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

Date of Decision: 8th August, 2022

(1) CRM-M-27775 of 2022

Jagmal Singh

Petitioner

Versus

State of Haryana

Respondent

(1) CRM-M-27991 of 2022

Sanjeev Kumar Gupta

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Cheema, Senior Advocate with
Mr. K. S. Nalwa, Advocate for the petitioner in
CRM-M-27991 of 2022.

Mr. Keshav Pratap Singh, Advocate for petitioner-Jagmal
in CRM-M-27775 of 2022.

Mr. Deepak Sabherwal, Advocate and
Mr. Gurmeet Singh, AAG, Haryana for the respondent.

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<u>AVNEESH JHINGAN, J :</u>

These two petitions seeking anticipatory bail in FIR No. 109 dated 8.2.2022, under Sections 409, 34, 120-B IPC (Sections 420, 467, 468, 471, 201 IPC and Section 13 of the Prevention of Corruption Act, 1988 added later on), registered at Police Station Samalkha, District Panipat are being disposed of by common order, as the same arise out of one FIR.

A scam in Uttar Haryana Bijli Vitran Nigam (for short, 'the Nigam') saw the light of the day on a complaint made by Suresh Kumar on 8.2.2022. He stated that he had friendship with Ajay Sharma and Kamal Sharma who assured him of getting loan from State Bank of India. In November, 2021, an amount of Rs.3,78,200/- was credited in his bank account but he was told by Ajay Sharma and Kamal Sharma that the said amount was wrongly credited. He repaid the amount to them through PhonePe and cash. Later, on an enquiry from the bank it revealed that no loan was sanctioned in his favour. Further he gained khowledge that brother-in-law of Ajay Sharma was employed as driver with Raghav Wadhawan (Clerk in Nigam) and that Ajay Sharma, Kamal Sharma, Pawan and Raghav Wadhawan embezzled amount from the Nigam and intentionally got the amount credited in his account.

On the basis of the complaint, FIR was registered. A Special Investigating Team (for short, 'SIT') was constituted. Accused-Pawan Sharma, Ajay Sharma, Yogesh Lamba, Raghav Wadhawan, Atul Sharma, Manhar Gopal Saini, Surjeet Gabbar, Pooja Gera, Anish Kumar, Executive Engineer-Kulwant Singh and Sonu were arrested and their disclosure statements were recorded. It was found that embezzlement of crores of rupees from State Bank of India's Account of Nigam was done. The disclosure statements revealed the roles of other co-accused and the accused including the petitioners were nominated. Final report qua seven arrested accused was filed.

It would not be out of place to mention that on coming to know about the scam, a special audit was ordered. The embezzlement was done from 2016 to 2022. Special audit qua 2018 to 2022 has been done .

The *modus operandi* adopted was that for payment of arrears of pay revision and gratuity of the retired employees of Nigam were released by preparing fake and forged Pensioner Payment Order (for short, 'PPO'). The accused in conspiracy with each other prepared vouchers and cheques in the names of their relatives or known persons, deposited the amounts in their accounts and withdrew the same . In other words, the arrears of the pensioners were not paid to the employees but were embezzled by getting it deposited in the accounts of others and withdrawn thereafter.

It would be appropriate to mention the sequence required to be followed for issuance of cheques of arrears.

> *i) Whenever any type of payment of any pensioner, due to revised pay scales or revised ACP or payment of pensionary benefits like gratuity, commutation, leave encashment etc is to be made, LDC/ledger keeper of accounts branch prepares details for making payment, keeping in view the prevailing instructions of Nigam.*
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> *ii) Then the Divisional Accountant check the details viz - a viz completes all requisite requirements , and verifies the same by appending his signatures.*
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> *iii) The details are then sent to the office of the Chief Accounts Officer (Senior Accounts Officer / Pension) for thorough checking, making entries in service book and other records of respective employees and sends approval letter for making payment.*
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> *iv) Then the Divisional Accountant, after getting all pre requisites completed, directs the LD ledger Keeper to prepare voucher . Accordingly, the LDC/ dealing hand prepares voucher and puts his signatures on it.*
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> *v) Thereafter it is duly checked and verified by the Divisional Accountant as per the instructions of Nigam and appends his signatures.*
>
> *vi) Once the above process is followed the voucher is signed . by the concerned XEN.*
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> *vii) The passed voucher is then dealt by the Head clerk/Deputy Superintendent section for arranging financial Drawing Limit from the office of Financial Advisor/HQ Panchkula. The details of passed voucher along with the name*

& designation of employee etc. is sent to the office of Senior Accounts Officer/Banking limit section .

viii) FA/HQ office applies all checks required for controlling the finances and issue directions for making payment by releasing Financial Drawing Limit to the concerned Bank . After receiving drawing limit from the office of FA/HQ Panchkula/Banking section, Head clerk/Deputy Superintendent section, checks the same, makes entry in cashbook and other relevant record, prepares the cheque and gets it signed from the concerned XEN."

The procedure laid down was not followed by the accused. They in connivance with each other played their specific roles and use to get their shares. The petitioners were named in the disclosure statements.

Petitioner-Sanjiv Kumar Gupta remained posted as Executive Engineer at Jagadhri from 21.4.2015 to 21.4.2018.

Petitioner-Jagmal Singh was Deputy Superintendent-cum-Head Clerk at Jagadhri from 9.9.2018 to 17.6.2021.

Learned senior counsel appearing for petitioner-Sanjiv Kumar Gupta argues that disclosure statement of Yogesh Lamba was recorded on 21.2.2022 and he had not named the petitioner. In the statement of Raghav Wadhawan recorded on 22.3.2022, the petitioner was first time named but no dates and details of amount given to the petitioner were mentioned. The contention is that Raghav Wadhawan was inimical towards the petitioner as the petitioner had got registered an FIR against him in the year 2006. The submission is that in the challan filed against the co-accused, it was not mentioned that investigation qua the petitioner is pending. Reliance is placed on the fact that Executive Engineer-Neeraj Kumar who was named by Yogesh Lamba was discharged on an application filed by prosecution stating that Neeraj Kumar had only signed the vouchers but not accepted the money. It is claimed that the petitioner is at parity with Neeraj. It is argued that special audit for the period 2018 to 2022 has been completed which covers only 25 days of the petitioner's tenure. Reliance is placed upon the audit report to submit that as per Auditor, there was only supervisory lapse on the part of the petitioner. It is brought to the notice of the court that there is half yearly audit undertaken by the Nigam and the embezzlement never came to the notice of the audit party. Instructions issued for fixing responsibilities where direct loss to the Nigam is detected during works audit is pressed into service. The plea is that the supervisory responsibility is 20%. The submission is that the petitioner retired on 31.1.2021.

Mr. Keshav Pratap Singh, Advocate appearing for Jagmal Singh argues that the petitioner was not named by the Yogesh Lamba but by Raghav Wadhawan whose statement was subsequent to that of Yogesh Lamba. It is argued that though the petitioner was posted at Jagadhri since 2018 but was given charge of issuing cheques and vouchers in 2020. He further submits that on 11.7.2018, in addition to her own duties, Pooja Gera was ordered to temporarily look after the work relating to cash book. The charge of the cash book was handed over to Jagmal Singh on 6.2.2020. Counsel has produced a photocopy of the voucher to show that vouchers were not signed by the petitioner.

Mr. Deepak Sabherwal, Advocate for the Nigam submits that petitioner-Sanjiv Kumar Gupta was posted at Jagadhri from 21.4.2015 to 21.4.2018. He further submits that on 1.7.2021, Bilaspur a new sub division was created. The petitioner being Executive Engineer had Ex officio charge of Drawing and Disbursing Officer. He was authorised to sign the vouchers and cheques. It is argued that during initial audit for the period from 2018 to 31.1.2022, the relevant period for Sanjiv Kumar Gupta was 24 days and 14 forged vouchers amounting to Rs.29,02,569/- were prepared. He further submits that interim audit for the entire period has been completed. The scam now sums upto 49,28,89,371/- and Rs.10,00,00,000/- relates to the period when the petitioner was posted at Jagadhri. The contention is that PPOs, Gratuity Payment Orders and Computation Payment Orders were forged. The payments were released to 1063 people who were not employees with the Nigam. After depositing the amounts in the account of known persons or relatives of the accused, the same was withdrawn and distributed amongst the accused.

The submission is that the name of the petitioner Sanjiv Kumar Gupta surfaced in the disclosure statement of six accused i.e. Raghav Wadhawan, Pooja Gera Assistant, Surjit Singh Data Entry Operator Atul Sharma, Data Entry Operator, Sonu Lineman and Kulwant Singh, Executive Engineer. Following amount and other articles were recovered from the co-accused:

Name of accused	Amount	Other items
Raghav Wadhawan	Rs.78,86,000/-	1850 grams gold
Pooja Gera	Rs.35,00,000/-	
Surjit Singh	Rs. 8,00,000/-	
Atul Sharma	Rs.4,00,000/-	One car
Sonu	Rs.1,50,000/-	
Kulwant Singh	Rs.40,00,000/-	

Sale deeds of the properties purchased by Raghav Wadhawan and Surjit Singh and mobile phones were recovered.

The argument is that the petitioner was the kingpin being at the helms of affairs, without his connivance the scam was not possible. The allegations are serious, public money was siphoned off and the dues of poor employees were embezzled. He submits that custody of the petitioner is necessary for deeper probe and to un-earth the *modus operandi*.

Mr. Sabherwal on instructions submits that petitioner-Jagmal Singh was custodian of the cash book and cheques. He had to verify the identity of the employees and thereafter hand over the cheques. Instead, he handed over the forged vouchers and cheques to Raghav Wadhawan (Accountant), who further disbursed it to the relatives or known persons of the accused.

In **State of Gujarat Versus Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364,** the Supreme Court held as under:-

> *"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."*

In ***Y.S. Jagan Mohan Reddy Versus CBI (2013) 7 SCC 439,*** the Supreme Court held as under:-

> *"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are*

> *peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

As per the case set up, from top to bottom a well-planned web was knitted for siphoning off the public money and embezzling the dues of retired employees of the Nigam. As is the case involving economic offences, coolly and calmly things were planned, specific roles were assigned to each of the accused. The plan was executed with such an efficiency that it was not even detected during half yearly audit. The fact cannot be lost sight of, that payments were got credited in the accounts of 1063 relatives or known persons of the accused. There would be every chance of petitioners influencing the witnesses.

Petitioner-Sanjiv Kumar Gupta though has retired but is aware of the working of the Nigam so is petitioner-Jagmal Singh. The chances of tempering with the evidence cannot be ruled out.

The contention that the petitioners were not named in the initial statement of Yogesh Lamba but their names surfaced in the disclosure statement of Raghav Wadhawan recorded subsequently is of no avail. As is contended by learned counsel for the respondent, the petitioners were named by other co-accused also. The evidentiary value of the disclosure statements and the material collected would be subject matter of trial. Non mentioning in the challan that investigation qua petitioner was pending will not be fatal, as the investigation was continuing even after filing of challan against the arrested co-accused.

There is another aspect to be considered that the accused executed the plan in such a minute detail that the procedure laid for issuance of vouchers and cheque was circumvented. It leaves an ample scope that if a loose end is left and opportunity so provided to the accused, the entire web may disappear.

The contention raised by learned senior counsel for the petitioner that only 25 days period when the petitioner was posted as Executive Engineer at Jagadhri was covered by the audit is noted to be rejected. In the audit of 25 days, it was found that the petitioner had signed 14 forged vouchers totalling Rs. 29,02,569/-. Learned counsel for the respondent contended that now the interim audit for the entire period has been completed and there is embezzlement of more than Rs.10 crores during the tenure of the petitioner.

Learned senior counsel for the petitioner claimed parity of the petitioner with Neeraj who was got discharged by the prosecution stating that he had signed the vouchers and cheques but not received any amount. Suffice to say the exact role of the petitioner would be revealed after the completion of investigation. Moreover, in the disclosure statement of the co-accused, it has been specifically stated that the petitioner had received his share, there was no such allegations against Neeraj.

Reliance of learned senior counsel on the audit report to submit that it was found that there was supervisory lapse on the part of the petitioner cannot be accepted. One portion of the audit report cannot be read in vaccum. In the audit report itself, eight names have been mentioned including that of petitioner who were found responsible for the fraudulent payment of arrears to the tune of Rs.49.29 crores.

The argument that Raghav Wadhawan was inimical towards the petitioner (Sanjiv Kumar Gupta) as he had got registered an FIR against him needs no consideration at this stage. The petitioner's name was disclosed by five other co-accused also.

The instructions relied upon to submit that responsibility of the supervisory officer was only to the extent of 20% cannot be accepted. Heading of Clause 7 of the instructions relied upon is reproduced below:

"7. Norms of responsibility to be fixed in the cases of irregularities where direct loss to the Nigam are detected during Works Audit and recovery to be effected from the delinquent officers/ officials:

Sr. No.	Type of irregularities	Percentage extent of responsibility					
		Xen	SDO	JE/ AFM	DA	HC	CA/ UDC
1.	Shortages work out while analyses of work of LD system improvement of LD system constructions work etc.	-	25	75	-	-	-
2.	Non deposit of estimated amount in case of deposit works carried out by the department/ Nigam on behalf of the other department/Govt.	10	30	50	10	-	-
3.	Non recovery of excess of payment made to meter reading bill distribution/cash collection/billing contractors etc.	20	20	-	30	-	30

4.	Drawl of excess pay and non recovery thereof.	20	-	-	30	-	50
5.	Various type of embezzlements i.e. Postage stamps fictitious payment cash embezzlement and embezzlement of material drawn from Nigam store/purchased	Dealing :80% Supervisor : 20%					

From the Heading of Clause 7, it is apparent that it deals with irregularities detected during the Works Audit. The instructions will not apply in case of fraud and embezzlement.

The contention of Mr. Keshav Pratap Singh that Petitioner-Jagmal Singh was posted at Jagadhri from September, 2018 as Deputy Superintendent-cum-Head Clerk but was given charge of cash book in 2020 does not help the cause of petitioner at this stage. Specific role attributed to him is that he was custodian of the cash book and cheques. It was the responsibility of petitioner-Jagmal Singh to verify the identity of the retired employee and to hand over the cheque to them. As per allegations he used to hand over the vouchers and cheques to Raghav Wadhawan who ensured encashment in the account of the relatives or person known to the accused.

The fact that Pooja Gera was given a temporary charge of dealing with cash book would be subject-matter of trial. It will have to be decided on the basis of evidence adduced during the trial as to whether petitioner continued to be the custodian or not. Be that as it may, the *modus operandi* adopted was such that in spite of making entires in the account books including cash book, the fake vouchers and cheques were being issued.

Reliance of learned counsel for the petitioner on the vouchers produced by him to show that these were not signed by the petitioner will not mitigate the role played by the petitioner. The case set up against him is not only to the extent that he signed the cheques and vouchers, his role has been dealt with in the earlier part of the order.

For the reasons mentioned above, no case is made out for grant of anticipatory bail to the petitioners.

The petitions are dismissed.

[AVNEESH JHINGAN]
JUDGE

8th August, 2022
mk

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes