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

201 **CRM-M-54233-2021.**
Date of Decision: 27.04.2022.

Gaurav Kumar ....Petitioner.

Versus

State of Punjab ....Respondent.

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CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sushil Kumar Sharma, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

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Lalit Batra, J.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Gaurav Kumar** in case FIR No.195 dated 12.09.2019 under Sections 120-B, 406, 420, 465, 467, 468 and 471 IPC, registered at Police Station Lambi, District Sri Muktsar Sahib.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further submits that as per record co-accused namely Ram Kumar, Supervisor and Attar Singh, employees of Star Agri Warehousing and Collateral Management Limited, were responsible for maintaining the godown especially the stock inventory. He further urges that petitioner who was employed as Auditor by Star Agri Warehousing and Collateral Management Limited on 01.06.2017, he alongwith co-accused namely Akhilesh Yadav and Mahesh Chander Rathore, other Auditors of said company, used to visit the site and conduct physical verification of the pledged stock. He further urges that petitioner had resigned from the services of above said company on 13.07.2018 and during his service span, he had submitted a report in the year 2017 and at that time the stock was corrected as per the statement rendered by Hira Lal, Senior Manager, Punjab National Bank, before the Investigating Officer and that too prior to the registration of FIR. He further urges that petitioner was Auditor of the company and he was not having any direct control of the stock. He further submits that petitioner has no knowledge of registration of instant FIR nor any notice under Section 41 Cr.P.C. has been received by him nor any statement of petitioner was recorded by the Investigating Officer. He further submits that co-accused namely Parmod Kumar and Attar Singh have already been extended the concession of interim bail by this Court, vide order dated 18.11.2019 passed in CRM-M-46721-2019 and CRM-M-46956-2019 respectively. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that the Directors of M/s Amyra Foods Private Limited (Rajvir Singh Samra and Bhupinder Kaur) and M/s Golden Agrarian Private Limited (Harinderjit Singh Samra and Malkit Singh) had availed cash credit facility from Punjab National Bank, against the available rice and paddy stock with them; the complainant company had an agreement with the aforesaid bank for providing collateral management and warehousing services and for that purpose, Godowns No.1 to 4 situated within the premises of M/s Amyra Foods Private Limited, were taken on sub lease, vide agreement dated 19.01.2017, by executing an indemnity bond of even date for covering the risk of shortage in stock stored; the complainant company was responsible for preparing record/issuing receipts of the available stock in the godowns and to forward the same to the bank which, in turn, would grant loan against the available stock and for releasing the stocks, the borrowers were required to pay to the bank to the tune of the equivalent amount of the stock to be released or furnish fresh stock equivalent thereto. He further submits that co-accused Ram Kumar was responsible for maintaining the records and the loan was advanced by the bank on the basis of stock receipts issued by him, whereas co-accused Attar Singh was responsible for conducting fortnightly physical verification of the available stock and to forward report to co-accused Joginder Kumar and besides them, the petitioner alongwith co-accused namely Mahesh Chander Rathore and Akhilesh Yadav were also employed by the complainant company as 'National Level Auditors' for conducting surprise stock checks/ physical verification and to report shortage, if any, with the concerned higher officer of the complainant company. He further submits that on physical verification by Parmod Kumar, it was found that the aforesaid borrowers in connivance with the aforesaid employees have misappropriated the stocks worth Rs.17,43,00,000/- for their personal gains. He further submits that a complaint dated 13.03.2019 was also received from Rajvir Singh Samra who alleged that stock remains in the custody of complainant company and requested for conducting joint physical verification of the available stock; Davinder Singh, an employee of complainant company, also alleged that stock discrepancy was brought to the notice of Mr. Makkar, Managing Director, by him and further alleged involvement of complainant-Parmod Kumar in the above said scam. He further submits that during inquiry by Deputy Superintendent of Police (Investigation), Sri Muktsar Sahib, statements of Parmod Kumar, Rajvir Singh Samra, Sukhbir Singh Samra, Attar Singh, Ram Kumar, Yudhvir Singh, Surinder Kumar, Ravi Sharma and Hira Lal, Manager, Punjab National Bank, were recorded, whereas Mahesh Chander Rathore, Akhilesh Yadav, Gaurav Kumar (present petitioner), Harminderjit Singh Samra and Bhupinder Kaur did not come forward to join inquiry, however, Harminderjit Singh Samra and Bhupinder Kaur had sent their written statements through Sukhbir Singh. He further submits that thereafter it was found that complainant company had no agreement with borrower M/s Golden Agrarian Private Limited and it permitted the aforesaid borrower to pledge stocks under an internal arrangement with M/s Amyra Foods Private Limited and in total, the borrower M/s Amyra Foods Private Limited had pledged 94,400 paddy bags and M/s Golden Agrarian Private Limited had pledged 51,700 paddy bags and Ram Kumar (Supervisor) was looking after the pledged stocks on behalf of the company and godown keys were in his custody and the loan was sanctioned by the bank based on stock receipts prepared by him on behalf of the company. He further submits that co-accused Attar Singh (Operation Executive) conducted physical verification of the stock on 29.03.2018 and 19.05.2018 and report in this regard was forwarded through Joginder Kumar, Area Manager to the company office at Bathinda, and the said Joginder Kumar is real brother-in-law of Ram Kumar (Supervisor). He further submits that co-accused Mahesh Chander Rathore conducted physical verification on 11.06.2017, 13.11.2017 and 17.12.2017, co-accused Akhilesh Yadav conducted physical verification on 10.07.2017, 12.08.2017, 09.10.2017, 23.01.2018, 03.02.2018, 07.03.2018 and 15.05.2018, whereas the petitioner had conducted physical verification on 10.04.2018 and 20.04.2018. He further submits that on 31.03.2018, accounts of the aforesaid borrower firms were declared NPA and on 25.04.2018 letter was issued by the bank requesting the company to take action for safeguarding the pledged stock and though joint physical verification of the pledged stock was conducted by bank employees namely Hira Lal and Sanjeev Kumar Makkar on 01.08.2017 and 02.12.2017 and individually by Hira Lal on 19.04.2018 and 09.05.2018, however, at no point of time shortage of any stock was reported by the aforesaid company/ bank employees. He further submits that after issuing letter dated 28.06.2018 thereby raising issue of discrepancy in pledged stock and lack of proper care at the storage facility, thus, on 29.06.2018, Hira Lal, Manager, Punjab National Bank, Faridkot, conducted physical verification of the pledged stock and reported the available stock to be less and of low quality and then on 30.06.2018, he had sent the intimation in that regard to AGM Recovery, Bathinda. He further submits that on 03.07.2018, complainant-Parmod Kumar alongwith Yudhvir Singh, Surinder Kumar, Ravi Sharma and Attar Singh inspected the stock and during checking, no stock was found present of the borrower firm M/s Amyra Foods Private Limited and only 29968 bags were found available on behalf of M/s Golden Agrarian Private Limited and even no entry of stock lifting was found recorded in the Stock Register. He further submits that on 17.07.2018 letters were issued to complainant company asking it to provide details of available pledged stocks by the borrower firms. He further submits that on 25.09.2018, complainant company informed that no stock is available in the godown of

M/s Amyra Foods Private Limited, whereas only 15186 bags of paddy and 10 bags of rice were available in the stock of M/s Golden Agrarian Private Limited. He further submits that video recording conducted by complainant Parmod Kumar revealed that some of the paddy bags were available in the pledged stock on behalf of the aforesaid firms, on which 'Punjab Government insignia' was inscribed and earlier to it, District Manager, PUNSUP, Sri Muktsar Sahib, got registered case FIR No.231 dated 07.10.2018 under Sections 120-B and 406 IPC at Police Station Lambi, against the Directors of M/s Amyra Foods Private Limited. He further submits that in view of aforesaid facts, it was concluded that complainant company without informing the bank, that it had no agreement with M/s Golden Agrarian Private Limited, got sanctioned the loan for that firm in connivance with M/s Amyra Foods Private Limited and false reports were sent to the bank by the complainant company and in total 94,400 paddy bags were released to M/s Amyra Foods Private Limited and 21732 paddy bags were released to M/s Golden Agrarian Private Limited, without obtaining release orders from the bank. He further submits that Parmod Kumar, who submitted complaint on behalf of company, in his physical verification report dated 03.07.2018, submitted that 29968 paddy bags were available in the pledged stock, however, thereafter in the latter physical verification report dated 25.09.2018, he stated that 15186 paddy bags and 10 rice bags were available in the pledged stock, which makes it apparent that he was acting in connivance with the aforesaid borrowers and other employees of the company and in this way the aforesaid employees of the complainant company in connivance with the aforesaid borrowers misappropriated 1,16,132 bags of paddy worth Rs.17,43,31,025/- and as such present FIR was registered against them. He further submits that during the course of investigation, physical verification of the pledged stock at the storage facility was conducted by the Special Investigation Team in the presence of employees of bank/complainant company and PUNSUP on 02.01.2020, 03.01.2020, 04.01.2020, 06.01.2020, 07.01.2020 and 08.01.2020, which was duly videographed/photographed and during checking, in total 25428 bags of paddy were found to be of different qualities and some more paddy bags were found scattered in mutilated bags, which could not be counted and said photographs are annexed as Annexure R-1. He further submits that on 03.07.2020, the DVR of the CCTV cameras installed in the storage facility were sent for retrieval of the CCTV footage to the Director, Forensic Science, Sector-18A, Gandhi Nagar, Gujarat and as per report (Annexure R-2), the CCTV video footage of 23.10.2019 to 25.10.2019, 30.10.2019 to 09.11.2019, 11.11.2019 and 12.11.2019 were found present in the hard disc, whereas no CCTV footage of the relevant time during which the pledged stock was misappropriated could be retrieved. He further submits that co-accused Ram Kumar was arrested on 25.12.2019. He further submits that as far as petitioner-Gaurav Kumar and co-accused namely Akhilesh Yadav and Mahesh Chander Rathore are concerned, despite efforts, they could not be arrested and process under Section 82 Cr.P.C. for declaring them proclaimed offenders was initiated and publication orders qua them were obtained. He further submits that petitioner while employed as 'National Level Auditor' with the complainant company was entrusted with duty to conduct surprise checks at storage facility in question. He further urges that petitioner conducted physical verification of stock at storage facility on 10.04.2018 and 20.04.2018, however, he did not bring the fact of discrepancy in stocks to the knowledge of his seniors/complainant company, which was found short/missing subsequently. He further urges that it is apparent that petitioner was acting in connivance with co-accused. He further urges that petitioner has not placed on record any document supporting his cause. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner while employed as 'National Level Auditor' with Star Agri Warehousing and Collateral Management Limited in conspiracy with co-accused did not perform his duty and got removed the stocks pledged with the bank and thereby caused loss to the tune of Rs.17,43,00,000/- to the Punjab National Bank and as such custodial interrogation of the petitioner is necessitated to unveil the truth.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is now well-settled proposition of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the Police. The Court has also to see that the investigation is in the province of the Police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the Police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner-**Gaurav Kumar**, is dismissed.

(LALIT BATRA)
JUDGE

27.04.2022
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No