

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

CRM-M-8485-2020

Date of Decision: 05.09.2023 (O&M)

Sanjay Gambhir and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gautam Dutt, Advocate, for the petitioners.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana.

HARNARESH SINGH GILL, J.

Through the present second petition (the first one having been dismissed as withdrawn on 21.02.2019), the petitioners seek concession of anticipatory bail in case bearing FIR No. 11 dated 22.01.2020 registered under Sections 406 and 420 IPC, at Police Station Barara, District Ambala.

2. At the outset, it may be noticed that vide order dated 13.03.2020 passed by this Court, on the joint statement of the counsel for the parties, the matter was referred to the Mediation and Conciliation Centre of this Court. It was further ordered that till the next date of hearing, no coercive steps should be taken qua the petitioners.

3. However, the fact remains that the mediation proceedings remained unsuccessful.

4. Learned counsel for the petitioners would vehemently argue that the petitioners have falsely been implicated in the

above noted FIR; that the petitioners are the partners in M/s Rama Rice Mills Barara and that as per the physical verification, a shortage of stock of C.M.R and misappropriation of paddy was noticed, which had allegedly caused loss to the tune of Rs.5,44,25,414/-. It is further submitted that the contract agreement executed between the parties, contained an arbitration clause and instead of invoking the said clause, the complainant proceeded to register the present FIR, which itself speaks volumes of false implication of the petitioners.

5. It is further submitted that the communication dated 09.08.2019 issued by the Food Corporation of India clearly falsifies the contents of the FIR; that according to the FIR, there was a shortage of 1572.51 metric tonne of rice, whereas the FCR has withheld payment of the petitioners to tune of Rs.7,42,777/- ; that the FCI is already in possession of an FDR amounting to Rs.10,00,000/- along with the mortgaged property market value worth Rs.12 crore. It is yet further submitted that a purely civil dispute has been given a cloak of criminal proceedings.

6. On the other hand, learned State counsel submits that the petitioners had supplied less quantity of rice to the tune of 1572.51 MT and thereby caused a huge loss of Rs.5,44,25,414/- to the Government. It is submitted that the petitioners have not only committed breach of trust by deceitfully usurping the public funds, but also committed a fraud, which is apparent from the facts and figures given in the FIR itself.

7. Still further, learned State counsel would submit that the petitioners, with a view to obtaining a stay on their arrest from this Court, had voluntarily got the matter referred to the Mediation and Conciliation Centre of this Court, but when it came to an amicable settlement, the petitioners had backed out.

8. While referring to an order dated 29.08.2023 passed by the Division Bench of this Court, learned State counsel would submit the petitioners had also moved an application in CWP-20288-2021 – Punjab National Bank Vs. State of Haryana and others, seeking interim protection in the present FIR, but said application was dismissed.

8. I have heard the learned counsel for the parties.

9. The conduct of the petitioners in seeking same relief at different Forum, is apparent from the very fact that while the present petition, seeking grant of anticipatory bail was pending and no order of coercive steps, was passed, pending the mediation and conciliation proceedings, they moved an CM-14331-CWP-2023 in CWP-20288-2021 before the Division Bench. The Hon'ble Division Bench, while dismissing the said application vide order dated 29.08.2023, was pleased to observe as under:-

“This application has been filed by applicant-respondents No. 5 to 8, seeking interim protection in FIR No. 11 dated 22.01.2020 under Sections 420, 406 and 409 IPC, Police Station Barara, District Ambala.

Heard.

Relief sought as above in this application in the writ petition filed by petitioner- Punjab National Bank, seeking quashing of order dated 27.07.2021, Annexure P.9, passed by the District Magistrate, Ambala, is clearly ill-conceived.

Admittedly, three of the applicants, i.e. respondents No. 6, 7 and 8, who are partners of M/s Rama Rice Mills, Shahbad Road, Village Barara, District Ambala, respondent No.5, have filed CRM-M-8485 of 2020 seeking anticipatory bail in FIR No. 11 dated 22.01.2020. It is stated in the present application that interim protection was granted to the petitioners in CRM-M-8485 of 2020, and the matter placed before the Mediation and Conciliation Centre of this Court. However, mediation between the parties failed. Order dated 27.08.2023, passed in CRM-M-8485 of 2020, reproduced in para 16 of this application, reads as under:-

“Learned State counsel submits that the amount due towards the petitioner is more than Rs.7 Crore and that the property in dispute has also been mortgaged with the bank, of which the petitioner owes the amount of Rs.6 Crore.

Learned counsel for the petitioner submits that the petitioner is to appear before the Hon'ble Division Bench of this Court on 23.08.2023."

Perusal of the present file reveals that there is no order whatsoever directing the applicants to appear before this Court and neither is learned counsel for the applicants able to point out any.

Prima-facie impression gained is that incorrect facts may have been projected before the learned Single Bench. Learned counsel for the applicants submits that as he is not the counsel in the said matter, therefore is unable to throw any light thereupon.

Be that as it may, we do not find any ground to entertain this application for granting interim protection in abovementioned FIR No. 11 dated 22.01.2020 registered at Police Station Barara, District Ambala.

Application is accordingly, dismissed with liberty to applicants No.6, 7 and 8 to pursue CRM-M-8445 of 2020, in accordance with law."

10. As noticed above, the Hon'ble Division Bench, has noticed that the petitioners had presented wrong facts before this Court. The petitioners cannot be allowed to take the Courts

for granted and seek interim protection on the basis of the wrong facts presented.

11. Even on merits of the case, no case is made out to grant the concession of anticipatory bail to the petitioners. As noticed above, the matter relates to the usurpation of a huge amount of Rs.5,44,25,414/-. The said amount belongs to the Government exchequer. The submissions of the learned counsel for the petitioners that an FDR amounting to Rs.10,00,000/- is already lying with the department (FCI) is no ground to assume that the petitioners did not commit any offence as alleged.

12. The custodial interrogation of the petitioners is required to unearth the real misappropriation/usurpation of the Government funds.

13. In view of the above, no case for grant of anticipatory bail to the petitioners is made out.

14. Dismissed.

05.09.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No