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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5495-2024

Date of Decision: May 06, 2024

KARTIK

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.
Mr. Rajiv Sidhu, DAG, Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of pre-arrest bail in case FIR No. 191, dated 09.07.2021, under Sections 406 & 420 of IPC, registered at Police Station Chhapar, District Yamuna Nagar, wherein the allegation levelled against the petitioner is of having mis-appropriated around 2000 metric tons of rice against the paddy delivered to him for the milling purposes.

2. Learned counsel for the petitioner submits that the present is a simple case of civil dispute about not returning the complete quantity of rice after milling of the paddy and in this regard, in pursuance of an arbitration clause that is there in the agreement entered into between the parties and the proceedings regarding appointment of Arbitrator have already commenced at the instance of petitioner; thus, no case of misappropriation being made out against the petitioner at this stage, he deserves the concession of pre-arrest bail.

Learned counsel for the petitioner also submits that though the FIR in hand was registered way back on 09.07.2021, however, so

far not even a single notice under Section 41-A of Cr.P.C. has ever been served upon the petitioner, which clearly reflects that his arrest was not required by the Investigating Agency. He further submits that the registration of FIR cannot be used as tool to effect recoveries from the petitioner. He also points out that mere non return of part of rice after milling of the paddy nowhere reflects that right from the inception i.e. date of execution of agreement dated 09.10.2020, there was any intention of fraud or cheating on the part of the petitioner. In support, learned counsel places reliance upon the following case laws:-

- (1) Judgment dated 30.11.2023 passed by this Court in CRM-M-57841-2023, titled "Dharampal Jain and another Versus State of Haryana";
- (2) Judgment of Hon'ble Apex Court in case "Kailash Verma Versus Punjab State Civil Supplies Corporation and another", 2005 (1) RCR (Criminal) 727;
- (3) Judgment dated 01.09.2006 passed by this Court in CRM-M-56477-2005, titled "Davinder Singh and Jaspal Singh Versus State of Punjab".

3. On the other hand, learned State Counsel vehemently opposes the prayer made on behalf of the petitioner, while submitting that there has been a clear-cut misappropriation of paddy on the part of petitioner by not having supplied the requisite quantity of rice to the complainant-Department and that too for no valid reasons expressed by the petitioner. He further submits that the invocation of arbitration clause under agreement would only pertain to the adjudication of civil rights between the parties without affecting the remedy available to the complainant under criminal law, so as to invoke proceedings regarding the cheating and fraud committed by the petitioner in addition to the misappropriation of paddy delivered by the complainant.

4. After hearing learned counsel for the parties and gone through the paper-book/relevant record, I am unable to find any

substance in the submissions made on behalf of the petitioner.

5. In the present case, 5380.88 metric tons of paddy was delivered by the complainant-public authority to the petitioner for milling purposes in the month of October 2020 under an agreement dated 09.10.2020 (Annexure R-1). As per terms thereof, after milling the paddy, 3605.19 metric tons rice was to be delivered by the petitioner to the complainant till 30.04.2021. The petitioner started supplying rice to the complainant on 26.11.2020 and delivered 1595 metric tons of rice till 26.02.2021, thereby creating a shortage of around 2000 metric tons of rice having mis-appropriated the same; forcing the complainant to approach the police authorities for the purpose of registration of FIR in hand. There has been a clear-cut fraud and cheating on the part of petitioner having mis-appropriated huge amount of paddy/rice, which was required to be delivered to the complainant under the agreement dated 09.10.2020 thereby causing huge financial loss to it of around Rs.7,43,00,000/-.

6. In the humble opinion of this Court, no merit can be found on behalf of the petitioner that once, the arbitration clause, available under the agreement was invoked, the registration of FIR at the hands of complainant was misuse of process of law. Undoubtedly, every case of fraud and cheating involves some kind of civil element involved therein though the same never bars the invocation of criminal remedies which are parallelly available under law. Even as per the terms of the agreement entered into between the parties, mere availability of remedies under the Arbitration and Conciliation Act, 1996 have not been made a bar for initiating proceeding qua fraud, theft or

misappropriation committed on behalf of the petitioner. Relevant portion from Clause-24 thereof (at page-53 of the paper-book) is extracted hereunder:-

“Subject as aforesaid, the Arbitration and Conciliation Act, 1996, shall apply to the arbitration provided under this clause. However, the cases of fraud, theft or misappropriation etc. on the part of Second party are not covered under this clause and in such cases legal proceedings as deemed fit will be initiated by the First party against the Second party as well as against the sureties.”

7. Moreover, the FIR in hand cannot by any stretch of imagination be termed to be as pressurizing tactics in order to effect recovery as the said remedy is statutorily available to the complainant, in addition to the terms of agreement between the parties. Furthermore, in the given facts and circumstances, wherein the petitioner having supplied with the huge quantity of 5380.88 metric tons of paddy under the agreement dated 09.10.2020, failed to return 2010.19 metric tons of rice and that too for no valid or justified reason at all thereby, resulting into loss of Rs. 7,43,00,000/- to the complainant-public authority, his custodial interrogation would be essential in order to carry out fair investigation and the pre-arrest bail at this stage to him would definitely encourage his dishonest intention.

8. Thus, for the reasons recorded hereinabove, the petitioner being not entitled for grant of discretionary relief of pre-arrest bail, resultantly, the present petition is dismissed being devoid of merits

9. Pending miscellaneous applications), if any, shall also stand disposed of.

06.05.2024

(HARKESH MANUJA)
JUDGE

Tejwinder

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No