IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-22749-2022 (O&M)
Date of decision: 27.04.2023

RAVI KUMAR AND OTHERS

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. P.K. Chugh, Advocate
for the petitioners

Mr. Deepak Sabharwal, Additional AG Haryana.

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AMAN CHAUDHARY. J.

On 03.08.2022, this Court had passed the following order:-

> "This is a petition filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.232 dated 01.05.2022 registered under Sections 34, 409, 420 IPC at Police Station Civil Line, Sirsa.
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> Petitioners are Block Development and Panchayat Officers (BDPO). Petitioners No.1 and 2 have retired. Petitioners No.3 and 4 are serving.
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> FIR was registered on the complaint of Joint Director, Panchayat and Development, Haryana Panchayat Bhawan, Chandigarh against six accused (including present petitioners). The other two accused are Subhash Kumar APO HAREDA and Dinesh Kumar, J.E. Electrical, Panchayati Raj, Hisar.
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> A news item was published in Dainik Jagran dated 24.01.2022 under the caption 'Installation of lights while violating rules'. On this an inquiry was assigned by the Department of Rural Development and Panchayat to the Superintending Engineer, Panchayati Raj Quality Control and Vigilance Cell, Development and Panchayat Department, Haryana, Chandigarh. A committee consisting of Shri Vishal Punia, Sub-Divisional Officer (Electrical), Rohtak, Shri Sanjay Gupta, Sub-Divisional Officer (Electrical), Ambala and Shri Aman Kumar, J.E. (Electrical), Ambala was constituted to inquire into the matter. The Committee submitted its report dated 6.4.2022, as per which payment of Rs.9,20,19,978/- was made for purchase of solar lights against their assessed value of Rs.5,83,27,264/-. It concluded that financial loss of Rs.3,36,92,714/- was caused. The report was handed over to Joint Director General and Chief Vigilance Officer, Haryana. Thereafter, the petitioners were suspended and present FIR was registered against them.
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> The Committee concluded that the petitioners alongwith co-

accused have committed the forgery, fabrication of record and embezzlement of Government funds. Following irregularities have been noticed :

> "i) The Administrative approval for the purchase of the solar lights has been accorded/given without preparing the estimates. As per Haryana Government Rules and Guidelines, before issuing any tender of development work, prior estimate is prepared. Then Technical approval is taken from the Authorized Officer. But no such approval was taken in this case.
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> ii) The work of (purchase of Solar lights) is to be done within the ambit of provisions of Haryana Panchayati Raj Act, 1996. Technical Specification and Estimate was required to be got prepared from SubDivisional Officer, Electrical Panchayati Raj, Hisar and District Project Officer, Sirsa. No such specification and estimate has been prepared regarding purchase of High Mast Solar Lights.
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> iii) The approval cost amount of solar lights is Rs. 9,20,19,978/-. As per rules for such a large amount, E-Tendering process was required to be followed. But this work was done through Manual Tender which is in violation of rules. This fact also proves that willfully and with dishonest intention, the tenders were issued to the favourites of the officers and the Government funds were embezzled.
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> iv) As per the Government Rules and Guidelines, the rate for the development works are to be approved by District Level Committee. In this case, the rates were approved by the Block Development and Panchayat Officers.
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> v) During the inspection/inquiry at the spot simple solar light of 15*4 watt (12.04 volt.) (18 ah*4 battery) with module of 75 watt*4 has been found installed on the poles whereas according to the specification by HAREDA on the pole having height of 7 meter, solar light of 22 watt*4 LED light, 12.8 volt. (50ah*4 battery) with 110 watt*4 module ought to be fixed/installed. This difference in the specifications of the solar light has resulted in State exchequer and was actuated with an intention to earn the wrongful gains with dishonest intention.
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> vi) According to Haryana New and Renewable Energy Department (HAREDA) the guarantee of Mast Solar light is to be of five years, but in this case only the warranty for 2 years was taken. Thereby the petitioners and others have caused the loss to the State exchequer.
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> vii) According to rules, after tender, work order is to be issued to the party/agency. In the work order quantity of lights, cost and amount is mentioned. But in this case, no work order was issued. Further in this case, the payment to the agency has been made on the basis of bills without there being any work order to the said agency. This has been done for the reason that the tenders were issued in the name of their known persons and in collusion with them Government funds were embezzled.
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> viii) As per rules, the tender holder agency has to deposit 2% of the total tender work amount. In this case the tender work amount is Rs. 10 crore approximately and 2% amount would be Rs. 20,00,000/-. Only Rs. 1,00,000/- were got deposited from the tender holder/agency against the total amount of Rs. 20,00,000/- This irregularity has been committed because the tenders were

issued to favourites of the petitioners.

ix) The rate of the light has been approved as Rs. 98,000/- per light, without any market assessment. According to market rate, the rate of per light is Rs. 66,736/-. Thus loss of Rs. 31,264/- per light has been caused to the State exchequer.

x) The lights which have been installed are not according to the test report of the company. The tender was for High Mast Light, but the petitioners in collusion with their known persons got installed the Simple Lights (not as High Mast Lights) whereas according to records taken by the Enquiry Officer, the bills were issued by the tender holder for High Mast Light. The said forged bills were duly passed/approved by the petitioners. In this way, the petitioners in collusion with tender holders have with a dishonest intention caused the loss to the State exchequer."

Mr. Bali, Learned Senior Counsel for petitioners argued that examined in the light of the background and facts of this case no wrong doing can be attributed to the petitioners.

He stated that people of various blocks of District Sirsa raised a demand for installation of solar lights in their villages. In this regard the BDPOs of various blocks wrote a letter dated 01.07.2021 to the District Project Officer, Renewable Energy Department, Sirsa requesting for the work to be done by it. In response the Additional Deputy Commissioner-cum-Chief Project Officer, New and Renewable Energy Department Sirsa informed petitioner No.3 that the New and Renewable Energy Department had not received any tender nor did it have any fund allocated towards the project of installation of solar lights. Petitioner No.3 was asked to take action at its own level.

Instead of purchasing the solar lights from the market, the Committee of BDPOs decided to follow a public and transparent mechanism by inviting tenders from interested firms/individuals. The Committee of BDPOs prepared and approved the specifications as well as the estimate for providing and fixing High Mast Solar Lights and same were made available for the interested firms/individuals. The tender notice was published in the Hindi newspaper (Punjab Kesri) and English newspaper (The Tribune) having circulation in the State of Haryana. The Committee allotted the work to firms/individuals offering the lowest prices in their financial bids. In this way, the Committee did nothing illegal. Infact, the Committee followed a fair and transparent method of allocation of the work.

The Committee of BDPOs also involved the Renewable Energy Department and Electricity Department in the tender process. The District Project Officer of Renewable Energy Department and Sub Divisional Officer of Electricity Department were appointed Members of the Committee. Five firms showed interest in the tender. Three were found to be eligible and submitted their bids. The bids were opened on 23.07.2021 in the presence of Members of the Committee.. The Committee of BDPOs agreed to award the tender to the two firms which quoted the lowest amount. Vide letter dated 02.08.2021 the DDPO approved the tender process and directed the BDPOs to execute the work in compliance with the terms and conditions of the tender. At all stages, the administrative and financial approvals were obtained from concerned DDPO and Sub Divisional Officer.

Subsequent to the grant of tender, the work was carried out by the two firms and the lights so installed are in operation in all the blocks of District Sirsa. A test report was sought from Nextron International Lab

> Private Ltd. by petitioner No.1 regarding the solar lights. Nextron International vide its report dated 14.08.2021 approved the street lights indicating they were up to the mark.
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> Mr. Bali argued that the petitioners were not associated with inquiry got conducted by the Department. They have not been given any opportunity to explain their position before the Committee. They have been wrongly indicted by the Committee for causing financial loss to the tune of Rs.3,36,92,714/-. He contended that the alleged financial loss of Rs.3,36,92,714/- is based only upon a quotation received from a third party namely Shivtech Enterprises. The Committee of BDPOs awarded the tender to the firms which had quoted the lowest prices, but said Shivtech Enterprises had never applied for same. Mr. Bali further argued that all the petitioners have served/ are serving in the Department since long. The case is based on documentary evidence. All the documents are already with the Investigating Agency.
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> Mr. Sabharwal, Learned Additional AG, with reference to the irregularities noticed in the inquiry report has argued that the petitioners with a deliberate intention to cause loss to the State exchequer and wrongful gain to themselves have blatantly flouted the norms/ guidelines for execution of development issued by the Development and Panchayat Department. He argued that with a view to curtail malpractices, guidelines have been issued that in respect of development works involving more than Rs.Five lakh e-tendering process is required to be resorted to. A set of procedures for seeking prior approval have been put in place which have been violated by the petitioners. Thereby, the State has suffered a huge loss.
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> Undoubtedly, in the present case there appear to be a number of violations of the procedural guidelines which were required to be followed. In the first instance, the petitioners who are serving and retired officials deserve to be given an opportunity to explain their position by joining investigation. Denying them the benefit of anticipatory bail at this stage may not be justified.
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> Adjourned to 15.11.2022.
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> Meanwhile, in the event of his arrest, the petitioners- Ravi Kumar, Om Parkash, Anil Kumar and Vivek Kumar shall be released on interim anticipatory bail to the satisfaction of the Arresting/ Investigating Officer, subject to the conditions provided under Section 438(2) Cr.P.C. They are also directed to join the investigation and cooperate with the Investigating Agency, as and when required."

Learned counsel for the petitioners submit that in pursuance of aforesaid order, the petitioners have not only joined investigation but also fully cooperated with the investigating agency. He further submits that in case the investigating agency requires them to appear, they shall make themselves available without demur.

Learned State counsel on instructions received vide letter dated 20.01.2023 affirms the factum of joining the investigation by the petitioners and cooperating with the investigation agency. He also submits that at this stage, they are not required for further custodial interrogation.

In view of the above and without expressing any opinion on the merits of the case, anticipatory bail petition filed by the petitioners is allowed and the order dated 03.08.2022 granting interim bail to them, is hereby made absolute, subject to compliance of conditions as specified under Section 438(2) Cr. P.C

However, it is made clear that if the petitioners fail to join and cooperate with the investigation agency as and when required, the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to them.

(AMAN CHAUDHARY)
JUDGE

April 27, 2023
M.Kamra

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