

CRM-M-46926-2023 (O & M)

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

Date of decision:30.11.2023

(1) CRM-M-46926-2023 (O& M)

Gaurav Arora

.... Petitioner

V/s

State of Haryana

...Respondent

(2) CRM-M-48041-2023 (O& M)

Sandeep

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ajaivir Singh, Advocate,
(in CRM-M-46926-2023).
Mr. Parminder Singh, Advocate,
(in CRM-M-48041-2023)
for the petitioner(s).

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal miscellaneous petitions
i.e. CRM-M-46926-2023 and CRM-M-48041-2023 as they arise out of the
same FIR.

2. For the sake of convenience, the facts are being taken from the
petition bearing No. CRM-M-46926-2023.

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3. The prayer in the present petitions under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioners-Gaurav Arora (petitioner in CRM-M-46926-2023) and Sandeep (petitioner in CRM-M-48041-2023) in case FIR No. 966 dated 11.10.2022 under Sections 409, 420, 467, 468, 471 and 120-B IPC registered at Police Station Sadar Karnal, District Karnal.

4. The aforementioned FIR came to be registered on the basis of a written application moved by SI Sher Singh, Office of C.M. Flying Squad, Karnal and reads as under:-

*“To, Post Incharge, Police Post Jundla, District Karnal.
Subject: Regarding instituting legal proceedings. Today I was present in the office of Chief Minister Flying Squad, Karnal that secret information was received that in the arrival of paddy in Jundla Grain Market, large quantity of paddy was being purchased by showing higher weight of paddy at the gate pass. Whereupon, the lifting of paddy is shown to be more, whereas, in reality, such large quantity of paddy is not reaching the concerned rice mills. On the basis of the said information, after I apprised the higher officials, the team was prepared. After reaching the Grain Market Jundla, Shri Vishwas Malik, Food and Supplies Department, Jundla Market, Jundla and Mandi Magistrate was informed telephonically, whereupon, Pawan Chopra Market Jundla, Sandeep Kumar Deputy Inspector Food and Supplies Department, Jundla and Gaurav Inspector Food and Supplies Department, Jundla and Shri Vishwas Malik, District Child Welfare Karnal and Mandi Duty Magistrate came present at the gate of the Grain Market, Jundla, who were acquainted with the situation and M/s Budhram and Sons, Shop No. 23, Grain Market Jundla was inspected. According to the records of Market Committee, Jundla office, dated 11.10.2022, the said firm received a total of 25988 quintals of paddy as per*

353 gate passes. According to the records of the firm, only 14446 quintals of paddy has been purchased and only 13621 quintals of paddy has been lifted. According to the records of this firm, paddy has been lifted from four rice mills namely KM Foods Jundia, M/s Budh Ram Foods Jundia, Anand Foods Jundla and Hansraj Industries Karnal. Whereupon, the team inspected the government paddy storage allotted to the above mentioned three rice mills located in Jundla. During the inspection, Ishwar Dayal son of Budh Ram, resident of H.No. 58, Bank Colony, Karnal, partner and representative of all three firms, whose mobile number is 99913874941, remained present. After the course of inspection, according to the record dated 11.10.2022 of the office of Food and Supplies Department, Jundla, 31135 quintals of paddy was allotted to M/s Budhram Foods, 41835 quintals of paddy was allotted to M/s KM Foods and 33784 quintals of paddy was allotted to Anand Foods, Jundla for milling. 26249 quintals of paddy stock was found less in Budhram Foods Jundla and paddy stock of 17588 quintals was found less at KM Foods Jundla. During the inspection, a truck bearing registration No. RJ-09-GC- 1424 was found loaded with rice bags at KM Foods Jundla, whose driver Chaman revealed to have brought the above rice from Bihar. In this way, the officers and employees of the Market Committee, the officers and employees of the Food and Supply Department, M/s Budhram and Sons Jundla Grain Market and the owners of the three above mentioned Rice Mills in collusion with each other depicted the purchase of large quantity in record in the above mentioned rice mills, even when there was less arrival of paddy. By not keeping the allotted government paddy in the rice mills and committing embezzlement of the same, they have caused loss to the government revenue and defrauded the government. Against whom, appropriate legal action should be taken. Sd Gourav, Inspector Gaurav Food and Supplies Department Jundla 11.10.2022, 9466300089, Sd

Sandeep Sub Inspector Sandeep Kumar Food and Supplies Department Jundla 9416581403, Sd Sher Singh SI Sub Inspector Office of Chief Minister Flying Squad Karnal dated 11.10.2022. Police Proceedings: Today I ASI alongwith HC Manoj Kumar is present in the Police Post Jundla that SI Sher Singh, office of Chief Minister Flying Squad, Karnal came present in the police station and furnished a written application to myself ASI. That on the transcript of the application, prima facie offence under Section 409, 420, 467, 471, 468, 120B IPC is made out, whereupon, the statement has been forwarded to the police station by hand of HC Manoj No. 494 for registration of case. Case number be notified after registration of case. Special report of the present case be forwarded to senior officials. I ASI is engaged in the investigation proceedings at the spot. Today Police Post Jundla Sd Rajnish Kumar ASI PP Jundla dt. 11.10.22 at 9:35 PM. Presently, it is on record in the police station that I SI Balinder Singh is present in the police station that on the receipt of the above-mentioned document prepared by ASI Rajnish through HC Manoj No. 494 in the police station, case number 966 dated 11.10.2022 under Section 409, 420, 467, 471, 468, 120B IPC has been registered at the Police Station Sadar Karnal and the copy of case file alongwith original document is being forwarded to the Investigating Officer through the upcoming employee. Special report of the case is being forwarded to the llaga Magistrate and senior officials vide email."

5. The learned counsel for the petitioners contend that the petitioner were not named as accused in the FIR and the allegations are primarily against the rice mill owners/firm. In fact, the petitioners were part of the team which had inspected the premises of the Firm with other persons/officials. The firm had been registered in the year 2002. The

allegations that the gate-passes had been issued for scooters/motor cycles and not trucks in connivance with the petitioners is incorrect. In fact, the petitioners were posted as Inspector and Sub Inspector respectively with the Food and Supplies Department. The details of the vehicles were to be fed into the system at the level of the DFSC Controller at Karnal which information had been fed by the miller. The gate-pass was generated in the said office including the details of the vehicle. The gate-pass was only to be printed/issued at the level of the Inspector. Therefore, the question of the petitioners issuing fake gate-passes does not arise. After the registration of the FIR against the mill owners/firm, the owners/firm had immediately approached the Civil Court by way of filing a suit for mandatory injunction. Alongwith the said suit, the plaintiffs had also filed an application for appointment of a local commissioner for the purposes of determining and assisting the Court about the controversy and the short-fall in paddy, if any. A local commissioner had been appointed by the Civil Court and on being satisfied that there was no short-fall, the Civil Court had granted interim injunction to the millers upon being satisfied that the paddy was stored safely. Thus, it was evident that there was absolutely no embezzlement by the accused much less any role being played by the petitioners. In fact, in the departmental proceedings, the petitioners had been exonerated. As two of the co-accused, namely, Ishwar Dayal and Pawan Chopra had been arrested and had been granted the concession of regular bail and two co-accused, namely, Dheeraj Singla and Bhagwan Dass Singla had been granted the concession of anticipatory bail. The petitioners were entitled to the similar relief as no case for their custodial interrogation was made out.

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6. The learned counsel for the State while referring to the replies dated 03.10.2023 (in CRM-M-46926-2023) and 12.10.2023 (in CRM-M-48041-2023) contends that the allegations against the petitioners are extremely serious. In fact, more paddy was shown to have been brought into the Mandi using transport vehicles which were subsequently found to be scooters/motor cycles. The said paddy was then supposedly despatched to the mills once again purportedly through transport vehicles such as trucks but the vehicle numbers corresponded to two-wheelers. Though, the gate-passes were issued undoubtedly at the level of the DFSC, Karnal based on fictitious transport vehicles but the petitioners were supposed to physically verify the vehicles carrying paddy into the Mandi and thereafter, being despatched to the millers for milling. For obvious reasons on account of illegal gratification being paid, less paddy was despatched to the mills though the mills in question received remuneration from the Government for milling based on the total amount of paddy actually supposed to have been supplied. The statements of some of the truck drivers who were supposed to have transported paddy from Jundla Grain Market to the mills have been recorded under Section 161 Cr.P.C. wherein they have clearly stated that their vehicles had never been used for the transport of the paddy to any rice mills and their vehicle numbers had been fraudulently used by the accused. As regards the report of the local commissioner arising out of the civil proceedings, it could be pointed out that the physical verification leading to the registration of the FIR took place on 11.10.2022 on which date the FIR came to be registered. The civil suit for mandatory injunction was filed on 29.11.2022 after which the local commissioner was appointed. In fact, it is

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lower price had been brought to the premises adjoining the mill to show that there was no short-fall. The petitioner-Gaurav Arora (in CRM-M-46926-2023) had signed the spot memo alongwith Ishwar Dayal- partner of the firm (main accused). As per the record, there was clearly a short-fall of paddy amounting to 17588.03 quintals. At the time when the physical verification took place, Ishwar Dayal and the petitioners could very well have pointed out that the paddy was lying in the adjoining mill. Therefore, it was apparent that the short-fall in the paddy/rice had been attempted to be made up later using sub-standard paddy/rice so as to obtain benefit in the present criminal proceedings. It has also been argued that the very nature of the offence was such that without the active complicity of the petitioners, the offence could not have been carried out and be given effect to. As the case was *prima facie* established against the petitioners and in order to unearth the entire conspiracy alongwith the names of the other accused, the custodial interrogation of the petitioners was certainly necessary and therefore, they were not entitled to the grant of pre-arrest bail.

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

8. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already

been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline***

custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. In the present case, the bogus procurement of paddy was done on the basis of fake registration in the portal “*Meri Fasal Mera Byora (MFMB)*”. Fake entry gate-passes of non-existent paddy in the names of farmers wrongly registered on the portal were issued in the name of commission agents of Grain Market, Jundla and while showing fake entries in the Register ‘H’ and on the basis of fake I-Form and J-Form, bogus procurement was shown on record of non-existent paddy which was then allotted to the three rice mills. Thereafter, out-going passes of the said paddy were also generated by giving registration numbers of vehicles including two-wheelers and cars on which the paddy could not have been transported. Certain truck drivers the registration number of who’s trucks which had been mentioned on the gate-passes also stated that they had never transported paddy from the Mandi to the rice mills. On the basis of such fake out-going passes, the bogus procured paddy was shown to have been transported from the Mandi to the three rice mills who being participants in the criminal conspiracy received the non-existent bogus procured paddy in their record. The mill owners then received payment from the Government on the basis of the paddy supposed to have been allotted to them. The short-fall in the post-milling was made up by purchasing sub-standard rice at cheaper rate from Bihar and other States. The petitioners who were the Inspector and Sub Inspector in the Food and Supply Department were then posted at Jundla and are active participants in the operation. The bogus procurement of the paddy

issued without the active complicity of the petitioners who are stated to have received illegal gratification as per the disclosure statement of co-accused Ishwar Dayal. In fact, the very nature of the allegations are such that without the active complicity of the petitioners, the offence could not have been committed. As regards the appointment of the local commissioner and his finding of there being no short-fall in the paddy, it may be pointed out that the FIR was recorded on 11.10.2022 and the local commissioner came to be appointed much later and it is apparent that the short-fall was covered up by bringing cheaper paddy from outside the State of Haryana. Had there been no short-fall at the first instance, Ishwar Dayal and the petitioner-Gaurav Arora (in CRM-M-46926-2023) and others would not have signed the spot memo showing the short-fall.

10. The co-accused of the petitioners, namely, Dheeraj Singla and Bhagwan Dass Singla, who have been granted anticipatory bail were not actively participating in the running of the business of the company/firm as it was being managed by Ishwar Dayal. The other two co-accused, namely, Ishwar Dayal and Pawan Chopra were arrested and granted the concession of regular bail. Therefore, the case of the petitioners is entirely on a different footing. As the offence stands *prima facie* established against the petitioners, therefore, in order to unearth the entire conspiracy alongwith the names of the other accused the custodial interrogation of the petitioners is certainly necessary to take the investigation to its logical conclusion.

11. In view of the above discussion, I do not find any merit in the these petitions and the same stand dismissed.

12. However, the observations made hereinabove are only for the

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to adjudicate upon the matter on the basis of the evidence lead before it
uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

November 30, 2023
sukhpreet

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