IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41843-2019(O&M)
Date of Order: 07.12.2019

Vishnu Kumar Shastri

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Rai, Sr. Advocate, with,
Mr. Anurag Arora, Advocate and
Mr. Ashwani Kumar Antil, Advocate and
Mr. Gautam Kailey, Advocate
for the non-applicant-petitioner.

Mr. B.R.Mahajan, Advocate General, Haryana, with
Mr. Manish Bansal, DAG, Haryana, with
Mr. Rameshwar Mehra, Addl. Excise & Taxation Commissioner, Haryana.

Mr. Rajiv Sharma, Advocate and
Mr. Nikhil Sharma, Advocate
for the complainant.

ANIL KSHETARPAL, J.

Petition under Section 438 of the Code of Criminal Procedure has been filed for grant of pre-arrest bail in a criminal case arising out from FIR No.0007, dated 26.08.2019, registered under Sections 192/193/451/466 IPC, at Police Station SVB Rohtak, State Vigilance Bureau, Rohtak.

Petitioner is employed, at present on the post of Deputy Excise and Taxation Commissioner, with State of Haryana.

In nut shell, the case of the prosecution is that on the basis of enquiry No.16 dated 10.09.2018 held by Additional Chief Secretary, Government of Haryana, Vigilance Department, which was initiated on the complaint made by Sh. Gopal Chand Kappor, owner/Director of M/s GNB Brothers, Kundli, District Sonepat, to the effect that the petitioner who was at the relevant time posted as Excise and Taxation Officer, Sonepat, was required to decide the case for the assessment year 2009-2010 by 30.03.2013 but the petitioner has not decided the case within the time. Thereafter, he subsequently, after having been transferred entered in the office on 11.02.2017, a holiday and made entries in the disposal register in order to establish that assessment orders have been passed. Thus, the State has suffered loss of revenue to the extent of Rs.56,85,580/-. During the enquiry, it was found that as per monthly report of March, 2013, cases of assessment years 2009-2010, 2010-2011 and 2011-2012 have not been assessed. Hence, recommendations were made to register the FIR.

This court has heard learned senior counsel for the petitioner, learned Advocate General, Haryana as well as learned counsel appearing for the first informant M/s DNB Brothers.

At the outset, it must be noticed that existence of assessment order for the assessment year 2009-2010 is not being disputed. Learned senior counsel for the petitioner has submitted that petitioner is being targeted because he was a member of Special Investigating Team constituted under Lokayukta Haryana and had detected and reported scam worth approximately Rs.10,000/- Crores on 14.01.2015 and, thereafter, petitioner is being targeted by seniors in the department. He further submitted that it is first FIR against an officer, for not passing appropriate assessment order in the history of State of Haryana. He further submitted that Comptroller and Auditor General, since 2009-2010 have been auditing the files and no point of time, it was ever reported that assessment orders have not been passed by the petitioner. He further submitted that the petitioner was transferred from Sonepat on 02.07.2014. Hence, he had no control over the files, thereafter. He further submitted that assessment orders have also been passed by the petitioner for the years 2010-2011 and 2011-2012. Copies whereof have been annexed as Annexures P-4 and P-5. He further submitted that M/s GNB Brothers admittedly did not file return after first quester of the assessment year 2010-2011. He further submitted that petitioner has got 18 FIRs registered against the assessees for cheating and fraud and it is because thereof the entire Taxation Bar Association is against him. Now, they also in collusion with the officials are targeting the petitioner. He further submitted that Chartered Accountant of the M/s GNB Brothers is in fact the President of the Taxation Bar Association. In the end, he submitted that petitioner has already joined investigation.

On the other hand, learned Advocate General, Haryana, has admitted that assessment order for the year 2009-2010 is available but the assessment orders as well as files of the assessment years 2010-2011 and 2011-2012 are not available. He further submitted that in the disposal register, petitioner made an ante dated entry in 2017 after getting the office opened, so as to cover up his lapse. He submitted that no assessment orders were passed is also established from various documents.

However, he admitted this is for the first time the FIR has been registered against the assessing authority for non-passing of the order of assessment.

On the Court question, learned Advocate General admitted that every assessing authority has a record keeper, who keeps and maintains the record. He admitted that no action has been taken against the record keeper, who was posted with the petitioner at the relevant time. He further admitted that record keeper never reported to the superior officer intimating that no order of assessment has been passed during all these years even after the transfer of the petitioner from Sonepat.

Learned counsel appearing for the first informant M/s GNB Brothers has submitted that his client has suffered loss of more than Rs.56,00,000/- as his client, although, entitled to the refund have not been able to get the same.

On consideration of the entire matter, this court is of the opinion that custodial interrogation of the petitioner would not be necessary. The petitioner on the direction of the Court has already joined investigation. The record, if any, is supposed to be in the custody of the record keeper and not the petitioner. The petitioner is still in the employment of State of Haryana. There are no allegations that he is likely to leave the country. File of assessment year 2009-2010 is now admittedly available. It is also undisputed that the petitioner was associated with the Special Investigating Team and submitted report on 10.12.2015. It only, thereafter, old files against the petitioner are sought to dug.

Keeping in view the aforesaid facts, the order dated 07.10.2019 granting interim protection is made absolute. Petitioner shall be bound to abide by the conditions provided under Section 438(2) Cr.P.C. and would join investigation as and when called upon.

Accordingly, the present petition is allowed.

07th December, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No