(204)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34916-2024
Date of Decision: 04.11.2024

HARPAL SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. APS Deol, Sr. Advocate with
Mr. H.S. Deol, Advocate
for the petitioner.

Mr. A.S. Chaudhary, Addl. A.G., Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 483 BNSS, 2023 is for the grant of regular bail in case bearing FIR No.443 dated 05.12.2021 registered under Sections 409, 420 IPC at Police Station Sadar, Faridabad.

2. The brief facts of the case are that the aforementioned FIR was registered on the complaint of the Assistant Registrar, Co-operative Societies, Fatehabad against Devi Lal, Manager, the Hanspur Primary Agricultural Cooperative Society, Hanspur (PACS Hanspur) and Mukhraj, Retail Sale Centre, Birabadi with the allegations that in the Audit Report of the Hanspur PACS Ltd. Hanspur, embezzlement of Rs.25,51,247/- of fertilizer had been found to have been done by Mukhraj and an embezzlement of Rs.1,93,35,472/- of fertilizer had been found to be done by Devi Lal.

Pursuant to the registration of the FIR, Devi Lal was joined in the investigation and arrested on 27.04.2022. On 28.04.2022, he suffered his disclosure statement stating that he had been appointed in the year 1988 as a Salesman in PACS Hanspur and promoted to the post of Manager on 06.10.2018 in the place of Harpal Singh. He disclosed that he had taken charge on 06.10.2018 from the petitioner and contrary to the rules had purchased material from Mittal Agriculture in the year 2019 without the permission of higher officials. He had made a complaint against the earlier Manager Harpal Singh to the higher officials on account of him (Harpal Singh) not handing over the entire charge to him (Devi Lal). Devi Lal further disclosed that Harpal Singh had committed an embezzlement of Rs.1,32,25,963/- by not giving charge of the goods to him (Devi Lal) despite repeated requests of higher officials. Devi Lal got recovered an amount of Rs.8,000/-

On 07.05.2022, Suresh Kumar, Junior Accountant, Branch Manager, Co-operative Bank, Branch Hanspur produced the inquiry report regarding the embezzlement done by the petitioner. In the said detailed inquiry report it was found that the petitioner had embezzled an amount of Rs.2,20,26,314.52/-. A communication regarding the same had been sent by the Branch Manager (Branch Hanspur) to the SHO, P.S. Fatehabad.

The report under Section 173(2) Cr.P.C. was submitted against the accused as and when they came to be arrested.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. Pursuant to his retirement, he had been issued a No Dues Certificate on 13.02.2020 which would show that he was not responsible for any embezzlement. As per the Special Audit Report, three persons were found to be *prima facie* liable namely, Devi Lal, Mukhraj and Kulwinder Singh and the total stock embezzlement came to approximately Rs.31,80,7591.00. The petitioner was not found to be liable for any embezzlement. As per the report dated 16.12.2020 of the Inspector Cooperative Societies sent to the Assistant Registrar, Cooperative Societies, Fatehabad for Hanspur, PACS, the liability the petitioner was between Rs.16-20 Lakhs and he had already deposited an amount of Rs.16,03,496/- in the Government accounts. Devilal was liable for stock embezzlement to the extent of Rs.1,93,35,472/-, Mukhraj was responsible for an embezzlement of stock worth Rs.25,51,247/- whereas Kulwinder Singh was responsible for the embezzlement of stock to the extent of Rs.24,80,336/-. Thus, the total embezzlement amounted to Rs.2,43,57,317/-. It was only later, on the disclosure statement of Devi Lal that the bulk of the liability had been placed on the petitioner leading to a report dated 10.02.2022 based on an office order dated 04.10.2021 as per which the petitioner was liable for an embezzlement of Rs.2,20,26,314.52 and the said report had been communicated to the SHO, P.S. Fatehabad on 07.05.2022. He contends that the facts and figures mentioned in the inquiry report find mention in the Audit Report as per which the liability of the petitioner was only between

Rs.16-20 lakhs. Even otherwise, as per Service Rules of PACS, the Sale Register and the complete relevant record was to be maintained by the salesman and not the petitioner. As the petitioner had been in custody since 01.05.2024 and none of the 29 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime in the near future and therefore, he was entitled to the concession of bail.

4. On the other hand, the learned State counsel while referring to the reply dated 16.10.2024 contends that the petitioner remained a Manager with the PACS, Hanspur uptil 06.10.2018 after which Devi Lal was posted as a Manager. On account of the discrepancies at the Hanspur PACS, vide order dated 04.10.2021, a team was constituted to inquire into the facts and submit a report after conducting a special inspection. Based on the inspection conducted, an investigation report was submitted to the General Manager, Fatehabad Central Co-operative Bank Ltd., Fatehabad. The said report which is a more detailed one also pertains to the period between 2015-2019 which is the period during which the petitioner was posted as a Manager of PACS. It was in these circumstances that the magnitude of the fraud had been enhanced and the defalcation at the instance of the petitioner had increased. A perusal of this report would reveal that the petitioner had maintained parallel records to commit embezzlement. Therefore, the petitioner could not take advantage of the facts and figures mentioned in the Inquiry reports.

Further, as the role of the petitioner in the embezzlement had been discovered later, the petitioner had managed to obtain a No Dues

Certificate on 13.02.2020. He contends that the sheer magnitude of the embezzlement at the instance of the petitioner did not entitle him to the grant of regular bail.

He, however concedes that the petitioner was in custody since 01.05.2024 and none of the 29 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties at length.

6. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, the petitioner is in custody since 01.05.2024 and none of the 29 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation the further incarceration of the petitioner is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and petitioner-Harpal Singh son of Mahajeet Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the Trial and inform in writing each time that he is not involved in any other crime other than the present case.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court.

The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

04.11.2024
JITESH

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