

**(2009) 07 AHC CK 0046**  
**In the Allahabad High Court**  
**Case No : Criminal M.W.P. No. 7100 of 2009**

|                                   |    |            |
|-----------------------------------|----|------------|
| Awdhesh Narain Singh (A.N. Singh) | Vs | APPELLANT  |
| State of U.P. and Others          |    | RESPONDENT |

**Date of Decision :** 28-07-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439  
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471

**Citation :** (2010) 1 ACR 32

**Hon'ble Judges :** Ravindra Singh, J;N.A. Moonis, J

**Bench :** Division Bench

**Advocate :** V.P. Srivastava, Lav Srivastava and Akhilesh Srivastava, for the Appellant; D.R. Chaudhary, A.G.A., for the Respondent

## Judgement

Ravindra Singh and N. A. Moonis, JJ.—This writ petition has been filed by the Petitioner Awdhesh Narain Singh (A.N. Singh) with a prayer to quash the F.I.R. of Case Crime No. 172 of 2009 under Sections 409, 420, 467, 468 and 471, I.P.C., P.S. Jawan, district Aligarh and to stay the arrest of the Petitioner in the above mentioned offence.

2. The facts in brief of this case are that the F.I.R. of this case has been lodged by Dr. N.S. Pawar, Chief Veterinary Officer/General Manager Central Dairy Farm (C.D.F.), Aligarh on 4.4.2009 at 6.15 p.m. regarding an offence punishable under Sections 409, 420, 467, 468 and 471, I.P.C. with the allegation that the first informant was directed to lodge the F.I.R. by the State Government vide letter No. 921/37-2-09-15(1)/06, dated 24.3.2009 against the Petitioner, contract employee of C.D.F. who had committed the irregularities. The Petitioner was serving as Assistant Manager, he had worked as Incharge General Manager also, he was retired on 31.7.2001 from the service of the Corporation, but he was employed in the department on a contract basis on 31.7.2001 on a consolidated salary, i.e., Rs. 14,242 per month for a period of two years, its approval was made by Board of Directors. But the Petitioner has worked for a period from

1.8.2001 to 31.3.2007, thereafter on 1.4.2007 the charge was taken by Dr. R.A. Agrawal from the Petitioner. The Petitioner had handed over a cash book, vouchers, cash balance and two keys of cash chest. Dr. R.A. Agrawal, the then General Manager, C.D.F. perused the documents and came to the conclusion that the Petitioner has committed many irregularities in the payments and has withdrawn the money and the same has been misappropriated. Its information was given vide letter dated 4.6.2007 to Managing Director, C.D.F., Camp Office, Lucknow in which the following allegations have been made against the Petitioner:

1. The Petitioner has withdrawn the amount of salary more than the agreed consolidated amount of payment Rs. 14,242 per month, he mislead the authorities and has illegally withdrawn the arrears of Rs. 17,581 in the year 2001-2003.

2. The Petitioner himself calculated his beneficiaries contribution for his service period from 15.5.1975 to 31.7.2001 and manoeuvre the thing in his favour and has withdrawn the amount of Rs. 2,94,637 by misleading the authorities concerned.

3. The Petitioner has got the amount of Rs. 46,000 as ex gratia payment from the closed unit by misleading the authorities concerned.

4. The Petitioner has received the amount of Rs. 1,47,163.55 as the arrears from the department. His services were terminated in the year 1992 for which he had filed a case, he had also taken the leave by which the payment could not have been made to him but he tried to mislead the authorities and he received the said arrears.

5. The Petitioner was working in C.D.F. on the contract basis but after 21.8.2005 no sanction was obtained and he continued with his job without any extension upto 31.3.2007 and received the salary by misleading the authorities.

6. The Petitioner got allotted the shop situated at Zigyasu Marg, G.T. Road, Aligarh in favour of his son J.P. Singh. The second shop situated in Conaught Place, New Delhi was got allotted by the Petitioner to his relative Anil Kumar Singh son of Panna Singh which was being managed by the second son of the Petitioner namely Satyendra Prakash Singh.

3. One Mahendra Pal Gaur, Ex-employee of C.D.F. has sent a letter to the Government making the following allegation against the Petitioner:

1. The Petitioner has got allotted the two shops of C.D.F. in favour of his sons, one shop at Aligarh and second shop at Delhi. One shop of the Hajratganj, Lucknow was also given by the Petitioner to someone on a nominal charges.

2. The contract was given by way of tender to contractor of a forest of Gursikaran range but in collusion with the Petitioner the trees of the babool, remja and eucalyptus were cut down and it was subsequently stopped by the

Collector.

3. The Petitioner has removed the certain articles Refrigerator, Sofa and furnitures etc. from C.D.F. guest house and the same were shifted to the house of his sons and articles of swift realtor's namely Fridge, Cooler and furnitures have been misappropriated by the Petitioner.

4. the Petitioner by misleading the authorities has obtained the forged pension papers and taking the pension from the Corporation as well as the Government.

4. Heard Sri. V.P. Srivastava, senior advocate assisted by Sri. Lav Srivastava, Sri. Akhilesh Srivastava and learned A.G.A. for the State of U. P.

5. It is contended by learned Counsel for the Petitioner that the allegation made against the Petitioner are false and frivolous. The Petitioner has served in the corporation on a contract basis and realized the money for which he was entitled. There is no evidence of misleading the authorities. The period of the service was extended by the authorities of the corporation. The other allegation regarding the allotment of the shops are absolutely false because the Petitioner has not allotted any shop. No departmental proceedings were initiated, proper action has not been taken before lodging the F.I.R., no sanction has been obtained for the termination of the Petitioner and without consulting the Public Service Commission, F.I.R. has been lodged. The F.I.R. has been lodged on false and frivolous allegation, if the Petitioner has withdrawn some money for which he was not entitled, the same may be recovered for which the procedure is prescribed but in any case the Petitioner may not be terminated for the alleged scandal of money.

6. In reply of the above contention, it is submitted by learned A.G.A. that the allegation made in the F.I.R. constituting the offence which is cognizable. The allegations are of serious in nature. There is no ground for quashing the F.I.R. even the lodging of the impugned F.I.R. is not barred by any law.

7. Considering the submissions made by learned Counsel for the Petitioner, learned A.G.A. and from the perusal of the F.I.R. it appears that the allegations made therein are constituting the cognizable offence, the F.I.R. is not barred by law and there is no ground for quashing the F.I.R. The prayer for quashing the F.I.R. is refused.

8. However it is directed that in case the Petitioner appears before the Court concerned within 30 days from today and applies for bail, the same shall be heard and disposed of in view of Amarawati and Another (Smt.) Vs. State of U.P.,

The Full Bench of this Court has held in the aforementioned case:

1. Even if a cognizable offence is disclosed in the F.I.R. or complaint the arrest of the accused is not a must, rather the police officer should be guided by the decision of the Supreme Court in Joginder Kumar Vs. State of U.P. and others, before deciding whether to make an arrest or not.

2. The High Court should ordinarily not direct any subordinate court to decide the bail application the same day, as that would be interfering with the judicial discretion of the Court hearing the bail application. However, as stated above, when the bail application is u/s 437, Code of Criminal Procedure ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application u/s 439, Code of Criminal Procedure it is in the discretion of the learned Sessions Judge, considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.

The same has been approved by the Hon''ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P., on 23.3.2009 in Criminal Appeal No. 538 of 2009.

9. With this direction, this petition is finally disposed of.