

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

CRM-M-3144-2023

DECIDED ON: 20.01.2023

RAJEEV KUMAR @ RAJIV KUMAR @ RINKAPETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. L. S. Sekhon, Advocate for
Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

This is a petition under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No.230, dated 21.12.2022, under Sections 420, 272, 273 and 120-B IPC, registered at Police Station Lehra, District Sangrur.

Learned counsel for the petitioner vehemently contends that the offence under Section 420 IPC, is not made out by any stretch of imagination, particularly in the light of the fact that how it came to knowledge that case under Section 420 IPC was added at the time of registration of FIR. It is also asserted on behalf of the petitioner that there is no complaint in the instant case for any such offence invoked in the FIR but have been added without even getting the samples of the alleged spurious and adulterated milk tested.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State and submits that the report from FSL has been received, wherein opinion has been given as “*based on the above-mentioned test parameters, the sample of mixed milk does not conform to standards laid down under Regulation no.2.1.2 of Food Safety and Standards (Food Products Standards and Food Additive) Regulations, 2011*as

%Solids not fat of the contents of the sample is 8.2% against the prescribed standard limit of minimum 8.5%. Hence, SUBSTANDARD under Section 3(zx) of The Food Safety and Standards Act, 2006.”

From the bare perusal of the report, the contention raised by the petitioner gets derailed, wherein the conclusion says that the milk found at the mill was of sub-standard quality, which would further make out a case under Section 3(zx) of the Food Safety and Standards Act, 2006.

Even otherwise, as per the contention of the learned counsel for the petitioner that no offence under Section 420 IPC is made out and other offences recorded in the FIR i.e., under Sections 273 and 120-B of IPC are bailable in nature is of no help in the light of the report dated 26.12.2022, of Food Analyst of the Food and Drug Administration, Food Laboratory, Punjab under the signatures of Scientific Officer Food Analyst FDA, Food Laboratory Kharar, Punjab. Moreover, it is an admitted case that the petitioner is none other than owner of the milk plant against whom prima facie of adulteration of milk with chemicals has been found to be made out, which is a serious proposition as prolonged consumption of such milk may affect vital body organs and poses health risk to the consumers of all ages.

This Court has to borne in mind the enactment of Food Safety and Standards Act, 2006 (FSS Act, 2006 ‘in short’), was framed by the Parliament, which is an exhaustive law in itself relating to food repealing the earlier laws framed for prevention of food adulteration.

Such an offence deserves high penalty and more stringent punishments to curb food adulteration, as is evident from the preamble of FSS Act, 2006, which reads as under:-

"An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto."

The case in hand is one of the instance, wherein there are reasonable grounds to infer that the milk sent for testing has been found to be spurious and adulterated, as per the report dated 26.12.2022, of Food Analyst of the Food and Drug Administration, Food Laboratory, Punjab.

Before culminating the view, I would be appetite to examine the definition of Section 420 IPC, which reads as under:-

"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The ingredients of an offence of cheating have been crystallized by the Apex Court in '**SW Palanikar versus State of Bihar-2002 SCC(Cri.) 129**' as:-

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or

to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm .to the person induced in body, mind, reputation or property.”

In fact the definition of cheating has been derived in Section 420 IPC from Section 415 IPC and therefore, both the sections are to be read inconsonance with each other and therefore, it mandates this Court to have a glance on this provision as well, which reads as under:-

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Chapter III of the Act of 2006 would also be of much relevance wherein general principles of food safety have been envisaged vide Section 18, which reads as under:-

“18. General principles to be followed in administration of Act:- The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be

guided by the following principles namely:-

(1) (a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;

(b) carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

(e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then,

depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and (g) where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.”

Even going further taking into account the gravity of negative effects on the human body, the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 came into being particularly to deal with the dairy establishment in which the manner of dairy based food is to be handled, processed, manufactured, stored and distributed confirming to the sanitary and hygienic requirements and other standards as laid down therein.

In a matter '**Swami Achyutanand Tirth and others versus Union of India and others'**, 2016(3) **Apex Court Judgments (SC) 59**, Hon'ble Supreme Court considering the seriousness of the offence directed the Union of India to come up with necessary amendments not only in the Act of 2006 but also in the Indian Penal Code after considering amendment to Section 272 of IPC as amended by the States of Madhya Pradesh, Orrisa and West Bengal and Uttar Pradesh enhancing the sentence to imprisonment for life and also for fine.

The milk and other dairy products are of such essential

commodity in life, which is consumed by the infants/children and by the public at large.

It is high time to put a check on increasing cases of adulteration of milk as was revealed in the summary of national survey on milk adulteration by Union of India. That adulteration of milk by and large with the use of hazardous substances including chemicals like pesticides, caustic soda and others chemicals putting the general public to face under compulsive ill effects on their health.

In the light of the discussions made hereinabove, having no sympathy with the petitioner, considering the report of the Food Analyst at Mark A and the factors like the risk involved to the health of public at large, the petition deserves to be dismissed.

Ordered accordingly.

20.01.2023
Poonam Negi/Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>