

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

1) CRM-M-42982-2022 (O&M)

Baj Chand ... Petitioner

Versus

State of Punjab and another ... Respondents

2) CRM-M-45477-2022 (O&M)

Gulab Singh and another ... Petitioners

Versus

State of Punjab and another ... Respondents

Date of Decision: 13.3.2023

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Suvir Sidhu, Advocate and
Mr. Harlove Singh Rajput, Advocate,
for the petitioner in CRM-M-42982-2022.

Mr. Balbir Kumar Saini, Advocate,
for the petitioner(s) in CRM-M-45477-2022.

Mr. Luvinder Sofat, DAG, Punjab,
assisted by DSP Manjit Singh.

Mr. Abhishek Arora, Advocate for
Mr. Tarun Seth, Advocate for respondent No.2.

GURVINDER SINGH GILL, J.

1. This order shall dispose of the above mentioned two petitions filed on behalf of petitioners Baj Chand, Gulab Singh and Hans Raj Singh seeking grant of

anticipatory bail in respect of a case registered against them vide FIR No. 275, dated 2.8.2022 at Police Station City Ferozepur, District Ferozepur, under Sections 409 and 120-B IPC and Section 13 of the Prevention of Corruption Act, 1988.

2. The FIR was lodged on the basis of letter dated 1.8.2022 written by District Controller, Food Civil Supplies and Consumer Affairs, Ferozepur to the Senior Superintendent of Police, Ferozepur for taking action in respect of the shortages of wheat found in various Godowns situated within District Ferozepur. It is alleged that verification of wheat stocks of PUNGRAIN was conducted at the warehouses in District Ferozepur during 11.7.2022 to 31.7.2022 and the following shortages/excesses were detected at 12 out of the 18 warehouses, situated within Ferozepur City :

Sr. No.	Particulars	Number of Sacks
1	Savitri Devi Warehouse	Approx. 6700 short
2	Bedi Covered Warehouse	92 in excess
3	Sandeep Chandra Co-owners	1584 short
4	Amrit Lal Mehta	2622 in excess
5	Ritu Mehta Covered	-83 in excess in Central Pool -16389 short in State Pool
6	Arvind Kumar and Co-owners	41 short
7	Dharmender Mittal Covered Warehouse	Approx. 2000 short
8	Sandeep Chandra Covered Warehouse	39 short
9	Sonu Chawla	620 short
10	Lovekesh Sachdeva & Joginder Singh	Approx. 6176 short
11	Sohan Lal and Sons	138 short
12	M/s Pawan Kumar and Co-owners	6569 short

3. A shortage of 310 quintals of wheat (620 bags of 50 kilograms each) which had been stored at Sonu Chawla Godown by Punjab Grains Procurement Corporation Limited (PUNGRAIN) had been detected, the worth of which was Rs.7,15,000/-. It is alleged that Hans Raj son of Mithu Ram, Gulab

Singh (petitioner), Baljit Ram, Yadwinder Singh, Hans Raj son of Piara Singh (petitioner) and Baj Chand (petitioner) were posted as Inspectors in the Center - Ferozepur City and were custodian of the wheat stock stored within Center - Ferozepur City. It is further the case of prosecution that pursuant to lodging of the FIR, another physical verification was conducted by a specially constituted team headed by AFSO which found an additional shortage of about 788 bags weighing 50 kilograms each.

4. The learned counsel representing the petitioners- Gulab Singh/Hans Raj has drawn the attention of this Court to various reports in the shape of PG-38 reports annexed as Annexure P-7 and Annexure P-8 with the petition - CRM-M-45477-2022, which are signed by AFSO Dalbara Singh. The learned counsel for the petitioners has also referred to several 'PG-7 reports' (Annexure P-9 to Annexure P-12 in CRM-M-45477-2022), prepared periodically indicating the stock position and also to godown-wise stock reports (Annexure-13 in CRM-M-45477-2022).
5. The learned counsel for the petitioners, while referring to order dated 28.4.2022 (Annexure P-3 in CRM-M-45477-2022), passed by the District Controller, Food and Supplies, Ferozepur assigning duties to field staff have submitted that none of the three petitioners were incharge of Sonu Chawla Covered Godown and that it is co-accused Baljit Ram and Yadwinder Singh who had been deputed to be incharge of the same.
6. On the other hand, the learned State counsel has submitted that PG-38 Reports are prepared by the Inspectors themselves wherein it is only the number of stacks which is mentioned without specifying the number of bags. It has further been pointed out that the said reports i.e. 'PG-38 Report' are

made regarding stacks only solely for the purpose of regular fumigation etc. so as to ensure that the stored wheat does not get damaged. It has, thus, been submitted that PG-38 reports cannot be made a basis for assessing accurate quantity or number of bags.

7. The learned State Counsel has informed that the reports as regards the position of stock is prepared by the Inspectors themselves and that the reports so attached do not bear the signatures of any officer superior and have not been prepared on the basis of physical verification and that once the inquiry was initiated, the accused in order to fudge the record have prepared godown-wise reports at short intervals of less than a week although previously the reports used to be prepared fortnightly. It has been pointed that while one of the reports was prepared on 15.7.2022, the next report was prepared after 10 days i.e. on 25.7.2022 and then after a gap of barely two days i.e. on 27.7.2022, and then after another six days i.e. on 3.8.2022 (Annexure P-19 in CRM-M-45477-2022). It has been submitted that the reports being relied upon by the petitioners had not only been prepared by the petitioners i.e. Inspectors themselves but had even been uploaded by them with the help of other officials of PUNGRAIN, and as such, do not reflect true picture.
8. The learned State counsel in reply to 28.4.2022 has drawn the attention of this Court to policy dated 28.9.2012 annexed as Annexure R-7 with reply filed by respondent No. 2 in CRM-M-42982-2022, wherein Para 6 specifies that while Inspectors will be allotted godowns for day-to-day working, but in case of any shortage within the Centre, they will together and collectively be responsible for the same. It has, thus, been submitted that the duties, as

assigned in order dated 28.4.2022 (Annexure P-3 in CRM-M-45477-2022) are to be construed as duties for day-to-day working only and the Inspectors in question cannot escape from their liability in case of any shortage found in any of the godowns situated within Center Ferozepur City.

9. This Court has considered rival submissions addressed before this Court.
10. It is not in dispute that all the three petitioners are posted as Inspectors in Center – Ferozepur City of PUNGRAIN. As per order dated 19.5.2022 (Annexure P-4 in CRM-M-42982-2022) passed by the District Controller, Food Civil Supplies and Consumer Affairs, Ferozepur, the petitioners Gulab Singh, Hans Raj Singh and Baj Chand had been allocated Chamber No. 13 of Bedi Warehouse (Central Pool); Chamber No. 12 of Amrit Lal Mehta Warehouse and Chambers No. 1, 2, 9, 10, 11, 8 of Bedi Warehouse. Though, the learned counsel vehemently argued that they cannot be held liable for any shortage in the covered godowns of Sonu Chawla, but having regard to the instructions/letter dated 28.9.2012 (Annexure R-7 annexed with reply filed by respondent No. 2 in CRM-M-42982-2022), the Inspectors posted within one Centre will all be equally liable in case of any shortage. The translated gist of Para 6 reads as follows :-

“ One inspector shall be deputed as Incharge at each sale/purchase Centre for the purpose of co-ordinating the work undertaken in the Centre. The godowns have been distributed/allocated for the purpose of day-to-day working and storage of wheat amongst the Inspectors posted at the Centre but in case any shortage of wheat is detected in the stocks of the Centre, all Inspectors shall collectively be responsible for the same in case any godown allocated to an Inspector gets vacant on account of despatch of wheat, he shall be

allocated the neighbouring godown alongwith Inspector of such neighbouring godown to look after the same jointly.”

11. The aforesaid letter dated 28.9.2012 (Annexure R-7 in CRM-M-42982-2022) makes it amply clear that all the Inspectors posted in the Centre are jointly responsible for maintaining the stock and consequently for shortage, if any. Such a condition seems to have been prescribed to ensure that all the Inspectors remain extremely vigilant and prevent pilferage lest each of them would be held responsible. The letter dated 28.4.2022 (Annexure P-3 in CRM-M-45477-2022) assigning duties to field staff has been issued in context of the earlier instructions dated 28.9.2012 (Annexure R-7 in CRM-M-42982-2022) i.e. for managing day-to-day affairs only. Thus, the petitioners cannot escape from the fact that they all were jointly responsible for shortage in view of instructions dated 28.9.2012.
12. During the course of arguments, the learned counsel for the petitioners submitted that the entire proceedings right from lodging of FIR and the investigation thereafter are illegal as no sanction in terms of Section 17-A of the Prevention of Corruption Act had ever been obtained before initiation of any inquiry/investigation. This Court has considered the aforesaid submission. Section 17-A of the Prevention of Corruption Act, which was inserted in the Act w.e.f. 26.7.2018 reads as follows :-

“17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-- No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval--

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
- (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
- (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

13. The scope of Section 17-A of the Prevention of Corruption Act has been discussed in detail in 2021(5) KHC 248 titled as Shankara Bhat and others versus State of Kerala and others. The question that was addressed in the said judgment and is stated in Para 5 of the said judgment, is reproduced herein-under:-

"Essentially, the question that arises in all the cases is whether section 17A of the Prevention of Corruption Act, 2018 is an omnibus pre requisite, applicable to every investigation, enquiry or inquiry. The specific contention of the accused was that, section 17A was intended to prevent misuse of the provisions of the Prevention of Corruption Act, by using it against honest officers and hence, a proceeding launched sans such statutory requirement was bad."

14. While considering the aforesaid question, the Kerala High Court referred to a plethora of judgments including Bajinath Gupta & Ors v. State of Madhya Pradesh(AIR 1966 SC 220); R.W Mathams v. State of West Bengal(1954 AIR 455); S.B.Saha & Others v. M.S.Kochar(AIR 1979 SC 1841); State of U.P. v. Paras Singh(2009 (6) SCC 372); Punjab State Warehousing Corporation v. Bhushan Chander & another(AIR 2016 SC 3104); State of Kerala v.

V.Padmanabhan (AIR 1999 SC 2405) and held that the scope of Section 17-A of the Act is confined to investigation or inquiry into an offence relatable to any decision taken or recommendation made by the authority and not in respect of each and every act of illegal gratification or undue advantage gained by a public servant. It was specifically held therein that the cases of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust etc. would not be covered under the protection of Section 17-A of the Act. The relevant extracts from the said judgments are reproduced herein-under :-

“19The most crucial part of section 17A provides that previous approval is required in relation to enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act "where the alleged offence is relatable to any recommendation made or decision taken by such public servant". It seems that the above part of the section is the most crucial part of the section, since it imposes a rider on the otherwise absolute power under section 17A that enquiry, inquiry or investigation into every act needed prior approval. It is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under section 17A required only where the alleged offence was relatable to "any recommendation made or decision taken by the public servant". This seems to be the heart and soul of the above section. It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant required prior sanction, the words "where the alleged offence is relatable to any recommendation made or decision taken by the public servant" ought not have been there. If the above words are omitted, it would have meant that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act in discharge of his official function or duties without the previous approval of the competent authority. In other words, if the intention of the statute was to cover every enquiry, investigation or inquiry, the words "where alleged offence is relatable to any recommendation made or decision taken by the public servant" were unnecessary, since even without those words it would have conveyed the

intention. Hence, it is clear that the intention of the Parliament was not to insist for previous approval in relation to enquiry, inquiry or investigation only in relation to every offence committed by the public servant.

20. xxx xxx xxx

21. xxx xxx xxx

22. The object of the Prevention of Corruption Act is to protect honest and upright public officers and to ensure that they are unnecessarily not dragged into litigation. It is also intended to ensure that the officers are insulated and protected against unnecessary litigation. Such a protection enable the officers to take prompt and bold decisions on files and the administrative machinery will move forward. Otherwise the officers would be reluctant to make any official recommendation or to take any decision on files, apprehending false accusation of corruption. In this context, it has to be noted that scope of section 17A is specifically confined to "any recommendation made or decision taken by public servant" which alone falls within the protection under section 17A. Definitely, the case of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust, conspiracy, etc. cannot be covered by the protection under section 17A. Definitely, they do not involve any decision or recommendation at all. Such acts cannot be considered as one done in discharge of his official functions and duties as contemplated under section 17A. Hence, it cannot, by any stretch of imagination, be held that investigation into any of the offences as mentioned above also needs prior approval, under section 17A. Such an interpretation alone can be in consonance with the section as interpreted by the various decisions. In other words, the scope of section 17A is only confined to investigation, inquiry or enquiry into any offence which is relatable to any decision taken or recommendation made by the authority. This purposive interpretation seems to be in consonance with the scope of section 17A.

23. xxx xxx xxx

24. xxx xxx xxx

25. The reasonable conclusion that can be arrived at regarding the scope of section 17A is that prior approval under section 17A for conducting any enquiry, inquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority and it involves a debatable or suspicious or doubtful recommendation made or decision taken by the authority. Acts, which are ex facie criminal or constitute an offence do not require approval under section 17A of P.C.Act.This legal proposition, seems to be clear from the statute and is in consonance with the spirit of the Prevention of

Corruption Act and also in consonance with the legal principles laid down in relation to section 197 Cr.P.C.

26. Applying the above legal principles, I am of the firm opinion that in the cases at hand, which involve allegation of falsification of accounts, breach of trust and misappropriation of funds or acts which are ex facie criminal, no prior approval under section 17A of Prevention of Corruption Act is required. Hence, all the Crl.M.Cs. are without any merit and are liable to be dismissed. However, it is made clear that except this issue, all other issues touching on the merit, are left open to be raised and considered at the appropriate stage.”
15. The ratio, as culled out from the above referred judgment is clearly to the effect that it is not each such act constituting an offence under the Prevention of Corruption Act which would require sanction in terms of Section 17-A of the Act and that the touch-stone is as to whether such act was committed in discharge of his official duties or not. Certainly embezzlement of huge stock of wheat, as against the record maintained by the accused, cannot be said to be a part of the official duty and nor any such embezzlement can be said to be a part of any decision making or recommendations made by a public servant.
16. A perusal of the photographs annexed as Annexure R-4 with the reply filed by respondent No. 2 in Baj Chand's case i.e. CRM-M-42982-2022 shows how the bags had been cleverly stacked to conceal the shortage by way of stacking wooden crates in the Centre of the stack and by laying the bags around such wooden crates and on top of such wooden crates. Para 8 of the reply which describes the manner of stacking wheat bags so as to conceal shortage, is reproduced herein-under:-

“ That the wheat bags are stored in the godowns/plinths in the form of stacks, which usually consist of 7-8 blocks of bags stored in layers. The number of bags in a stack are counted/ascertained peripherally from the constitution of such blocks and the number of layers. While the stacks

stored in open have a dome formation at the top, the covered stacks do not require dome formation. However, the petitioner along with other co-accused created the stacks in such a way that the peripheral walls/bags were laid while the interior of the stack was either left hollow or was filled with wooden crates thus to give a fake impression from outside that the stack is full of bags of wheat.....”

17. The report of a Committee headed by AFSO clearly indicates shortage of wheat in Centre Ferozepur City where the petitioners were posted. Their custodial interrogation would certainly be required to unearth all the finer details of the *modus operandi*. As such, no special case for grant of anticipatory bail is made out. The petitions are sans merit and are hereby dismissed.
18. A copy of this order be placed on the file of connected case.

13.3.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No