

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

CRM-M-30669-2020  
Date of Decision: 05.04.2022

ASHWANI CHOPRA

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present : Mr. Gunjan Rishi, Advocate  
for the petitioner.

Mr. Praveen Bhadu, A.A.G., Haryana.

Mr. Sumeet Goel, Senior Advocate  
with Mr. A.K. Ranolia, Advocate  
for respondent No.2.

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**VIKAS BAHL, J. (ORAL)**

This is a first bail application under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.352 dated 26.08.2020 under Sections 406/409 IPC registered at Police Station Sector 10-A, Gurugram.

On 01.10.2020, a coordinate Bench of this Court was pleased to pass the following order :-

*“ The case has been taken up for hearing through video conferencing.*

*The petitioner has filed present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.352 dated 26.08.2020 registered under Sections 406 and 409 of the Indian Penal Code, 1860 in Police Station Sector-10A, Gurugram.*

*Learned Senior Counsel for the petitioner has submitted that the petitioner is sole proprietor of M/s AAA Apparels Mfg.*

*Co. Covered under the Employees Provident Funds Miscellaneous Provisions Act, 1952. Due to oversight the petitioner failed to deposit the employees share of the Provident Fund Contribution as is required under the law. The petitioner has since deposited the entire amount which was determined and demanded by the Employees Provident Fund Organization (EPFO), Gurugram pursuant to which the recovery proceedings have also been closed and no other amount is payable by the petitioner. Still the petitioner is ready to deposit any deficient amount and also interest payable to place the concerned employees in the same position in which they would have been in case the amount was deposited in time. There is no other similar case involving any such default for any other period against the petitioner. The petitioner is ready to join the investigation and his custodial interrogation is not required in the case which is based on documentary evidence.*

*Notice of motion.*

*Pursuant to supply of advance copy of the petition, Mr. Naveen Singh Panwar, DAG, Haryana has appeared and accepted notice on behalf of the respondent-State.*

*In view of the facts and circumstances of the case, presence of the complainant is considered to be necessary for just and proper decision of the petition. Accordingly, complainant is ordered to be impleaded as respondent No.2. Memo of Parties be amended accordingly.*

*Learned State counsel seeks time to file reply.*

*Adjourned to 15.12.2020.*

*Notice to newly added respondent No.2 be issued for that date and notice be also given dasti, if so desired.*

*In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. In the event of his arrest, the petitioner shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail*

*bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which he shall not be entitled to the protection of interim bail allowed to him.*

*(ARUN KUMAR TYAGI)  
JUDGE”*

01.10.2020

Learned counsel for the petitioner has submitted that in the present case, an order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act, 1952) was passed on 18.02.2020 (Annexure P-1), requiring the petitioner to deposit a total amount of Rs.3,44,329/-. It is submitted that at the time of the issuance of notice of motion vide order dated 01.10.2020, it was submitted on behalf of the petitioner that the said amount had been deposited and further a statement was made that in case, there was any deficient amount and/or interest payable, then the same would also be deposited. It is further submitted that the perusal of the order dated 25.03.2021 would show that the senior counsel appearing for respondent No.2 had filed copies of the orders passed under Section 7Q and 14-B of the Act, 1952 through Special Messenger, which were taken on record and it has been recorded in the said order that amounts of Rs.1,80,390/- and Rs.1,80,831/- were assessed to be payable by the petitioner towards damages and interest. Learned counsel for the petitioner has submitted that although, he had right to challenge the said proceedings but he had deposited the said amount, which had been assessed under Sections 14-B and 7-Q of the Act, 1952 and in order to prove the same, he has produced on record the receipt dated 06.04.2021 (Annexure

A-1, page 289). It is submitted that in fact, the amount which had been deposited under Section 14-B of the Act, 1952 is Rs.3,43,982/-, which is higher than the amount as was assessed to be payable by the petitioner in the order dated 25.03.2021. It is further submitted that the petitioner has joined the investigation.

Learned State counsel-respondent No.1, on instructions from Sub Inspector Harikesh has submitted that the petitioner has joined the investigation on 18.11.2020 and is not required for further investigation.

Learned senior counsel appearing for respondent No.2 has opposed the present application for anticipatory bail and has vehemently submitted that in the present case, the petitioner is the sole proprietor of the firm i.e. M/s AAA Apparels Mfg. Co. and the establishment had deducted the Provident Fund contribution from the employee wages/salary but the same had not been deposited in members EPF accounts and had thus, *prima facie*, committed the offence under Sections 406/409 IPC. It is further submitted that in pursuance of the orders passed by this Court, the assessment orders were also passed under Section 7Q and 14-B of the Act, 1952 and the said orders were brought to the notice of this Court and were noticed in the order dated 25.03.2021.

This Court has heard the learned counsel for the parties and has perused the record.

As per order dated 18.02.2020 passed under Section 7A of the Act, 1952, an amount of Rs.3,44,329/- was required to be deposited by the petitioner. It is the case of the petitioner, as has been noticed in the order dated 01.10.2020, that the said amount has been deposited. The petitioner

had also given a statement that any deficient amount and/or interest payable, in case pointed out to the petitioner, would also be deposited.

A perusal of the order dated 25.03.2021 would show that the orders passed under Sections 7Q and 14-B of the Act, 1952 required the petitioner to deposit an additional amount of Rs.1,80,390/- and Rs.1,80,831/-. As per the receipt dated 06.04.2021 (Annexure A-1) (page 289 running), the petitioner had deposited the amount of Rs.3,43,982/- under Section 14-B and Rs.1,80,390/- under Section 7Q of the Act, 1952 and has thus, deposited the entire amount which could have been charged against the petitioner, including the damages and interest payable. The petitioner has joined the investigation and as per the stand of the State, he is not required for further investigation.

The entire matter is based on the documentary evidence and thus, the custodial interrogation of the petitioner is not required.

In the present case, there is another issue which needs to be resolved. A coordinate Bench of this Court, vide order dated 15.12.2020 had exercised its jurisdiction under Section 482 Cr.P.C., and had directed the Director General of Police, Haryana to file an affidavit with respect to the following :-

*“ (i) number of cases in which complaints have been received but FIR is yet to be registered; (ii) number of cases in which FIR has been registered against the employer for non-deposit of the amount of provident fund; (iii) number of cases in which charge-sheets have been filed; and (iv) number of cases which are pending for investigation.”*

Thereafter, in compliance of the same, the affidavit was filed by the Director General of Police, Haryana, and it was ultimately noticed that 59 FIRs had been registered, including 48 FIRs which were registered on the basis of complaints received from the Regional Provident Fund Commissioner-I (Legal), Zonal Office, Employees' Provident Fund Organisation, Haryana. Additionally vide order dated 07.04.2021, Mr. Manoj Yadav, Regional Provident Fund Commissioner-I (Legal) Zonal Office Employees Provident Fund Organization, Haryana was also directed to file additional affidavit explaining the reasons for delay in assessment of the damages and interest and also mentioning the steps taken to expedite filing of the complaints against the defaulters.

In pursuance to the said directions issued on 07.04.2021, the affidavit dated 30.09.2021 was filed (page 265 of the paper book). Paragraphs 2 to 5 of the said affidavit are reproduced as below :-

*“ 2. That in the State of Haryana EPFO has 5 Regional offices (as under) which ensure compliance of the EPF & MP Act, 1952 and the Schemes framed thereunder under their respective jurisdiction*

- 1. Regional Office, Faridabad.*
- 2. Regional Office, Gurugram-East*
- 3. Regional Office, Gurugram-West*
- 4. Regional Office, Rohtak.*
- 5. Regional Office, Karnal.*

*It is submitted that generally the cases where the statutory dues under the EPF & MP Act, 1952 (The Act) have been deducted by the employer and have not been deposited come to notice when any complaint/grievance is received by the concerned authority of EPFO or any record/documents etc. of*

*any establishments are inspected for any purpose. It is also submitted that all actions regarding the compliance of “the Act” and the Schemes framed thereunder are taken immediately at the level of Regional Offices whenever any such default comes to notice. The role of Additional Central P.F. Commissioner (“ACC” in short) for securing compliance in respect of establishments covered under “the Act” is to monitor the Regional Offices regarding implementation of the provisions of “the Act” and the Schemes framed thereunder.*

*3. That the requisite information as required to be submitted before this Hon’ble Court in compliance of Order dated 07.04.2021, has been collected from all the 5 Regional Offices of Haryana State. As directed by this Hon’ble Court, the information as collected from these Regional Offices of Haryana State is submitted as **Annexure –A and B:***

*(i) Annexure-A : Office-wise status of filing complaints u/s 406/409 with the Police Authorities.*

*(ii) Annexure-B : Office-wise status of levy of damages and interest on delayed deposit.*

*4. The contributions under the EPF & MP Act, 1952 and the Schemes framed thereunder are received by EPFO from employers who are fully responsible for deducting employees’ share as per the statute and deposit the same along with employer share with EPFO through online mode. Complaints received from individual members are one of the credible sources through which this office get information of any default by employers. On receiving the complaint, as per Head Office EPFO’s instructions, the establishment is pursued through letter/emails/telephonically to make the compliances. If it fails, permission from higher office is obtained for inspection of the establishment. Further, sometimes, at time of general inspection of records of the establishment for some specific purpose, the default in deposit of PF dues even after deduction from*

*employees is detected and whenever such instance is noticed the “Enforcement Officers” of EPFO have standing instructions to file police complaints with the police for action under the provisions of IPC.*

5. *It is humbly submitted that the field offices of this organization situated in Haryana Zone have clear instructions to ensure that all the actions are initiated against the defaulter establishment whenever such cases are noticed. In the instant case also, urgent action was initiated by officials of the concerned office/Regional Office, Gurugram-West as soon as default was noticed.”*

Along with the said affidavit, Annexures ‘A’ and ‘B’ were also filed which would show the details with respect to various Regional Offices falling in Haryana. Annexure ‘A’ gives the details of the complaints filed under Sections 406/409 IPC with the police authorities and in the said Annexure, the details of the ***name of the establishment, Code No., Period of default, Amount of default, Date of default detected in cases where employees’ share deducted from the salaries of the employee but not deposited, Date of filing of the complaint, whether there is any delay in filing police complaint after detection of default, steps taken to expedite filing of the complaints against the defaulters and as to whether the FIR has been registered or not*** have been given.

In Annexure ‘B’, the levy of damages and interest on delayed deposits has been detailed and even in the said chart, the ***name of the establishment, Code No., Period of delay deposit, Date of issue of notice for damages and interest, Date of assessment of damages and interest, whether there is any delay in assessment of damages and interest and steps taken to expedite the recovery of damages and interest*** have been detailed.

A perusal of the above said affidavits as well as the earlier affidavits filed, show that the orders passed by this Court stand complied with and this Court is sanguine of the fact that the State as well as the concerned authorities would take appropriate action in accordance with law for any such default which is made with respect to the deposit of the Employees Provident Fund. The same does not call for any further orders.

In view of the same, the present petition for anticipatory bail of the petitioner is allowed and the interim bail granted vide order dated 01.10.2020 is made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

**05.04.2022**

gurpreet

**(VIKAS BAHL)  
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No