(2019) 12 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 45192 Of 2019 (O&M)

Jonty Vinay Chhag APPELLANT

Vs

State Of Haryana RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 438, 438(2)
Indian Penal Code, 1860 — Section 34, 120B, 380, 406, 409, 420, 467, 468, 471, 474
Essential Commodities Act, 1955 — Section 3, 5

Citation : (2019) 12 P&H CK 0180

Hon'ble Judges : Mahabir Singh Sindhu, J

Bench : Single Bench

Advocate : R.S.Rai, Abhilaksh Grover, Arun Beniwal, Sartej Singh Narula

Final Decision : Dismissed

Judgement

Mahabir Singh Sindhu, J

Present petition has been filed under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of pre-arrest bail to the petitioner in FIR No.0158 dated 13.03.2018, under Sections 406, 420, 380, 409, 467, 468, 471, 474, and 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Gharaunda, District Karnal.

The above FIR was registered on the basis of a complaint made by Mrinav Hemant Sagar, r/o 31, Raj Palace, 11 Road, Navi Mumbai against the petitioner, his father-Vinay Chhag, mother-Bhawna Chhag and other unknown persons. The allegations are that complainant is the Director of Tanna Agro Impex Private Limited, Gharaunda, District Karnal and running a rice sheller, where co-accused Vinay Chhag (father of petitioner) was working as Manager for the last more than 20 yea Rs. Vinay Chhag was fully authorized to look after the work of sale, purchase, export of rice, operate the bank account(s) of the Company, sign che ues as well as to supervise the day-to-day working of the sheller. While taking undue advantage of the situation and misusing his powers, said Vinay Chhag in conspiracy with the present petitioner as well as other co-accused committed fraud, theft, criminal breach of trust, misappropriation of funds and caused heavy losses to the Company. He manipulated the record on the basis of forged and fabricated documents and misappropriated 8031 uintals of rice, thereby causing loss to the tune of about Rs. 6 Crores. Besides above, Vinay Chhag sold the tare (Baaradaana), tarpaulin, wooden crates, diesel etc. Also alleged that Vinay Chhag was terminated from the services of the Company in November, 2017 on account of his dishonesty and after checking of the record pertaining to stock, it came to the notice in February, 2018 that he along with his wife-Bhawna Chhag, his son (present petitioner) and other co-accused caused heavy loses to the Company and purchased moveable as well as immovable properties in their names while playing fraud.

It is contended by learned Senior Counsel on behalf of the petitioner that after completion of his Computer Engineering, he started his own rice sheller business in the name and style of V.C. Exports, Gharaunda, District Karnal as his father-Vinay Chhag was having long experience in the industry. Further contended that complainant pressurized the petitioner to close down his business and join services with their Company-Tanna Agro Impex Pvt. Ltd., but he refused and thus, they got annoyed with him. Also contended that petitioner being a successful businessman in rice industry has raised the turn over of his Firm to the tune of Rs. 33 Crores and thus, complainant became jealous while treating him as business rival in the rice industry. Also contended that father of the petitioner had resigned wayback on 16.11.2017, thus, complainant cannot blame for the shortage of 8031 uintals of rice, noticed in February, 2018. Reliance is also placed on Clause 20 of the Haryana Rice Procurement (Levy) Order, 1985 (for short '1985 Order') to the effect that neither there is any register produced to indicate the uantity of rice, milled and sold by the complainant; nor any fortnightly return has been shown to substantiate the stock of the Company, thus, the present FIR is nothing, but a bundle of lies just to put undue pressure upon the petitioner, his father-Vinay Chhag and other co-accused.

On the other hand, learned State Counsel, on instructions from Investigating Officer/A.S.I. Bahadur Singh, E.O.W., Kaithal, opposed the bail application and submitted that conse uent upon interrogation of petitioner's father-Vinay Chhag, the involvement of the petitioner is clearly established. Further contended that petitioner in connivance with his father created a bogus Firm-V.C.Exports just to swindle the amount in uestion as the same is existing only on pape Rs. Again submitted that petitioner, after preparing forged and fabricated bills/challans, siphoned off the funds of Tanna Agro Impex Pvt. Ltd. in favour of V.C. Exports, thus, he being the direct beneficiary is the main culprit for commission of the alleged offences.

Learned Counsel for the complainant also vehemently opposed the present petition on the similar lines of arguments, raised by learned State Counsel while submitting that as a matter of fact, father of the petitioner, namely, Vinay Chhag did not resign, rather he was terminated on account of his fraudulent acts in connivance with the present petitioner. Again submitted that the plea of Clause 20 of levy Order 1985 is not legally sustainable as the same has already been done away by the Government of Haryana in view of the Central Government decision under Sections 3 and 5 of the Essential Commodities Act, 1955 (for short 'Act of 1955') [C-1 and C-2]. Also contended that fraud was noticed by the complainant in February, 2018 after termination of Vinay Chhag, who worked uptill November, 2017, thus, irregularity, if any, in maintaining the register or return in terms of Clause 20 of the 1985 Order, the same is attributable to Vinay Chhag being the sole Incharge of the sheller and, therefore, petitioner, his father along with other co-accused cannot take any benefit of their own wrongs. Further contended that turn over of the petitioner's Firm-V.C.Exports to the tune of Rs. 33 Crores is a total mystery being without any capital investment or sources of funds and which was registered only on 01.07.2017.

Heard learned Counsel for the parties and perused the paper-book. It transpires that initially the present FIR was registered under Sections 380, 406, 420 and 34, IPC against the petitioner, his father-Vinay Chhag, mother-Bhawna Chhag and other co-accused. Subse uently, on 31.12.2018, the matter was entrusted to the Economic Offence Wing, Karnal by the Superintendent of Police keeping in view the financial implications and gravity of the offence. During investigation, 24 delivery challans (receipts) for the period w.e.f. 22.04.2017 to 15.06.2017, purported to have been issued by Tanna Agro Impex Pvt. Ltd. in favour of Amit Rice Mill, Uchani, District Karnal were verified, but no entry to that effect was found in the record of Amit Rice Mill, rather the same were forged and fabricated by the accused persons, including the petitioner. Conse uently, on 01.02.2019, the offences under Sections 409, 467, 468, 471, 120-B, IPC were also added, whereas Section 34, IPC was deleted. Paper-book reveals that at the time of submission of the report under Section 173 Cr.P.C. against co-accused Vinay Chhag and Aklesh Rai, Section 474, IPC was added on 29.04.2019. During investigation, co-accused Vinay Chhag was arrested on 03.02.2019 and he made disclosure statement regarding the fake transport Company i.e. Shree Sai Transport Company, Gharaunda incorporated in the name of his cook, namely, Aklesh Rai (co-accused) by him. He further disclosed that several trucks were purchased from the funds of Tanna Agro Impex Pvt. Ltd. in the name of above co-accused Aklesh Rai, present petitioner-Jonty Chhag and co-accused Bhawna Chhag, the details of which are as under:-

Sr. No. Registration No. Name of the Owner with address

1. HR-73-4437Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana-132001

2. HR-73-5633Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana-132001

3. HR-45-C-7018Aklesh, Ward No.5, Gharaunda, District Karnal, Haryana

4. HR-45-B-9533Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana-132001

5. HR-45-B-5142Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana-132001

6. HR-55-S-1051Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana-132001

7. HR-46-B-2203Aklesh, Tanna Agro Impex Private Limited, Ward No.5, Gharaunda, Karnal, Haryana

8. HR-45-B-6055Aklesh, H.No.1613, Sector 13, Urban Estate, Karnal, District Karnal Haryana.

9. HR-45-B-8957Jonty Chhag, H.No.1613, Sector 13, Urban Estate, Karnal, District Karnal, Haryana.

10. HR-55-D-4587Bhawna, H.No.1613, Sector 13, Urban Estate, Karnal, District Karnal, Haryana.

Also necessary to mention here that co-accused Aklesh Rai, who has been shown as owner of eight trucks, was employed by father of the petitioner in the year 2000 with the Tanna Agro Impex Pvt. Ltd. at a monthly salary of Rs. 14,000/- only and there is no source of funds available with said Aklesh Rai for purchasing the above trucks.

In addition to above, two luxury cars bearing registration Nos.HR-05-AS-4879 (Creta) and HR-05-AM-9596 (Cruze) were also purchased from the Company's funds by Vinay Chhag.

The police have also seized 2218 uintals rice from the godown(s) of V.C.Exports, which is sole proprietorship Firm of the petitioner, but there is no valid documents regarding the purchase of the stock. Audit report of Tanna Agro Impex Pvt. Ltd. has also been recovered during investigation from the Chartered Accountant, which indicates that the losses caused to the complainant's Company are to the tune of Rs. 14,41,93,731/- on account of fraud played by the petitioner along with other co-accused, including his father and the same is extracted as under:-

1. Rate Difference Rs. 4,25,97,541/-

2. Variety Difference Rs. 6,55,68,716/-

3. Stock misappropriation Rs. 3,19,36,118/-

4. Freight difference Rs. 35,76,767/-

5. Personal expenditure Rs. 5,14,589/-

TOTAL Rs. 14,41,93,731/-

During investigation, police found the complicity of the petitioner in the present case, therefore, a Look Out Circular (LOC) was issued for securing his presence on 05.02.2019. Various efforts were made through Whatsapp to contact the petitioner by the police, but he did not respond. Ultimately, his arrest warrants were obtained from learned Judicial Magistrate 1st Class, Karnal (for short 'JMIC') on different occasions i.e. 05.03.2019, 05.04.2019, 06.05.2019 and 09.07.2019. Sensing his arrest, the petitioner fled away from the country and thus, despite successive arrest warrants, the police was not able to secure his presence. Resultantly, learned JMIC after recording his satisfaction, vide order dated 01.08.2019, issued a proclamation for enforcing the presence of the petitioner for 29.10.2019. Finding no other alternative, petitioner approached this Court through present petition and he was granted the interim protection on 29.10.2019 while passing the following order:-

"At the outset, learned counsel for the complainant has raised a preliminary objection regarding maintainability of the present petition for grant of pre-arrest bail to the petitioner through General Power of Attorney, i.e. mother of the petitioner.

In response to the above, learned Senior counsel for the petitioner has submitted that a Look-Out notice has been issued, in the matter and petitioner is apprehending his arrest by the police at any time.

In view of the above, objection raised by learned counsel for the complainant is overruled for the present after taking into consideration the factum of Look-Out notice as well as apprehension of the petitioner, but the same is kept open and shall be decided finally on the next date of hearing. Complainant would be at liberty to file his affidavit, in this regard, if so advised.

It is contended on behalf of the petitioner that as per the case of the prosecution itself, father of the petitioner (co-accused) resigned from the Company, i.e. Tanna Agro Impex Pvt. Ltd. wayback on 16.11.2017 and the present FIR has been registered on 13.03.2018 with mala fide intention. Further contends that in terms of Clause 16 of the Haryana Rice Procurement (Levy) Order, 1985 (for short '1985 Order'), neither there is any register available with the complainant to indicate the uantity of paddy milled and rice delivered under levy for the period in uestion; nor any report has been prepared by the Enforcement Officer in terms of Clause 17 of the 1985 Order to substantiate the allegations levelled in the present case.

Learned State counsel is not able to controvert the above contentions raised on behalf of the petitioner and he seeks time to file an affidavit, in this regard.

Adjourned to 04.12.2019, for further consideration. In the meanwhile, the petitioner is directed to join investigation before the Investigating Officer. In the event of his arrest, the Arresting Officer would admit him to interim bail, till the next date of hearing, on his furnishing ade uate bail and surety bonds to his satisfaction. The petitioner is also directed to abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973."

In response to the above order, affidavit dated 03.10.2019 of the Deputy Superintendent of Police, Gharaunda has already been filed, which reiterates that services of the petitioner's father-Vinay Chhag were terminated by the complainant on behalf of the Company due to his misconduct and thus, his claim for resignation from the post of Manager is falsified. Even this fact is duly substantiated from the termination letter dated 16.11.2017 (R-1), collected by the police during investigation, which is in the following terms:-

"As it has been brought to my knowledge from reliable sources and staff members that you are misusing the powers granted to you to manage both rice mills situated at Gharaunda. There have been allegations that your have indulged in corruption activities like accepting commissions, using company facilities for your personal use as well as for your near and dear, using Company resources for the firms of your son and wife and illegal and unaccounted shifting of Goods from our company to other companies.

In view of above facts and misdeeds and consultations with other managerial staff I have decided to terminate you from services with immediate effect. We will be investigating the fats and accordingly will take steps against you in the future."

Affidavit of the DSP has also clarified that 1985 Order is no longer applicable as the same has already been done away by the Director General, Food, Civil Supplies and Consumer Affairs Department, Haryana, vide letter dated 19.03.2015 in view of the decision of the Central Government under Sections 3 and 5 of the Act of 1955. Concededly, Vinay Chhag was working with the Tanna Agro Impex Pvt. Ltd. till November, 2017 and even if the fraud was detected on 20.02.2018 by the complainant, then also, the petitioner, his father along with other co-accused cannot regal out from their liability as the same was noticed after his termination and that was the precise reason for dispensing with the services of Vinay Chhag. It has come on record that petitioner is successfully avoiding the process of law and kept the Investigating Agency at tenterhook for the last more than one year. There is sufficient material available with the prosecution agency, which suggests the complicity of the petitioner as mastermind of the whole conspiracy and he ran away to Dubai to thwart the process of law. Although, interim protection was granted to the petitioner by this Court on 29.10.2019, but he is not revealing the true facts to the Investigating Agency regarding the modus operandi as well as siphoning off the stock of rice and funds of the Tanna Agro Impex Pvt. Ltd. It has been pointed out by learned State Counsel that despite repeated asking of the Investigating Officer, no co-operation has been extended by the petitioner in the matter regarding the stock of rice lying with the V.C.Exports as well as source of amount of Rs. 2.85 Crores deposited in the bank account(s) of his Firm. He is also not able to render any explanation about the source of Rs. 1 Crore received from his mother-Bhawna Chhag as loan amount transmitted in the account of V.C.Exports despite the fact that she is only a housewife. Petitioner has gone to the extent of floating a fake Company, namely, M/s Bar at Exports in the name of his mother-Bhawna Chhag also just to divert the funds of Tanna Agro Impex Pvt. Ltd. and shown the loan entry of Rs. 1 Crore from M/s Bar at Exports in favour of V.C. Exports. There is another Firm shown in the name of his cousin, namely, Umesh to misappropriate the funds of complainant's Company by circulation and fabrication of various records. Curiously, as per the Income Tax Return of the petitioner for the Assessment Year 2018-2019, his gross income has been shown just Rs. 12,19,602/-, therefore, it is not discernible as to what is the source for raising the fortune to the tune of Rs. 33 Crores by his Firm-V.C. Exports. Still further, one truck bearing registration No.HR-45-B-8957 has been purchased by the petitioner without any source of income. As earlier discussed, eight trucks have been shown in the name of co-accused Aklesh and his address is shown as H.No.1613, Sector 13, Urban Estate, Karnal, District Karnal, Haryana, which is the same address mentioned by the petitioner in his bail application, thus, he has actively conspired with co-accused Aklesh also while siphoning off the funds for purchase of eight trucks. Even one more truck bearing registration No.HR-55-D-4587 was purchased in the name of his mother registered on the same very address, thus, all are actively involved in the entire gamut of conspiracy.

Since the services of petitioner's father were terminated by the complainant on 16.11.2017, therefore, he was wholly responsible for maintaining the accounts of the Company and thus, they cannot take the shelter while raising the plea of Clause 20 of the 1985 Order for the losses detected in February, 2018. Even otherwise, if there was any lapses in maintenance of the record of Tanna Agro Impex Pvt. Ltd., then also, it is Vinay Chhag who is wholly answerable and the petitioner cannot take the benefit of his wrong. The respondents have also rightly taken the stand that in view of the communications (C-1 and C-2), issued by the Central Government as well as State Government while exercising powers under Sections 3 and 5 of the Essential Commodities Act, 1955, no levy is to be imposed upon the seller w.e.f. 01.10.2015 and on that count also, plea of the petitioner is indefensible.

It transpires that petitioner has incorporated a bogus Firm under the name of V.C. Exports just to misappropriate the funds and stock of Tanna Agro Impex Pvt. Ltd. while committing fraud and forgery. There is sufficient material which suggests that V.C. Exports had received rice through number of vehicles and some of which are even three-wheelers, buses, including School Bus and thus, petitioner along with his father has swindled the crores of rupees in conspiracy with other co-accused. Original delivery challans for the rice worth Rs. 2.25 Crores are to be recovered from the petitioner, but he has not co-operated with the Investigating Agency despite repeated asking and thus, misusing the concession of interim protection granted by this Court. His original Computer and

Laptop are also to be searched, but the same have not been shown to the Investigating Officer till date. Facts of the case reveal that petitioner is the real conspirator, who being a Computer Engineer, has diverted the funds of the complainant's Company in connivance with his father, mother, Aklesh along with other accused persons and misused his skill. Even the purchase of eight trucks by co-accused Aklesh are also in connivance with the petitioner as the same are shown to have been used for transporting the rice meant for petitioner's firm, namely, V.C.Exports on the basis of forged and fabricated bills as well as gate passes. Police have also collected the material that co-accused Balkar Singh used to charge exorbitant rates and he shared the commission with petitioner. Bank entries of petitioner's Firm-V.C.Exports reveal that an amount of Rs. 30 Lakh was transferred as commission from the account of co-accused Balkar Singh, from whom, the paddy is shown to have been purchased by the complainant's Company on exorbitant rates than the market price in lieu of hefty commission. Hence, the custodial interrogation of the petitioner is very much necessary to collect the material in support of the prosecution case and to unearth the actual modus operandi for siphoning of the funds and stocks of the complainant's Company to the tune of more than Rs. 14 Crores.

Since the present petition is being dismissed, therefore, the point raised by learned Counsel for the complainant regarding locus standi through GPA is left open and the same shall be considered in an appropriate case.

In view of above, the present petition is dismissed.

The above observations may not be construed as an expression of opinion on merits of the case.