2024:PHHC:099275

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211-4 cases

CRM-M-20634-2024
Date of decision: 01.08.2024

Pramod Kumar

....Petitioner

V/s

Central Bureau of Investigation

....Respondent

CRM-M-28987-2024

Malkit Singh @ Malkiat Singh

....Petitioner

V/s

Central Bureau of Investigation

....Respondent

CRM-M-28964-2024

Chhittar Mal Saini

....Petitioner

V/s

Central Bureau of Investigation

....Respondent

CRM-M-28212-2024

Gaurav Kumar and another

....Petitioners

V/s

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR. JUSTICE MANJARI NEHRU KAUL

Present: Mr.Jagpal Singh, Advocate
for the petitioner in CRM-M-20634- 2024.

Mr. Sushil K. Sharma, Advocate for the
petitioners in CRM-M-28212-2024.

Mr. J.S. Ghumman, Advocate for the petitioner(s)
in CRM-M-28964-2024 and CRM-M-28987-2024.

Mr. Gagandeep Singh Wasu, Spl.Public Prosecutor
for the respondent-CBI in CRM-M-20634-2024 .

Mr. Ravi Kamal Gupta, Standing counsel for CBI,
for the respondent-CBI in CRM-M-28212-2024,
CRM-M-28964-2024 and CRM-M-28987-2024.

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MANJARI NEHRU KAUL, J. (ORAL)

1. This order shall dispose of four petitions bearing CRM-M-Nos.20634, 28212, 28964 and 28987 of 2024 as they have arisen out of the same FIR.

2. The petitioners are seeking the concession of bail under Section 438 of the Cr.P.C. in case FIR No.RC0052020A0011 dated 08.07.2020 under Sections 420, 406, 409, 120-B of the IPC and Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station ACB, Chandigarh.

3. **CRM-M-20634-2024-Pramod Kumar**

Learned counsel for the petitioner has vehemently contended that he has been falsely implicated in the present case and has been made a scapegoat to allow the true culprits to escape unpunished. It has been asserted that the petitioner was the State Head of M/s Star Agri, a Company which was providing collateral management and warehousing services to its clients, including Punjab National Bank (for short 'PNB'). Golden Agrarian Private Limited (for short 'GAPL'), had availed of a credit facility from the PNB against storage receipts for paddy and rice. Under this arrangement, funding was secured from PNB for various types of paddy and rice with Amyra Foods Pvt. Limited (AFPL) standing as its guarantors. These stocks were documented as being deposited in the warehouses of M/s Star Agri under the name of the borrowers, GAPL, and corresponding receipts were issued by the accused-Company, allowing the borrowers to obtain loans.

4. It was further argued that the terms stipulated that the stocks could only be released upon the repayment of the loan to the PNB. However, the Directors of GAPL had repeatedly obtained release orders from the PNB without fulfilling its condition. The petitioner was notified by the PNB that the account of GAPL has been classified as Non Performing Asset (for short 'NPA') and that there were suspicions of discrepancies in the pledged stocks. Upon receiving this information, the petitioner visited the site and discovered that the Directors of GAPL, in collusion with other employees of M/s Star Agri had managed to release a significant portion of the pledged stocks without repaying the loan, and without obtaining the required release order from the PNB. In the wake of the seriousness of the situation, the petitioner promptly filed a complaint on 07.09.2018 with the officer incharge of Police Station Lambi, Sri Muktsar Sahib. However, in an attempt to protect the actual culprits-namely, bank employees whose involvement was essential for the release of the stocks-the petitioner was instead falsely involved in the present case. Learned counsel submits that being the State Head, the petitioner was overseeing 200 such warehouses across the State, and thus, it would not have been possible for him to conduct physical verification at each and every site. It has also been argued that in addition, the

CBI had lodged the present FIR on the same cause of action as the FIR registered by the petitioner, which is a blatant abuse of the legal process.

5. A prayer has, therefore, been made by the learned counsel that since the petitioner has consistently cooperated with the investigation whenever required and, as a result, was never arrested by the Investigating Agency coupled with the fact that the entire case of the prosecution hinges on documentary evidence, he be extended the concession of anticipatory bail as the investigation is now complete.

6. Learned standing counsel for the CBI, while opposing the prayer and submissions made by counsel opposite, has contended that the petitioner, while serving as the State Head of M/s Star Agri, actively colluded with the Directors of GAPL to dispose of a substantial portion of the pledged stocks, which was the basis for the loan obtained from the PNB. It has been asserted by the standing counsel that the petitioner was responsible for conducting periodic inspections and audits of the CC-WHR stocks against which Storage Receipts (SRs) were issued. However, the petitioner issued false CIS reports, leading to the issuance of fraudulent SRs without there being in existence underlying stocks or commodities.

7. Learned standing counsel for the CBI has further submitted that the petitioner despite holding the position of State Head of M/s Star Agri deliberately failed to appoint security personnel as per the warehouse guidelines of M/s Star Agri and, thus, after entering into a criminal conspiracy with the other co-accused allowed the Directors of GAPL and AFPL access of the

warehouses and fraudulently disposed of the hypothecated and WHR stocks, thereby causing huge financial losses to the PNB amounting to more than Rs.48 crores. The CBI has also drawn the attention of this Court to the statement of co-accused Ram Kumar, Supervisor-cum-Watchman of warehouse of M/s Star Agri, recorded under Section 164 of Cr.P.C., wherein the role played by the petitioner in the crime in question stands detailed, including the false entries in the stock registers made by Ram Kumar, at the instance of none other than the petitioner.

8. Learned standing counsel for CBI while further vehemently controverting the submissions made by the learned counsel for the petitioner qua the petitioner being made a scapegoat in the present case has submitted that no doubt a complaint had indeed been made by him to the local police, however, it was only done to fabricate defence in his favour as it had come to the notice of the PNB that a fraud had been played with it, and the PNB had declared the account of GAPL as NPA, and had also sent a communication in the said regard to the petitioner to conduct physical verification of the stocks. It has been asserted by learned Standing counsel for CBI that it was only thereafter, the petitioner, for reasons but obvious, lodged an FIR with the Punjab Police to save his skin, but eventually his active complicity in the fraud was unearthed by the State police leading to his nomination as an accused in the FIR registered by he, himself.

CRM-M-28987-2024-Malkiat Singh

9. It has been asserted that Golden Agrarian Private Limited (hereinafter referred to as 'GAPL') was never in actual custody of the stocks as it was under the physical control of M/s Star Agri which was responsible for ensuring its safe custody. Upon receiving the commodities from GAPL, M/s Star Agri, acting as the agent of the bank retained possession of the stocks, making the bank, through M/s Star Agri, the effective custodian of the commodities until its release.

10. Learned counsel has further submitted that the Branch Head of the Bank was responsible for physically verifying the stocks under Ware House Receipts (WHR). Additionally, the State Head of M/s Star Agri had been conducting periodic physical verifications of the stocks and also issuing corresponding receipts to the PNB. Consequently, the petitioner had no role in either maintaining or verifying the physical custody of the stocks.

11. Learned counsel for the petitioner submits that the false implication of the petitioner-Malkit Singh @ Malkiat Singh is evident from the fact that on the basis of same cause of action, and identical allegations, three separate FIRs have been lodged against the petitioner. Pertinently in one of these FIRs, the directors of the guarantor company (AFPL) had approached this Court and the said FIR had been quashed by a Division Bench of this Court vide order dated 27.05.2024 in CWP-34277-2019, on the ground that the bank had not adhered to the principles of natural justice while declaring their bank account as fraudulent, and consequently the proceedings arising therefrom including the FIR stood

vitiated. It has been further submitted that in this regard even the petitioner has approached this Court for quashing of the FIR which is pending before a Division Bench of this Court. Furthermore, the petitioner had duly cooperated with investigating agency as and when required and his custodial interrogation was never sought by the investigating agency throughout the investigation.

12. Learned Standing counsel for the CBI, while vehemently opposing the prayer and submissions made by learned counsel for the petitioner, has submitted that the petitioner, as one of the Directors of GAPL, masterminded the entire fraud by disposing of the hypothecated and WHR stocks in collusion with M/s Star Agri, resulting in losses to PNB amounting to more than Rs.48 crores. It has been further asserted that the petitioner, being at the helm of affairs as Director of GAPL, had facilitated procurement of the credit facilities from the PNB through an application moved by him. Furthermore, he was the authorized signatory for GAPL and had executed all the relevant documents including personal and corporate guarantees, in pursuit of the credit facilities.

13. Learned standing counsel for the CBI has, thus, argued that the petitioner, by conspiring with the other co-accused, cheated the PNB by disposing of the hypothecated stocks, failing to deposit the sale proceeds with the PNB, and creating false invoices and Goods Receipts (GR). Furthermore, although the stocks were in the custody of M/s Star Agri, the Warehouse Supervisor-cum-Watchman accused Ram Kumar, in his

statement recorded under Section 164 of Cr.P.C. detailed the role of the petitioner in the crime in question by categorically stating that the petitioner and the other Directors of the Company had been given access to the hypothecated stocks by handing over the keys to them, under the directions of accused Pramod Kumar who was the State Head of M/s Star Agri. In support, learned counsel has drawn the attention of this Court to the Statement of Ram Kumar recorded under Section 164 of Cr.P.C.

CRM-M-28964-2024-Chhittarmal

14. Mr. J.S. Ghumman, Advocate, for the petitioner-Chittar Mal submits that the petitioner has been summoned to stand trial vide summoning order dated 09.01.2024. The petitioner is an employee of M/s Golden Agrarian Pvt. Ltd. (GAPL), and was working in the capacity of an Accountant; his role was limited to recording transactions in the ledger book based on the data provided by his employers. These entries as per the learned counsel were subsequently handed over to the Chartered Accountant of the Company, who was responsible for filing the returns. Learned counsel has further argued that as per the final report presented by the CBI allegedly there were some discrepancies between the audit balance-sheet dated 31.03.2015, submitted to the Income Tax Department, and the provisional balance sheet dated 30.09.2015, submitted to the Bank. However, it has been asserted by the learned counsel that these discrepancies cannot be attributed to the petitioner, as his responsibilities were only limited to recording transactions; whereas the audit reports had

been prepared by the Chartered Accountants who have since been extended the concession of anticipatory bail by this Court. Learned counsel has further emphasized that the entire case of the prosecution hinges on documentary evidence which is already in the possession of the CBI leaving nothing to be recovered from the petitioner. With the investigation complete and no risk of any tampering with the evidence, the petitioner, therefore, deserves to be extended the concession of anticipatory bail.

15. Learned standing counsel for the CBI, on the other hand, has prayed for dismissal of the instant petition by arguing that the petitioner was an active participant in a huge fraud orchestrated by the Directors of GAPL, which had caused catastrophic losses to the PNB amounting to more than Rs.48 crores. GAPL in collusion with M/s Star Agri , dishonestly and fraudulently disposed of hypothecated and WHR stocks and thereafter, diverted the funds. Still further, as an accountant of GAPL, the petitioner prepared the trial balance and other financial documents presented to the PNB, and for other related purposes. The petitioner was also responsible for maintaining accounts, and it was in fact, the petitioner who had provided all the information to the Chartered Accountants. Still further, the petitioner prepared and submitted stock statements pertaining to hypothecated stocks to the PNB under his own signatures. Learned standing counsel for CBI has further contended that not only this, the petitioner also submitted cash deposit vouchers and fictitious cash deposits. Furthermore,

the petitioner manipulated credit entries to misrepresent the GAPL financial health to the PNB as a result of which the drawing powers of the Company were enhanced. In addition, the petitioner also manipulated entries regarding unsecured loans and sundry creditors, leading to discrepancies between the audit report and the income tax reports. It was therefore, vehemently argued by the learned standing counsel for CBI that these stock statements and the fraudulent entries signed and submitted by the petitioner, evidenced his active involvement in the huge fraud perpetrated upon the PNB.

CRM-M-28212-2024-Gaurav and Akhilesh

16. Learned counsel for the petitioners-Gaurav & Akhilesh Yadav submits that false implication of the petitioners is evident from the fact that their names do not appear in the FIR No.RC0052020A0011. It has been submitted that it was during investigation, the petitioners were falsely implicated in the present case. Learned counsel has argued that although the petitioners were employed by M/s Star Agri for supervision of the stocks, audit was conducted by some other persons including co-accused Mahesh Chandra Rathore and other auditors who visited the site and carried out a physical verification of the alleged stocks. It has been further submitted that during the period the petitioners were engaged with the Company they had submitted only one report in the year 2017. Furthermore, this report according to the statement given by Sh. Hira Lal, Senior Manager, Punjab National Bank, was an accurate report, therefore,

no deficiency in service, much less fraud, could be attributed to the petitioners. It has been further submitted that the investigation in the present case is complete and thus, there can be no likelihood of the petitioners tampering with evidence as the entire prosecution case hinges on documentary evidence which is already in the possession of the CBI.

17. Learned standing counsel for the CBI, while opposing the prayer and submissions made by the counsel for the petitioners, has argued that both the petitioners were active participants in the crime in question. As auditors for M/s Star Agri, they colluded with the Directors of GAPL and other officials of M/s Star Agri, to submit false stock audit reports in lieu of financial gains.

18. It has been further submitted by the learned standing counsel for CBI that when the PNB officials inspected the stocks on 06.06.2018, 29.06.2018 and 17.07.2018, they found discrepancies – the stock was missing and did not match the stock statements and the sale proceeds were not deposited in the PNB. This discrepancy, therefore, highlighted the involvement and role played by the petitioners in the crime in question and clearly hinted towards both these petitioners being conspiring with the other co-accused which had resulted in huge financial losses to the PNB.

19. I have heard learned counsel for the parties and perused the relevant material placed on record.

20. When deciding an application for anticipatory bail, especially in cases involving economic, a Court must meticulously evaluate the severity and

potential societal impact of the allegations in the FIR. Additionally, the Court should examine the antecedents of the accused and the likelihood of absconding.

In **Sushila Aggarwal's case (**supra), Hon'ble the Supreme Court underscored the principles governing the grant of anticipatory bail. Hon'ble the Supreme Court highlighted the necessity of evaluating the nature and gravity of the alleged offences, the specific role attributed to the accused and the unique facts of each case, by asserting that the decision must be tailored to the particular circumstances of each case.

Furthermore, in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 Live Law (SC) 577**, the Hon'ble Supreme Court outlined the parameters that Courts should consider when deciding applications for anticipatory bail in cases involving economic offences, observing the following:-

> *"ECONOMIC OFFENSES (CATEGORY D)*
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> *66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:-*
>
> ***Precedents***

***P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791:23.*

*23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. **Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same,** being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.*

***Sanjay Chandra v. CBI** (2012) 1 SCC 40:*

"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to

> *the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."*

Though the petitioners have asserted their entitlement for grant of extraordinary concession of anticipatory bail on account of the investigating agency not seeking their custodial interrogation, however in this regard, it would be relevant to refer to the following observations made by the Hon'ble Supreme Court in **Sumitha Pradeep vs. Arun Kumar C.K. & another, Criminal Appeal No.1834 of 2022:**

> *"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."

21. Turning to the specifics of the present case, the investigation has revealed a criminal conspiracy orchestrated by the borrowers/directors of GAPL, namely Harinderjit, and Malkiat Singh, along with the directors of AFPL, Rajveer and Sukhveer, in collusion with the petitioners, namely, Pramod Kumar, Chhittar Mal Saini, Gaurav Kumar and Akhilesh Yadav, to defraud Punjab National Bank of an amount exceeding ₹ 48,00,00,000. The petitioner, Chhittar Mal, who served as the accountant for GAPL, allegedly submitted fabricated documents to the bank, including fake credit entries, to enhance the company's credit records. This deception was intended to mislead the bank into advancing loans and increasing the firm's drawing powers.

Further allegations suggest that the other petitioners, namely, Pramod Kumar, Gaurav Kumar and Akhilesh Yadav, misused their positions at M/s Star Agri, by playing an active role in the fraudulent disposal of hypothecated stocks under the "CC – WHR" account with Punjab National Bank, Main Bazar Faridkot. They allegedly submitted false, forged, and fabricated documents and circumvented bank procedures and rules. This was corroborated by the statement of co-accused Ram Kumar, recorded under Section 164. Cr.P.C. The petitioners, employees of M/s Star Agri, were entrusted by the PNB to ensure the safe custody of goods hypothecated by the borrowing firms. However, in connivance with the borrowers, they clandestinely disposed of these goods for personal gain without the loan being repaid by GAPL.

Additionally, the Ld. Standing Counsel for CBI has contended that the petitioners are involved in other criminal cases with similar allegations. Given the gravity of the charges and the substantial prima facie evidence suggesting a fraud that resulted in financial losses exceeding ₹ 48,00,00,000 to Punjab National Bank for personal gain, the severity of the offences cannot be overlooked.

Therefore, considering the roles attributed to the petitioners and adopting a prudent and cautious approach, this court finds no grounds to grant bail to the petitioners.

22. Accordingly, the instant petition is dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

23. Photocopy of this order be placed on the files of other connected cases.

(MANJARI NEHRU KAUL)
JUDGE

August 01, 2024
poonam

Whether speaking/reasoned: Yes
Whether reportable: No