

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRM-M-1961-2024
Date of Decision: 01.02.2024

Avtar Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amaninder Preet, Advocate for the petitioner.

Mr. Digvijay Nagpal, A.A.G, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
26	13.09.2023	Vigilance Bureau FS-1, Punjab, District SAS Nagar (Mohali)	13(1) (a) read with Section 13(2) of PC Act and 120 IPC

1. Apprehending arrest in the FIR captioned above, the petitioner, who was posted as an XEN, has come up before this Court, by filing the present petition under Section 438 Cr.P.C.
2. Vide order dated 15.01.2024, this Court had granted interim bail. Thereafter, vide order dated 24.01.2024, this Court had extended the interim bail when the petitioner had voluntarily agreed to declare his assets.
3. Today counsel for the petitioner submits that he has complied with the said order and has voluntarily given affidavits to the State counsel. He further submits that he would not claim such declaration as self incrimination, violation of Article 20/21 of Constitution of India or any other fundamental right/law.
4. State counsel does not dispute the said fact.

5. The facts of the case are being taken from paragraph No.3 of the reply dated 22.01.2024 filed by the concerned Deputy Superintendent of Police, which reads as under:

3. *That the brief facts of the case are reproduced below for the kind perusal of this Hon'ble Court:*

The inquiry qua complaint No. 172/2019 Jalandhar was conducted by Sh. Iqbal Singh, Deputy Superintendent of Police, EO Wing, Punjab, SAS Nagar (now retired). On the basis of the above said inquiry report and after obtaining approval from PSPCL. Department, the above mentioned FIR was registered. In this case work order No. 04 C/E/N/D.S. dated 25.06.2010 was issued by the Chief Engineer (North Zone) Jalandhar. This work order was allotted to M/s Vindhya Telecom, New Delhi. As per the conditions of this work order, electricity meters installed inside domestic/commercial consumers falling in Divisions, Sub Divisions in Hoshiarpur Circle had to be shifted outside on poles/pillar boxes and for the same supply, erection, testing, commissioning of the required material was to be done on Turn Key basis and for the same an agreement was made by Chief Engineer (North Zone) DS Jalandhar. In this case, due to negligence of the officials of PSPCL, Hoshiarpur and the senior officers of PSPCL, M/s Vindhya Tele Links received excess payments out of bills qua supply of material. According the work order, there were only 01 to 19 material supply RAB bills presented by the contractor. The said work was started on 25.06.2010 and completed on 30.06.2013.

6. Counsel for the petitioner seeks bail on the grounds that the incident is old and even the complaint was filed in the year 2019, whereas, the work in question had started on 25.06.2010 and had completed on 30.06.2013.

7. State opposes the bail by referring to paragraph 4 of the reply which reads as follows:

The petitioner Avtar Singh was posted as Senior Executive Engineer in Sub Division Bhogpur, District Hoshiarpur from 11.12.2009 to 27.10.2010 and from

14.11.2011 to 30.06.2013. The petitioner had, during this period, verified RAB Bill No. 13 for supply of material in relation to work order No. 04 C/E/N/D.S dated 25.06.2010. As per clause 4.2 of the work order, at the time of verifying the bill, it had to be ensured that whether or not the contractor has utilized 80% material out of the earlier material brought to the site by him for which he had received 85% of the payment and for this purpose a certificate has to be issued by the concerned officials and only thereafter the bill can be cleared and amount released to the contractor. It is pertinent to mention here that the petitioner had not ensured before verify/sign RAB bill no 13. without there being the above mentioned certificate. Had there been certificates which had been verified by all the ASEs/Sr. XENs of the Divisions as as per Clause 4.2 of the work order, and checked at the concerned offices, the correct data regarding the used as well as unused material would have been obtained and as a result the contractor would not have received excess payment against the material. As per clause 4.1 of the work order, the fact regarding unused material being not more than 30% was not also verified by the petitioner due to which the company received excess payment. It is pertinent to mention here that none of the employees of PSPCL, including the petitioner, made any efforts to take proper custody of the unused material in a PSPCL store due to which the contractor company managed to part with the unused material despite getting paid for the same by PSPCL.

ii. That after adjusting the amount by PSPCL, an amount of Rs. 60,06,445/- was paid to the company out of total amount (Gross Amount 85%) of Rs. 69,20,612/- in relation to RAB Bill No. 13. The petitioner did not verify whether or not the un-erected material was or was not within 30% cap which is the requirement of clause 4.1 of the work order as per which payment is made to the company. Due to this reason the company received excess amount.

iii. That it is further relevant to mention here that instead of Senior XEN Tech, Powercom, Hoshiarpur, the RAB Bill No. 13 was verified by the petitioner. After being verified by the petitioner, bogus certificates were issued by Senior Executive Engineer PSPCL, Mukerian Division.

iv. As per clause 4.1, 4.2, and 4.5.1 of the work order, certificate qua 80% material erected in Divisions of Hoshiarpur Circle had to be issued by the concerned official of the Division after taking measurements but the same was not issued by the concerned official. However, the petitioner verified the RAB Bill No. 13.

8. An analysis of the arguments suggest that the petitioner had not ensured before verifying bill No.13 that it did not contain the certificate. If there had been no mistake, then the further excess payment would not have been made. Although, the petitioner did not verify whether or not unerected material was within 30 % cap which was the requirement of Clause 4.1 of Work Order and for that reason excess payment was made and such payment would not be a ground to send him for pre-trial incarceration. Further, the petitioner has demonstrated his honesty by voluntarily declaring his assets. It shall be open for the investigator and State to verify his assets.

9. Given above, the present petition is allowed and interim order dated 15.01.2024 is made absolute. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

01.02.2024
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.