**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

104 CRM-M-42897-2024
Date of Decision : **September 25, 2024**

RAJESH KUMAR

.....Petitioner

***VERSUS***

STATE OF HARYANA

.....Respondent

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl.AG, Haryana.

Mr. Rajesh Hooda, Advocate
for the complainant.

**KULDEEP TIWARI, J.**

1. Through the instant petition filed under Section 438 Cr.P.C., prayer is made for grant of anticipatory bail to the petitioner in case FIR No.137 dated 29.4.2024, under Sections 406, 409, 420 IPC, registered at Police Station Sector 13-17, Panipat.

2. The instant FIR has been registered on a complaint made by one Sanjay Kumar, Enforcement Officer-cum-Provident Fund Inspector, EPFO, Ministry of Labour Employment (Govt. of India) against M/s WWF Security Services Pvt. Ltd., and its Directors, namely, Rajesh Kumar and Sushma Sharma with the allegations that the accused company is an establishment covered under the Employees'; Provident Funds Miscellaneous Provisions

Act, 1952 (hereinafter referred to as the **Act, 1952**), therefore, the employer of this establishment was under a statutory obligation to deduct the employees' share of the Provident Fund Contribution each month from salary of poor workers with the entrustment to deposit the same into the PF account of the said workers, as maintained with Central Board of Trustees/statutory fund (CBT) on or before 15th day of the next wage month. However, the employer of this accused company, though deducted the employer shares of contributions from their salaries/wages, but did not deposit the same with the said Board and rather, utilized the same for their own benefit. In the FIR, it was specifically mentioned that an enquiry was conducted under Section 7A of the Act 1952, wherein, it reflects that the accused company has supplied man powers to the Income Tax Department from dated 1.7.2015 to 30.6.2019 and also deducted the share of contributions from the employees' wages/salaries for the purpose of depositing the same in the PF account, but was not deposited. Finally, it is alleged that from dated 1.7.2015 to 30.6.2019, the accused company received wages from the Income Tax Department but did not deposit the share of the workers PF amounting to Rs.2,76,84,510/-, with the provident fund organization and statutory order under the relevant provisions of Act 1952, has been passed by the competent authority.

3. Learned counsel for the petitioner in the asking for the relief (supra), submits that infact the instant FIR, has been lodged with a oblique motive and is an act of vengeance on the part of the complainant-Department, as one of the Directors of the company has got registered an FIR i.e. FIR No.RC0052022A0026 dated 1.9.2022, against one Amit Nain, Regional Provident Fund Commissioner, although he was granted the relief of regular

bail after 20 days of his arrest, but he is facing the trial in the above case and on the behest of Amit Nain, all the proceedings were initiated against the present petitioner. He further submits that the order dated 16.4.2024, as passed under Section 7A of the Act 1952, which is the basis for the registration of the instant FIR, has not attained finality, as the petitioner threw a challenge to this order by filing review petition under Section 7-B of Act 1952, however, the same was declined vide order dated 15.5.2024. Having aggrieved with the above two orders, the petitioner has now filed CWP No.12563 of 20024 titled as “M/s WWF Security Services Pvt. Ltd. and others Vs. Employees Provident Fund Organization and others”, in which notice of motion has been issued and now it is pending consideration before this Court. While referring to the pendency of the above mentioned writ petition, he submits that all the facts, which have been mentioned in the impugned orders are disputed questions of facts, which are yet to be attained finality. He also submits that the amount which has been shown in the FIR (supra) is the exaggerated amount and the entire share of the workers has been deposited as per the requirement of the Act 1952. Finally, while referring to the complaint filed by one Surjit Singh, he submits that he is under the direct influence of Amit Nain, therefore, till the veracity of such allegations are proved, the petitioner be granted the relief of anticipatory bail. He also placed reliance upon the order dated 12.7.2024 passed by a co-ordinate Bench of this Court in CRM-M-32837-2024, whereby, the co-accused (wife of the present petitioner) has been extended the relief of anticipatory bail. He in addition submits that the present petitioner is at co-equal with co-accused and, therefore, he is also entitled for the same relief.

4. The submissions made by the learned counsel for the petitioner have been vociferously opposed by the learned State counsel as well as by the learned counsel for the complainant. They have filed replies to the instant petition.

5. The learned State counsel submits that after registration of the FIR (supra), a thorough investigation was carried out and during investigation bank statement pertaining to co-accused Sushma Sharma was taken into possession, which reflects that she has received an amount of Rs.5 crores since the last 5 years, from the official accounts of the accused-company i.e. M/s WWF Security Pvt. Ltd. He further submits that the relevant document was also taken into possession from the Income Tax Department on dated 21.6.2024. A perusal of salary sheets of March 2018 of the employees supplied by the petitioner-company to the Income Tax Office, Panipat and copy of PF challan revealed that the petitioner had claimed Rs.44,838/- to deposit towards PF contribution, for 14 workers for March, 2018, however, the same was never deposited in the PF Account of the workers against the said challan. He also submits that the challans which have been deposited with the complainant-Department, are infact fabricated documents.

6. To counter the arguments, the learned counsel for the complainant also submits that during investigation, only 23 PF challans have been surfaced, which are unpaid till date. The details of which reads as under:-

| Sr. no. | Month & year | TRRN | Amount in Rs. | Number of workers | status |
|---|---|---|---|---|---|
| 1 | March, 2018 | 2012005004203 (R-12) | 35024 | 11 | Unpaid (R-13) |
| 2. | April, 2018 | 2012007012344 (R-14) | 13276 | 4 | Unpaid (R-15) |
| 3 | Sep., 2018 | 2012008012418 (R-16) | 17307 | 5 | Unpaid (R-17) |
| 4 | October, 2018 | 2012008012419 (R-18) | 17416 | 5 | Unpaid (R-19) |
| 5 | November, 2018 | 2012008012420 (R-20) | 19046 | 6 | Unpaid (R-21) |
| 6 | December, 2018 | 2012008012421 (R-22) | 8888 | 3 | Unpaid (R-23) |
| 7 | January, 2019 | 2012008012434 (R-24) | 9626 | 3 | Unpaid (R-25) |
| 8 | February, 2019 | 2012008012440 (R-26) | 9626 | 3 | Unpaid (R-27) |
| 9 | March, 2019 | 2012008012443 (R-28) | 9100 | 3 | Unpaid (R-29) |
| 10 | April, 2019 | 2012008012446 (R-30) | 10152 | 3 | Unpaid (R-31) |
| 11 | May, 2019 | 2012008012448 (R-32) | 11511 | 3 | Unpaid (R-33) |
| 12 | June 2019 | 2012008012452 (R-34) | 11511 | 3 | Unpaid (R-35 |
| 13 | Sep., 2019 | 2011911002046 (R-36) | 40282 | 13 | Unpaid (R-37) |
| 14 | May, 2020 | 2012006012462 (R-38) | 54177 | 11 | Unpaid (R-39) |
| 15 | October, 2020 | 2012102014327 (R-40) | 29594 | 7 | Unpaid (R-41) |
| 16 | December, 2020 | 2012103011665 (R-42) | 29594 | 7 | Unpaid (R-43) |
| 17 | December, 2020 | 2012102002602 (R-44) | 81200 | 26 | Unpaid (R-45) |

| | | | | | |
|---|---|---|---|---|---|
| 18 | January, 2021 | 2012103011666 (R-46) | 29594 | 7 | Unpaid (R-47) |
| 19 | February, 2021 | 2012103011664 (R-48) | 29594 | 7 | Unpaid (R-49) |
| 20 | February, 2021 | 2012103009374 (R-50) | 92463 | 34 | Unpaid (R-51) |
| 21 | March, 2021 | 2012105003729 (R-52) | 101715 | 33 | Unpaid (R-53) |
| 22 | April, 2018 | 2011806002754 (R-54) | 46947 | 13 | Unpaid (R-55) |
| 23 | May, 2018 | 2011806002753 (R-56) | 46947 | 13 | Unpaid (R-57) |
| | | **TOTAL** | **754590** | **223** | |

7. He in addition submits that petitioner operates in the business of providing manpower on contractual basis and has provided contractual workers to 30 principal employers including several government departments and private firms. He over and above submits that in view of the modus operandi adopted by the petitioner, it is highly probable that the similar practice has been extended to other PF challans as well. While referring to Annexure R-59, the learned counsel for the complainant submits that the extract from the company's form 26AS statement, it is established that the company generated a total revenue of Rs.26,05,44,433/- during the period dated 1.4.2014 till dated 31.3.2024 and the TDS on these payments was deducted under Section 194C, of the Income Tax Act, confirming that the amount was received as a contractor based on the work orders and invoices, the company charges a service fee ranging from 2% to 3.5%. Accordingly, even on the higher side, the company's total income for this period should approximate to 4% of Rs.26,05,44,433/-. He further submits that in the instant

case the petitioner has transferred an amount of Rs.5 crores into the single bank account, which is maintained by his wife, over the past 5 years, which specifically established that the provident fund, which meant to be deposited with the Department has been embezzled. He finally submits that the challan which has been deposited with the Department *qua* the workers are infact forged documents.

8. This Court has considered the rival submissions made by the learned counsel for the parties concerned and is of the considered view that the petitioner does not deserve the relief of anticipatory bail.

9. What reflects from the complaint, as well as the investigation, as conducted, as on date that the accused persons used to receive employer share of provident fund from the organization from the accused company and used to deduct the employees' share of provident fund, from the wages of the employees and he was under statutory obligation of the workers/employees with the complainant-Provident Fund Organization, however, the petitioner failed to deposit the said amount and misappropriate/embezzled the same for his own benefit and also siphoned of the amount of the accused company in the private account of his family members. It further reflects that in order to achieve the above illegal act, the petitioner created forged challans and deposited the same with the principal employer Department to show that the deposit of the provident fund amounts with the Department concerned has been done. *Prima facie* there is a huge embezzlement of provident funds of the workers and further deep investigation is required to be conducted, therefore, the custodial interrogation of the present petitioner is required.

10. In view of the above facts and circumstances and the gravity of the offence, the instant petition is ordered to be **dismissed**.

**(KULDEEP TIWARI)**
**September 25, 2024** **JUDGE**
ajay-1

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No