

CRM-M-26308-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-26308-2023

Date of decision : November 22, 2023

Naresh Kumar @ Naresh Kumar BansalPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Sahdev, Advocate, for the petitioner

Mr. PS Grewal, DAG Punjab

Mr. Aalok Jagga, Advocate for the complainant

KULDEEP TIWARI, J.

1. The petitioner having apprehension of being arrested in case FIR No. 60 dated 6.5.2023, under Sections 420, 406, 408, 120-B of the IPC, registered at Police Station Lalru, District SAS Nagar, filed the instant petition under Section 438 Cr.P.C. for grant of pre-arrest bail.

2. At the time of notice of motion, the following order was passed:-

“1. The petitioner is seeking anticipatory bail in the case bearing FIR No.60 dated 06.05.2023 under Sections 420, 406, 408 and 120-B IPC registered at Police Station Lalru, District SAS Nagar,

2. Learned counsel for the petitioner contends that as per the allegations, the petitioner had been supplying cotton husk to the complainant- company since the year 2018 and value of the goods supplied was approximately to the tune of Rs. 9 crore. It has been further alleged that the cotton husk supplied was of inferior quality and not upto the standard. At the most, it is a consumer dispute and does not attract any penal provision. The supplied material was also tested in the internal lab of the company and the same was found to be satisfactory but it was found to be of inferior quality when tested in the third party laboratory.

3. Notice of motion.

4 Mr Hittan Nehra, Additional Advocate General, Punjab, accepts notice on behalf of the respondent-State.

5. Mr. Aalok Jagga, Advocate, has put appearance on behalf of the complainant and submits that the petitioner had acted in conspiracy with Satosh Kumar Paikray, who is senior officer of the company. The co-accused was in- Charge of the lab, which had given false test reports and even there is exchange of amount from the account of the petitioner to the account of Satosh Kumar Paikray, co-accused.

6. Learned State counsel seeks adjournment to get detailed instructions and submit the reply.

7. Adjourned to 02.06.2023.”

3. Thereupon, vide order dated 23.8.2023, the arrest of the petitioner was stayed and he was ordered to join the investigation.

Today, learned State counsel has filed the status report dated 15.11.2023 by way of an affidavit of the Deputy Superintendent of Police, Investigation, SAS Nagar, in the Court and the same is taken on record.

4. In the reply, it is undisputed that the petitioner has joined the investigation, and the final report under Section 173 Cr.P.C. has been filed before the learned trial court on dated 10.7.2023, and the next date before the trial court was fixed for 18.11.2023 for framing of charges.

5. Before getting down to brass tacks of the issue of grant of pre-arrest bail, it is pertinent to give gist of the allegations against the petitioner. The complainant Chander Shakher Gaur, AVP of M/s Nahar Industrial Enterprises Ltd. situated at Dera Bassi lodged a complaint against Naresh Bansal proprietor of M/s Shiv Shakti Briquette Industries, Sirsa and Santosh Kumar Paikray, employee of the same company, stating that the accused No.1 is an exclusive supplier of cotton husk to the power generation unit of the company since 2018, and had supplied cotton husk worth Rs.9 crores (approximately). And accused No.2 is AVP operation head of the Power Plant in which Cotton husk is being used for generating power. It is further mentioned in the complaint that various purchase orders for cotton husk were placed with the accused No.1, and the higher management of the company noticed that the power plant is not generating enough electricity proportionately to the gross

calorific value (GCV) of the fuel (cotton husk) burnt in the Power Plant against, the quality of cotton husk being used in the plant. There were many complaints from the staff members of the complainant company regarding the quality of cotton husk being used, and as per the internal lab report the material was found to be satisfactory on the documents and on further investigation and third party laboratory testing, it was found that the material has higher production of 60% ash/soil whereas, as per purchase orders issued by the complainant company, the maximum tolerance of ash was 10%. It was found that Santosh Kumar Paikray being Senior Officer of the complainant company pressurized the laboratory staff to approve sub standard material and also forced the operational staff to utilize the same. Thus, both the accused have embezzled crores of rupees by supplying sub standard material to the company (complainant) and has caused damages to the power plant. On the basis of aforesaid allegations, the present F.I.R. was registered.

6. The learned State counsel through the status report dated 15.11.2023 discloses the role of the present petitioner, and also the outcome of the investigation. According to the status report, during the course of investigation, the accused Santosh Kumar Paikray was arrested by the police on dated 10.05.2023, and during the course of his interrogation, he disclosed that he in connivance with the petitioner-Naresh Kumar Bansal, used to get the sample of the adulterated fuel (cotton husk) passed. He further

disclosed that he used to raise demand for more raw material, and in return, he used to take the bribe of Rs 50,000/- per 100 tons, that was given by the present petitioner, upon which, Naresh Kumar Bansal used to transfer the said money to him through bank transfer, and sometimes the money was sent through the driver of delivery vehicle. On further interrogation, the accused Santosh Kumar Paikray disclosed the details of his bank accounts, i.e. State Bank of India, having account number 30930787620 and Bank of Baroda, having account number 39540100007612. Thereafter, on checking the bank statements of the accused-Santosh Kumar Paikray, it was found that Naresh Bansal (the present petitioner), Proprietor of M/s Shiv Shakti Briquette Industries, Sirsa (HR), had deposited about Rs one lakh in the account number 30930787620 of accused Santosh Kumar, as per their deal. Thus, Santosh Kumar Paikray and Naresh Kumar Bansal (present petitioner) had caused considerable financial losses to the Nahar Company by supplying adulterated cotton husk. Therefore, on the basis of the aforesaid disclosure of the co-accused Santosh Kumar Paikray, Naresh Kumar Bansal (present petitioner) was arrayed as an accused in the present case/FIR.

7. I have heard learned counsel for the parties and perused the records.

8. Learned Senior Counsel for the petitioner has submitted that the petitioner firm was supplying cotton husk to the complainant

company since 2018 and total supply was worth Rs.9 crores. No such complaint was ever raised by the complainant company. The allegations are regarding the supply of material from dated 01.04.2023 to 20.04.2023, and it is alleged that the said material was found to be of inferior quality. He further submitted that the petitioner firm was still to recover balance of Rs. 1,99,20,428 50/- from the complainant company, and as per the account statement (Annexure P-3), and with a view to avoid the abovesaid payment, the present case has been registered by making such allegations that the petitioner had paid Rs.10 lakhs, as a commission to the co-accused-Santosh Kumar, who is the Vice President of the complainant company. He further submitted that the allegations are false, yet, at most it is a civil liability and the complainant company can approach the civil court or the consumer court regarding the supply of inferior quality of raw material. No offence under Sections 420, 406, 408 IPC, is made out from the allegations as mentioned in the FIR, and that the petitioner was granted interim bail and in pursuance of said interim protection, the petitioner has joined the investigation and co-operated with the investigating agency. The case is based on documentary evidence, which has already been taken into possession by the investigating agency. The custodial interrogation of the petitioner is, thus, not required.

9. Learned counsel for the complainant has submitted that the petitioner was depositing the amount in the accounts of the co-

accused, who is an employee of the complainant-company, which shows their active connivance with each other, and therefore, he is not entitled for the relief as prayed for.

10. This Court, at this stage, finds this dispute primarily of business transactions, where the material supplied to the complainant company, is alleged to be of inferior quality, which infact is yet to be established, during the course of trial. Further the petitioner has also alleged that he has to recover around Rs 2 crores from the complainant company, as per their account statement.

11. Considering the fact that in pursuance to the order dated 23.8.2023, the petitioner has already joined the investigation and the final report under Section 173 Cr.P.C. has also been filed and he is facing the trial and that the entire case is based on documentary evidence, therefore, custodial interrogation of the petitioner is no more required, the present petition is allowed. Interim order dated 23.8.2023, passed by this Court is hereby made absolute.

November 22, 2023

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**(KULDEEP TIWARI)
JUDGE**

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>