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

CRM-M-53015-2023
Reserved on: 14.12.2023
Pronounced on : 19.12.2023

Hargulal ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Rajat Gautam, Addl. AG, Haryana.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0021	05.09.2023	ACB, Faridabad, District Anti Corruption Bureau, Haryana	120-B, 166, 167, 201, 218, 406, 409, 420 IPC and Sections 13(2), 13(1)(a), 7 of Prevention of Corruption Act 1988

1. The petitioner, who was posted as Audit Officer in Municipal Corporation, Faridabad, apprehending arrest in approving bills on which Contractor Satbir in connivance with other officials got money, based on which Satbir got undue benefits, had come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 04.10.2023.

2. Vide order dated 18.10.2023, the petitioner was granted interim bail, subject to declaration of assets and the said order is continuing till date. On 14.11.2023, petitioner's counsel submits that they had voluntarily complied with the order dated 18.10.2023 and declared all their assets.

3. Facts of the case are being extracted from para Nos.2 to 5 of the reply of DySP, Anti Corruption Bureau, Faridabad Range, Faridabad, dated 07.11.2023, which reads as follows:-

> *"The allegations in brief as contained in the FIR are that the Petitioner and co-accused by committing the offence of Criminal Misconduct and other offences under the Indian Penal Code as indicated in para 1 above, awarded a tender to contractor Satbir Singh for installation of 590 iron grills in the divider road from crematorium, Ballabgarh to Tigaon chowk*

bye pass by deliberately splitting the work in parts to keep the tender amount below Rs. I crore so as to avoid seeking of approval of the Urban Local Body Department(HQ) Haryana, Chandigarh. It is further alleged that such 6 works which were awarded to the contractor Shri Satbir Singh was of the total value of Rs. 27,52,000/- (447000+460000+530000+ 440000+442000+433000) (details of six works) which were dishonestly and with an ulterior motive of causing wrongful gain to themselves and the contractor were enhanced and revised to Rs. 5,80,47,574/- (9917905+9991325+9311949+9678988+ 9718103+9429304) without actually getting any work executed and thus cheated and caused corresponding wrongful loss to the Govt. exchequer.

3. That it was further revealed that during enquiry conducted by the Executive Engineer, Ballabgarh Zone, Municipal Corporation Faridabad vide his letter no. 86 dated 21.01.2022 had informed this office that as per record of Ballabgarh Zone for the year 2015, one work order no. MCF/EE-IV/2015/424 dated 11.09.2015 was issued for RMC. Divider and Grill on Tigaon road. No other work order has been issued for fixing of iron grill on Crematorium, Ballabgarh to Tigaon Chowk, Bye Pass Road and it has also came in to the notice during the investigation that the works which were decided to be done by way of preparing fake orders, had already been completed earlier vide work order no. 424 dated 11.09.2015, thus the accused in connivance with the other co-accused has committed fraud by getting prepared the fake work orders in 2018 for the work which had already been done earlier in 2015. Copy of the letter/work order of the Executive Engineer(B), Municipal Corporation Faridabad is attached as Anenxure R-1.

4/ That it was further revealed that the entry of all the 6 bills in MW -14 have been made by Shri Rajendra Kumar Clerk Accounts Branch (now retired) and noting sheet for payment of related bills has been found to be prepared by Shri Naveen Kumar Clerk Accounts Branch, Municipal Corporation, Faridabad. The bills were checked by Mr. Vinod Kumar. Superintendent Budget, Accounts Wing and Mr. Vishal Kaushik OIA (Officer Incharge of Account). It is also revealed in the enquiry conducted that Sh Satish Kumar Accounts Officer had proposed for the release of the payments to the contactor Satbir Singh. It was revealed that the bills were sent to the audit branch, Municipal Corporation, Faridabad for pre-audit by Mr. Vishal Kaushik OIA (Officer In-charge of Accounts). After that pre audit was done by Shri Naveen Kumar Senior Auditor and Shri Hargulal Audit Officer, Municipal Corporation, Faridabad. The bills were again sent to Accounts Branch for payment. It would be pertinent to mention here also that at that time Shri Deepak Thapar was working as Joint Director, Audit in Municipal Corporation Faridabad but it has been revealed that Mr Hargulal, Audit Officer had put his signature under the seal of Joint Director, citing the Joint Director as 'On Leave'. The Copy of the same are attached as Annexure R-II to R-V respectively.

The Enquiry officer, during the course of enquiry, had issued a notice for the attendance of the Petitioner and the Petitioner joined the enquiry on dated 02.03.2022 but again to say that he tried to impose the fault only on the Engineering Branch and Account Branch of the Municipal Corporation. But he also accepted the actual fact that the work is uploaded on M.W.Portal of the Corporation and after checking of the same Audit is done by the Auditors, which clearly show the involvement of the Petitioner in committing the offence with the other co-accused"

4. Petitioner’s counsel submits that petitioner was only Audit Officer and his role was to ensure that extra money is not claimed and had to verify the bills. It was never his role to go to the spot to verify the work that whether it was actually done or not. Petitioner’s counsel further submits that it was the job of concerned Engineer to verify the work at the spot and in case there is any defect at the end of contractor, he has to report and petitioner cannot be blamed for such lapses.

5. Counsel for the State submits that petitioner being a responsible officer, he was supposed to know that work has been done or not. He further submits that file qua work done is uploaded on MW Portal and the audit is done by the Auditor only after checking the same. Despite that the petitioner proposed the release of amount.

6. It remains undisputed that audit was done by one Shri Naveen Kumar and Hargulal-Audit Officer Municipal Corporation, Faridabad. It also remains undisputed that initially the entries in the bills were made by Accounts Branch. Subsequently, bills were checked by Vinod Kumar, Superintendent, Budget, Accounts Wing and Mr. Vishal Kaushik, Officer Incharge of the Account. After that, Satish Kumar, Accounts Officer had proposedfor the release of payments to the contractor Satbir Singh. Subsequently, bills were sent to the Audit Branch, Municipal Corporation, Faridabad, for pre-audit, where the petitioner was posted as Audit Officer and he along with one Naveen Kumar, Senior Auditor, conducted audit. Once they had done the audit, it was sent to Joint Director, Audit, who had also approved the same.

7. Given above, petitioner’s case is on different footing from the contractor and the engineers who were supposed to verify the work at the spot. Further the role of auditor is to examine accounting records to prepare financial statements and to evaluate statements prepared by others as such. There is no allegation that there was any tampering or cutting in the bills or excess amount was released. Consequently, it is not a case of any custodial interrogation and pre-trial incarceration is not required, as such, the petitioner is entitled to bail.

8. Given above, petition is allowed and interim order dated 18.10.2023 is made absolute. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.12.2023
anju rani
Whether speaking/reasoned: Yes
Whether reportable: No.