRISES, Delhi	1.35 Crore
29	Star Trading, 205 2nd Floor, Triveni Complex E-10 Jawhar Park Delhi	2.01 Crore
30	UNICON TIE UP PVT. 215, OLD CHINA BAZAR STREET, Kolkata WB	10 Lakh
31	Albeli Leasing and Finance Pvt. Ltd, Mumbai Related with Esoteric Trading Pvt. Ltd. (Relative of Rahul Anand)	1.55 Crore
	Total	**31,32,06,300/-**

12. The evidence collected by the investigating agency clearly reveals that the petitioners Rahul Anand has executed several sham transactions pertaining to sale of sugar and apparently the said sugar had been sold off in the open marked and no amount was recovered. Similarly, several payments have been paid to several companies etc. without there being jusitification for making such payments. The details of all these companies and transactions have been collected by the SIT. The fact that one company namely Rahul Sales Limited Chandigarh of which the petitioner Rahul Anand is a Director had been transferred an amount of ₹ 36.55 crores and has also been sold sugar amounting to ₹18,65,55,285/- without having recovered any payment, clearly shows the complicity of the petitioner Rahul Anand. In these circumstances, having regard to the colossal fraud committed by the petitioner Rahul Anand, he does not deserve the concession of bail. The petition on his behalf, as such, is dismissed.

13. As far as the petitioner Arun Kumar Garg is concerned, he is Director of Esoteric Trading Private Limited in whose account an amount of ₹33,54,15,205/- had been transferred which would definitely make him an accused in the case. The petitioner Arun Kumar Garg has, however, taken a plea that he was a *dummy* Director of the firm Esoteric Trading Private Limited, which was created and managed entirely by Rahul Anand and that he is infact a petty shopkeeper having a mobile shop by the name M/s World Communication at Sangrur and was allured into signing certain documents as he was promised a monthly salary of ₹ 7500/- per month. The relevant extract from his disclosure dated 23.2.2022 (Annexure R/24) reads as follows :-

> “In front of the following witnesses, arrested accused Arun Garg, without any fear, pressure, inducement, greed, voluntarily retracted his earlier disclosure statement and got recorded that "Since the year 2015, my friend Sandeep Singh is on the post of Director in Naraingarh Sugar Mill and in the year 2017, Sandeep Singh told me that the owner of sugar mill Rahul Anand has to form a company, you will be made the director in that company. You will also be given a commission from that company and you will also be given a salary. I came across Sandeep Singh's talk and met Rahul Anand, the owner of sugar mill in Chandigarh. There Rahul Anand through his CA formed Esoteric Trading Pvt. Ltd. Chandigarh company was formed and I was made a director of that company. Rahul Anand told me that sugar will be traded in the name of this company from Naraingarh Sugar Mill and money will be withdrawn from sugar mill so that they can embezzle money from sugar mill. I have opened Esoteric Trading Pvt. Ltd. UBI branch Manimajra, Chandigarh bank account in the name of the company. After that, in the year 2018, according to Rahul Anand's advice, I had opened a bank account in IndusInd Bank in the name of the company. I had given the cheque books of the bank accounts of Union Bank of India and IndusInd Bank to Rahul Anand under my signature. It was only through the cheque books of these bank accounts that Rahul Anand used to do transactions in these bank accounts. Whenever OTP came on my mobile phone, I used to inform Rahul Anand.”

14. It needs to be noticed that in the present case, the police recovered signed cheque books of the accounts of Esoteric Trading Pvt. Ltd. from Rahul Anand from his house at Delhi pursuant to his disclosure statement much prior to the involvement or arrest of the petitioner Arun Kumar Garg. The said fact could lend some kind of credibility to the statement of Arun Kumar Garg to the effect that it is Rahul Anand, who was infact managing and

controlling all the affairs of Esoteric Trading Pvt. Ltd. though of course, the petitioner Arun Kumar Garg also cannot escape from his liability inasmuch as he had willingly chosen to open the said accounts in return of an amount on monthly basis. However, the role of the petitioner Arun Kiumar Garg cannot be equated with that of Rahul Anand. While Rahul Anand was the mastermind who executed the entire fraud, the petitioner Arun Kumar Garg was used by Rahul Anand while alluring him by offering monetory considerations which he was paying every month. As such, the petition on behalf of the petitioner Arun Kumar Garg merits acceptance and is hereby accepted and he is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

15. The petition on behalf of Rahul Anand stands dismissed, as already discussed above.

16. A photocopy of this order be placed on the file of connected case.

26.7.2022 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No