

CRM-M-36596-2024

126 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.36596 of 2024(O&M)
Date of Decision: 01.08.2024

Sharan Kumar ... Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R. K. Agnihotri, Advocate for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
5	03.06.2024	ACB Panchkula, District Anti Corruption Bureau, Haryana	120-B, 409, 420 IPC and 13(1)(a) of Prevention of Corruption Act, 1988

Seeking quashing of FIR captioned above, the petitioner has come up before this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

2. I have heard counsel for the petitioner and have gone through the record to ascertain as to whether the matter is worth issuing notice to the respondent or not, and its analysis would lead to following outcome.

3. A copy of FIR has been annexed with the petition and its relevant portion reads as follows:

“ To The S.H.O., Police Station Anti Corruption Bureau, Panchkula Division, Panchkula. Sir, It is submitted that a complaint No. 166/Panchkula/2023 dated 23.5.2023 was received for sake of enquiry in compliance to Memo No.6630/Complaint/166/PKL/2023 dated 21.4.2023, issued by the Director General, Anti Corruption Bureau, Haryana, Panchkula, in which, it was alleged that one Sharan Kumar son of Sh. Kundan Lal, resident of Village Bapauli, Police Station Radaur, District Yamunanagar, despite having no eligibility for getting benefit under Pradhan Mantri Awaas Yojana, said Sharan Kumar, his nephew Rohit Sharma son of Sh.Raj Pal, Sarpanch, Gram Panchayat, Village Bapauli, resident of Village Bapauli, Police Station Radaur, District Yamunanagar and nephew namely Shyam Lal, in connivance with the officers belonging to the office of Block Development & Panchayat Officer, Radaur, District Yamunanagar, hatched a well planned conspiracy and got provide undue benefit of Rs.1,38,000/- under Pradhan Mantri Awaas Yojana to said Sharan Kumar and this way, have grabbed the official funds.

Enquiry in said allegation conducted by me, Inspector, from which it reveals that as per provisions of Pradhan Mantri Awaas Yojana, the villager, willing to get benefit under said scheme, should not be having any Motor vehicle/two-wheeler/three-wheeler/four wheeler vehicle registered in his/her name, whereas according to the report received from the office of Sub Divisional Officer, Radaur, District Yamunanagar, Sharan Kumar is having a Scooty bearing Registration No. HR 92 1023 (TVS Jupiter BS-IV) colour white) dated 17.11.2017. The person willing to get benefit under Pradhan Mantri Awaas Yojana should not be having Kissan Credit Card for Rs.50,000/- or more in his/her name, whereas according to report received from Sh. Dharmender Patwari, Village Bapauli, Sharan Kumar is owner of land measuring 19 Kanal 03 Marla, situated at village Bapauli and as per Rapat No. 415 dated 3.5.2019, he is having mortgaged his land with OBC, B.O. Radaur by way of Kissan Credit Card for Rs.2,30,000/-. It is also revealed during the course of verification that Sharan Kumar was having an old house at village Bapauli, where at present, only a vacant plot is existing. Sharan Kumar has got clicked photographs in front of two separate under construction houses with a motive to get benefit under Pradhan Mantri Awaas Yojana, one of which is situated opposite his vacant plot and is owned by Sudesh Rani wife of Ram Pal Sharma, resident of Village Bapauli and other house is non-traceable. As per the provisions of Pradhan Mantri Awaas Yojana, Geo tagging of land, used for building construction of house, is conducted. As per Geo Tagging detailed, obtained from Website, the house is shown having location at three different places, whereas the said location was required to be at only one place. Accused Sharan Kumar son of Sh. Kundan Lal, resident of Village Bapauli, Police Station & Tehsil Radaur, District Yamunanagar, was not entitled to get benefit under Pradhan Mantri Awaas Yojana, and he got the said amount of Rs.1,38,000/- under said Scheme in wrongful manner. The Committee, formed for verification of eligible/ineligible persons for getting benefit under Pradhan Mantri Awaas Yojana, comprising of Rohit Sharma, the then Sarpanch, Village Bapauli (President), Dharmender Singh, Patwari, Village Bapauli (Member) & Virender Kamboj, Panchayat Secretary, Village Bapauli (Member), connived with said Sharan Kumar son of Sh.Kundan Lal, resident of Village Bapauli and despite his ineligibility to get benefit under said scheme, wrongly showed him eligible in their report and on the basis of said report, said Sharan Kumar son of Sh.Kundan Lal, resident of Village Bapauli, Police Station & Tehsil Radaur, District Yamunanagar, was granted an amount of Rs. 1,38,000/- for construction of house under Pradhan Mantri Awaas Yojana. Hence verification report sent by the Superintendent of Police, Anti Corruption Bureau, Panchkula Division, Panchkula with his comments to the office of the Director General, Anti Corruption Bureau, Haryana, No.130/A.C.B./Panchkula Panchkula dated vide 12.2.2024, letter the with recommendation to register an F.I.R. U/s.420, 409, 120-B IPC, 131-A. Prevention of Corruption Act, 1988 against said Sharan Kumar, Rohit Sharma, the then Sarpanch, Village Bapauli, Dharmender Singh, Patwari, Village Bapauli & Virender Kamboj, Panchayat Secretary, Village Bapauli. Then as per letter No. 6620/Complaint/166/PKL/2023 dated 29.2.2024 of the office of Director General, Anti Corruption Bureau, Haryana, Panchkula, a direction received form registration of F.I.R. against said Sharan Kumar, Rohit Sharma, the then Sarpanch, Village Bapauli, Dharmender Singh, Patwari, Village Bapauli & Virender Kamboj, Panchayat Secretary. Village Bapauli. Hence in compliance to said letter, letter

No.209/A.C.B./Panchkula dated 13.3.2024 issued by the office of the Superintendent of Police, Anti Corruption Bureau, Panchkula Division, Panchkula, vide which, verification report sent to the office of the Divisional Commissioner, Ambala Division, Ambala Cantt. For getting necessary permission U/s.17-A, Prevention of Corruption Act, 1988 for registration of F.I.R. against said Sharan Kumar, Rohit Sharma, the then Sarpanch, Village Bapauli, Dharmender Singh, Patwari, Village Bapauli & Virender Kamboj, Panchayat Secretary, Village Bapauli. As per letter No. K.C./Vigilance/2361/Ambala Cantt. Dated 10.4.2024, received from the office of the Divisional Commissioner, Ambala Division, Ambala Cantt., necessary permission has been received for registration of F.I.R. against above noted accused, as suggested in verification report.

Hence written intimation is being sent to Police Station, Anti Corruption Bureau, Panchkula Division, Panchkula through Constable Subhash Chand 709/Panchkula for registration of case F.I.R. U/s.420, 409, 120-B IPC, 13 (1) (a), Prevention of Corruption Act, 1988 against said Sharan Kumar, Rohit Sharma, the then Sarpanch, Village Bapauli, Dharmender Singh, Patwari, Village Bapauli & Virender Kamboj, Panchayat Secretary, Village Bapauli. Case be registered and copies of F.I.R. being Special Report be sent to Ld. Court of Special Judge, Yamunanagar and senior officers. An Inquiry Officer be appointed for conducting further investigation in this case and a copy of F.I.R. alongwith original written intimation be delivered to him."

4. The grounds on which the petitioner seeks quashing of FIR captioned above are mentioned in the petition which reads as follows:

"3. That it is further submitted that regarding committing embezzlement of funds under Pradhan Mantri Awaas Yojana (Gramin) a complaint bearing CM Window No. CMOFF/N/2023/038892 received on 25.5.2023 in the office of Lok Pal, MGNREGA vide letter No. 1560 dated 18.5.2023 of the office of BDPO, Radaur. In the said complaint the complainant Kuldip Malik son of Sh. Mehma Singh alleged that house of one Sharan Kumar son of Sh. Kundan Lal, resident of Village Bapauli, Block Radaur, District Yamunanagar is constructed under PMAY, but while disbursing grant for said house, eligibility criteria has been violated. In this connection, letter No.543 dated 26.5.2023 issued by the office of Lok Pal, vide which, Sh. Kuldip Malik son of Sh. Mehma Singh, resident of Village Bapauli, Block Radaur, complainant was summoned for getting recorded his statement. The said complainant got recorded his statement on 6.6.2023 to the effect that Sharan Kumar son of Sh. Kundan Lal, resident of Village Bapauli, applicant, is not fulfilling the criteria of PMAY. The applicant is having two-wheeler and also operating Kissan Credit Card. The place, where survey & Geo tagging conducted for construction of house or colony, is not so far having any house at the spot. The said house has been constructed by spending a sum of about Rs.40-45 lac. Sharan Kumar son of Kundan Lal is Chacha of the then Sarpanch. The sum of Rs.1,38,000/- has been defrauded under Pradhan Mantri Awaas Yojana in connivance with Panchayat Secretary, Sarpanch & B.D.P.O.

4. That thereafter, on dated 19.06.2023 statement of petitioner Sharan Kumar son of Sh. Kundan Lal, was get recorded and in his statement before the office of Lok

Pal Yamuna Nagar he specifically stated that his name was lying mentioned in list of beneficiaries in Economic survey, conducted in year 2011 and he got benefit of said scheme in year 2019. He has having land measuring 2 Acres 3 Kanal and a TVS Scooty, having registration in year 2017, which was donated by someone else being Pandit by caste. He also got limit for Rs.1,60,000/- from Bank for completion of his house. He has seen photograph of house on file, which relates to his house, on which, a sum of Rs.4-5 lacs has been spent. He didn't construct house at proposed location, because the street over there was so narrow. He didn't get labourers for construction of house.

5. That after this on dated 23.06.2023 statement of Virender Kumar, Secretary get recorded and on dated 30.06.2023 statement of Rohit Sharma got recorded and on dated 05.07.2023 Halka Patwari Dharmender Singh got recorded his statement before the office of Lok Pal Yamuna Nagar. Thereafter, after considering the evidence available on record Sh. Suba Singh, Lok Pal/ Ombudsperson, Yamuna Nagar directed to recover Rs. 138,000/- alongwith interest from petitioner Sharan Kumar as per rules. The true and correct translation copy of order dated 09.08.2023 is annexed herewith as Annexure P-2 for kind perusal of this Hon'ble High Court.

6. That it is pertinent to mention here that in due respect / compliance of the order dated 09.08.2023 passed by the Lok Pal, Yamuna Nagar petitioner submitted an application dated 19.08.2023 to The Lok Pal, Mahatama Gandhi National Rural Employment Guarantee Act & Pradhan Mantri Awaas Yojana (Gramin), Yamuna Nagar containing the particulars of the deposited amount i.e. Rs.1,38,000/- deposit on 19.8.2023 vide Cheque No.696532, issued by Punjab National Bank, by way of RTGS bearing UTR No. PUNBH23231466912, deposited in Account No. 50100235568283 of State Rural Housing Fund IAYPMAYGHRY, maintained in HDFC Bank Ltd., B.O. Sector 46, Chandigarh, IFSC Code HDFC0000434. He further undertakes that he will also comply with the order regarding interest, as assessed in due compliance of the order dated 09.08.2023. The true and correct translation copy of application dated 19.08.2023 is annexed herewith as Annexure P-3 for kind perusal of this Hon'ble High Court.

7. That it is relevant to submit that petitioner submit his affidavit dated 17.09.2018 to take benefit of Pradhan Mantri Awaas Yojna Scheme and that time he has not any KCC Limit/Loan and that time he is fully eligible being his name fall in the list of poor person and who have no other Pucca house except a Kacha house. Rather the KCC Loan was getting sanctioned in favour of the petitioner on dated 03.05.2019. The true and correct translation copy of affidavit dated 17.09.2018 is annexed herewith as Annexure P-4.”

8. That the allegation regarding having a Scooty in the name of petitioner at the time of getting benefit of PMAY, regarding the same petitioner has already explained in the statement giving before the Ld. Lok Pal that same Scooty was donated to him by someone else as petitioner is Pandit by caste.

9. That as stated above now the petitioner has already deposited the benefit amount i.e. Rs.138,000/- by way of RTGS bearing UTR No. PUNBH23231466912, deposited in Account No. 50100235568283 of State Rural Housing Fund IAYPMAYGHRY and thus at the time of registration of the above said FIR no.0005 dated 03.06.2024 no offences under sections 120-B, 409, 420 IPC, 1860 and 13(1) (a) of Prevention of Corruption Act, 1988 are made out against the present petitioner.”

5. The petitioner’s counsel argued that there is neither any illegal motive nor intention nor even connivance with any person to the get the benefit of the scheme and he was granted benefit because he was found poor, as such, there is no reason to register an FIR later on. Petitioner’s counsel further argued that there is no allegation of any cheating or embezzlement of amount, as such no case is made out against him. The petitioner’s next argument is that he is a poor person and FIR has been registered to negate him and to insult him. Petitioner’s counsel lastly referred to para 10(viii) of the petition as per which he referred to Annexure P4 that he has already deposited the amount of Rs. 1.38 lacs, which he had received.

6. A perusal of the above said submissions do not make a case to disrupt the criminal proceedings in the trial Court at the initial stage. However, the reason is that all the stands taken by the petitioner needs to be proved at an appropriate stage including the trial. It is not a situation where if all the allegations are accepted, then it doesn’t make out a case, rather, the petitioner is trying to demonstrate that there is no case being made out by referring to the evidence and other documents. Petitioner needs to prima facie establish or bring to the notice of the trial Court, if prosecution against him is launched.

7. In the entirety of facts and circumstances, it is not a case of worth issuing notice and as such, the petition is dismissed. However, petitioner is at liberty to file an application for discharge, in case, prosecution is launched against him and trial Court before proceeding to frame charges under 251 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) or 228 Cr.P.C., shall adjudicate such application and decide the same in accordance with law by passing a speaking order.

8. **Petition dismissed in aforesaid terms.**

(ANOOP CHITKARA)
JUDGE

01.08.2024

Sonia Puri

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No.