

**(2010) 12 P&H CK 0375**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRM No. M-31558 of 2010 (O and M)

Narinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Dec. 2, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 438, 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 420, 467, 468

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Mehinder Singh Sullar, J.

Petitioner Narinder Singh son of Atma Singh, has directed the instant petition for the grant of anticipatory bail in a case registered against him, vide FIR No. 54 dated 7.10.2010, for the commission of the offence punishable u/s 406 IPC, by the police of Police Station Kum Kalan, District Ludhiana, invoking the provisions of Section 438 Code of Criminal Procedure.

2. Concisely, the prosecution claimed that the department of Food, Civil Supplies and Consumer Affairs, Punjab, entrusted 76318 bags of paddy, weighing 26711.30 quintals, to the Petitioner-accused, owner of M/s DSL Rice Mill, for shelling and de-husking. Although after completion of milling process, the Petitioner was required to return/supply 17896.57 quintals of rice, to the department, but he had only returned 7231.95 quintals of rice till 31.3.2010 and did not supply the remaining commodity of the rice despite repeated request/visits of its officials to his premises. In the wake of checking, it revealed that no stock of paddy was found in the Mill premises, but some rice was illegally stored in the godown. Thereafter, an effort was made by the officials of the department to contact the Petitioner telephonically, but he did not attend any call. Then, notices dated 12.8.2010 and 8.9.2010 were issued

to him to appear in person and to get physical verification of the stock, but in vain. According to the complainant, thus, he has cheated the department and mis-appropriated an amount of Rs. 1,92,36,737/-as price of the remaining rice in this behalf.

3. Levelling a variety of allegations and narrating the sequence of events, in all, the complainant claimed that the Petitioner was entrusted 76318 bags of paddy, weighing 26711.30 quintals, for shelling and de-husking. Although after completion of milling process, the Petitioner was required to return/supply 17896.57 quintals of rice, to the department, but he had only returned 7231.95 quintals of rice till 31.3.2010 and did not supply the remaining commodity of the rice despite repeated requests and notices. Therefore, he has cheated and mis-appropriated the indicated amount as price of the remaining rice. On the basis of aforesaid allegations and in the wake of complaint of District Manager of the concerned department, the present case was registered against the Petitioner-accused, in the manner indicated here-in-above.

4. Notice of the petition was issued to the State.

5. After hearing the learned Counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant petition in this context.

6. However, the main arguments of learned Counsel that the Petitioner has been falsely implicated in the present case and since no offence punishable u/s 406 IPC is made out against him, in view of the observations of Hon"ble Apex Court in cases Kailash Verma v. Punjab State Civil Supplies Corporation and Anr. 2005(1) RCR 727 and Tarsem Lal v. State of Punjab 2006(3) RCR 889, so, he is entitled to concession of anticipatory bail, are not only devoid of merits but misplaced as well.

7. In Kailash Verma's case (supra), the Appellant was discharged by the Chief Judicial Magistrate and revisional Court confirmed that order after elaborately considering the facts and circumstances of the case, but the High Court reversed the order. The Respondent-Corporation had also initiated steps for arbitration proceedings. On the peculiar facts and in the circumstances of that case, it was observed that "the High Court was not justified in exercising its inherent power u/s 482 Cr.PC as it cannot be said that there was mis-carriage of justice warranting interference by the High Court." The same view was reiterated in Tarsem Lal's case (supra) that simple breach of contract or the case involving pure civil nature, would not attract the penal provisions of Section 406 IPC.

8. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the Petitioner in this regard. As is evident from the record that there are direct allegations against the Petitioner that he was entrusted with 76318 bags of paddy, weighing 26711.30 quintals, for shelling and de-husking. After completion of milling process, the Petitioner was required to

return/supply 17896.57 quintals of rice, to the department, but he had only returned 7231.95 quintals of rice till 31.3.2010 and did not supply the remaining commodity of the rice despite repeated requests and notices. Thus, he has cheated and mis-appropriated an amount of Rs. 1,92,36,737/- in this respect.

9. An identical question arose before the Hon'ble Apex Court in a recent judgment in case State of Punjab v. Pritam Chand and Ors. 2009 (3) RCR 376, wherein, it was observed that under such circumstances, there is no bar for prosecution under the criminal law as well, although there may be a contract between the parties containing an arbitration clause. Therefore, the contrary arguments of the learned Counsel that no offence punishable u/s 406 IPC is made out against the Petitioner "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the observations in Pritam Chand's case (supra) "mutatis mutandis" are applicable to the facts of the present case and are the complete answer to the problem in hand.

10. Not only that, SI Davinder Singh SHO of Police Station Koom Kalan, Ludhiana has filed an affidavit that the Petitioner is a habitual offender and he was arrested in cases, vide (i) FIR No. 22 dated 3.3.2005; (ii) FIR No. 24 dated 4.3.2005 for commission of the offences punishable under Sections 420, 467, 467, 468, 471 and 120B IPC by the police of Police Station Division No. 2, Ludhiana and (iii) FIR No. 33 dated 4.3.2005 u/s 420 IPC by the Police of Police Station Shimlapuri, Ludhiana. He is also required in fourth case, vide FIR No. 170 dated 13.8.2010 under Sections 406 and 420 IPC pertaining to Police Station Sahnewal, Ludhiana. That being so, the Petitioner is not entitled to the discretionary relief of anticipatory bail as well.

11. Moreover, the anticipatory bail is not to be granted as a matter of course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power u/s 438 Cr.PC is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. The order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation of the police. The Court has also to see that the investigation is the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational power of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby.

12. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial, the present petition for anticipatory bail filed by the Petitioner is hereby dismissed, in the obtaining circumstances of the case.

13. Needless to state that, nothing observed, here-in-above, would reflect, in any manner, on merits of the case, as the same has been so recorded for a limited

purpose of deciding the instant petition.