

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

CRM-M-3222 of 2017(O&M)

Date of decision: 30.10.2017

Rishu Sharma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jagdish Manchanda, Advocate
for the petitioner.

Mr.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner - Rishu Sharma, an accused in FIR No.234 dated 12.11.2016 for offences under Sections 420, 451, 465, 467, 468, 471, 506 & 120-B IPC, registered with Police Station Gobindgarh Mandi, District Fatehgarh Sahib.

Briefly stated, the facts of the case as per prosecution version are that complainant Sudhir Kapila son of Kewal Krishan, resident of House No.9, Sector 5-C, Shastri Nagar, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib had submitted a written complaint dated 21.9.2016 addressed to Senior Superintendent of Police, Fatehgarh Sahib, in which he contended that he is working as Manager in Amrinder & Company, which is proprietorship of one Jagjit Singh son of Ajmer Singh,

resident of # 1312, Phase-5, Mohali, who had given Special Power of Attorney to him for the purpose of managing the affairs of that concern; that Rishu Sharma and Narinder @ Ashu in connivance with each other had got passed the stock amounting to Rs.3,94,57,537/- from 23.8.2016 to 2.9.2016 through Khanauri barrier without their information, committing theft of tax on amount of Rs.64,51,307/- on which tax @ 3.85% amounting to Rs.15,19,115 and @ 12.5% was payable; that they had come to know that they issued fake bills of their firm to the parties of Ludhiana and that parties of Ludhiana are also involved in the scam; that a bank account has been opened with Indian Overseas Bank, near Bus-stand, Mandi Gobindgarh in the name of their concern Amrinder & Company by submitting fake documents and the person, who had opened the account and guarantor are also in connivance with such accused; that on 9.9.2016 at about 7:15 p.m., Rishu Sharma and Narinder @ Ashu along with 14-15 unknown persons reached in his office, both of them kept their revolvers on his table threatening to kill him, hurling abuses upon him and when he protested then unknown persons caught hold of him from his arms, whereas Rishu Sharma and Narinder @ Ashu started slapping him, in that way assaulted him; that he had saved his life by running away and necessary action be taken.

On registration of formal FIR, apprehending his arrest in this case, the petitioner Rishu Sharma had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application. His such application had been assigned to learned Additional Sessions Judge, Fatehgarh Sahib, who vide order dated 6.1.2017 dismissed the same, as

such the petitioner has approached this Court asking for similar relief.

Notice of the petition was given to respondent – State, which put in appearance through counsel.

It may be mentioned here that during the course of proceedings Excise & Taxation Officer concerned was asked to come present in the Court to give the details of the alleged illegal transactions. Such Officer had put in appearance. Excise & Taxation Commissioner, Punjab was then directed to look into the matter and file his personal affidavit, annexing therewith all relevant documents. He was further directed to go into the issue of the complainant having violated any provisions of the VAT or the Rules framed thereunder, to operate the firm in question, in any manner. This was accordingly done. Thereafter, Excise & Taxation Commissioner, Punjab was required to state in his affidavit as to how vehicles other than trucks etc. are being allowed to go through at ICC, Khanauri, on the presumption that they are goods carrying vehicles, when, as per the investigation carried out, some of the vehicles involved in the present case are stated to be scooters and motorcycles etc. Necessary compliance was got made and status report was placed on file.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that complainant himself is guilty of flouting bogus firms so as to cause loss to the public exchequer and this is quite clear from the affidavits/status report filed by Excise & Taxation Commissioner, Punjab and to save his skin, he had lodged a false FIR. As regards, the petitioner, he has

contended that petitioner has not committed any offence and he has since joined the investigation, therefore, his custodial interrogation is not required and the interim bail granted to him vide order dated 7.2.2017 be made absolute.

On the other hand, learned State counsel submits that the allegations against the petitioner are very serious of indulging in cheating, forgery, fabrication of record and along with his co-accused while armed with fire-arms assaulting the complainant in his office and giving him beatings and at that time he was accompanied by 14-15 unidentified persons. Though, the petitioner has joined the investigation but he has not furnished complete information, therefore, his custodial interrogation is necessary.

After hearing learned counsel for the parties, I find that here we are dealing with a petition for grant of pre-arrest bail filed by petitioner Rishu Sharma, who is an accused in an FIR registered against him. The main thing to be seen is as to whether he is entitled to pre-arrest bail or not. The allegations against complainant as regards the flouting bogus firms in order to cause lose to the public exchequer, it is a separate matter, which can be got investigated, however, that does not dilute the guilt of the petitioner as far as the present case is concerned. Furthermore, as regards the remaining vehicles on the road trying to evade payment of VAT and other taxes that is also beyond scope of this petition and can be dealt with in a proper forum. The allegations against the petitioner are quite grave and serious. According to the State counsel, he has not come up with all the information within his knowledge. It is well settled that

custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

However, while parting with the discussion, the State is directed to get probed the incriminating facts, which have come on record against the complainant and then to take necessary action in the matter.

30.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No