204

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

CRM-M-28797-2020
Date of Decision: 22.09.2020

Ravi Nandan

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Surya Parkash, Advocate for the petitioner.

Ms. Samina Dhir, Deputy Advocate General, Punjab *instructed by Mr. Gursharan Grewal, AIG, E.O. Wing.*

****

AVNEESH JHINGAN, J (Oral):

1. The present petition is filed being aggrieved of order dated 11th September, 2020 rejecting the prayer of anticipatory bail in FIR No. 8, dated 21st August, 2020 under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Sections 7, 7(a) and 8 of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, Phase-1, Mohali.

2. The FIR was result of information received by the vigilance bureau that person namely Vijay Kumar resident of Khanna is working in the filed of transportation within cities of Khanna, Ludhiana and others. He had been indulging in the tax evasion in connivance with the officers/ officials of Excise and Taxation Department. It is alleged that the tax was being evaded by ensuring that there is no checking or verification of the documents or the goods while being transported to and from State of Punjab. Heavy monthly amount were being paid as bribe to the officers and officials of taxation department. It is also stated that various other persons were involved in connivance with Vijay Kumar. The mobile number used by these persons were pin pointed after getting permission from the competent authority, technical inputs were collected and call details were gathered. On 5th March, 2020, one person called Vijay Kumar on his mobile to inform that he had delivered bribe in district Moga, Faridkot and Ferozepur and asked as to whether Vijay Kumar will deliver the money to Ravi Nandan, Excise and Taxation Officer (ETO), Fazilka or he should deliver. There are other converstations with regard to amounts of money being paid to various officers and officials and a separate bribe

being given to the AETC, Fazilka. Instructions were given by Vijay Kumar to check the computer with regard to payments already made to some officers. There is conversation with the lady officer stating that whatsoever was settled, Vijay Kumar is not backing from it and she should not harass by obstructing vehicles. The lady officer stated that she has already allowed more vehicles to go than the settled number. The telephonic calls reveal that there are other transporters and passers involved in the similar activities, one of them is named as Shinda.

3. Apprehending the arrest, the petitioner moved petition under Section 438 of Cr.P.C. for grant of anticipatory bail. On rejection of the petition, the present petition is filed.

4. Learned counsel for the petitioner argued that apart from the conversation that as to whether Vijay Kumar will send the amount to the petitioner or the other person should give, there is nothing against the petitioner in FIR. There is no proof of any payment made. It is further submitted that the petitioner retired on 31st March, 2020 whereas FIR is of August, 2020. The contention is that the reliance on the register maintained by Som Nath, Pawan Kumar and Shiv Kumar giving details of money paid to the officers

has no evidentiary value. It is submitted that the telephonic calls of the petitioner were not recorded and he had 30 years of spotless service.

5. On behalf of the State, it is contended that the names of 7 officers figured in the FIR and the petitioner has been specifically named. It is submitted that during the investigation, Sukhwinder Singh @ Shinda (passer) stated that Rs.12,00,000/- per month was paid to the Mobile Wing Bathinda and Fazilka, the petitioner remained posted there. It is further submitted that in the call recordings, it is clear that money is to be delivered to the petitioner, the only discussion was as to Vijay Kumar would pay or other person should do the needful. The prayer is opposed on the ground that retirement of the petitioner is not a relevant factor, as the investigation involves period prior to his retirement also. Contention raised is that the collection of GST at the State level has dropped. The evasion of tax is by connivance of transporters, officers/officials of Excise and Taxation Department and the passers, if it is not checked or taken seriously, the tax regime under GST would crash. It is prayed that custodial interrogation is necessary to go to the root of the matter.

6. Learned counsel for the petitioner rebutted the contention of the State by submitting that statemnet of Sukhwinder Singh @ Shinda was vague and cannot be relied upon.

7. To decide the present petition, it would be necessary to glance at working of Goods and Services Tax (GST). With the introduction of GST regime, one of the object worked upon was free movement of goods, by removal of barriers and Information Collection Centres. The responsibility was shifted upon the Excise and Taxation Officers/ officials and more so on the mobile wing of the department. Under the GST, there is an inter-connected chain of sellers and purchasers as the purchaser gets the credit of tax paid or suffered by seller. The chain can be within the State or PAN-India. One link in the chain being ingenuine, doctored or non-existant, would impact the entire chain.

8. The nature of allegation in present case of evasion of GST requires a deeper probe. There are far reaching ramifications which may vary from allowing of input credit/ MODVAT of tax not paid to the Government to an eventuality that the credit of tax paid on some other product is used for something else. Not only this, someone later in chain in spite of being bona fide purchaser not

aware of the earlier misdeed in the chain yet will have to suffer the consequences.

9. The term 'passer' has been repeatedly used. He is a person who acts as a Mediator between the dealers, transporters and the officers. He ensures the ground level implementation that the goods in transport reach the destination without checking. It is for this facility that the amount is charged and the said bounty is shared and distributed.

10. If the dealer is sure that the goods sent in transit and the documents accompanying will not be checked or verified, he has leverage of playing havoc with the collection of tax. The goods can be sent by preparing the documents which are not even accounted for and on reaching the destination, the documents are done away with leaving no trail of the transaction. This enables usage of credit of the tax paid or suffered on the said goods in the manner which is suitable to the commercial interest of the dealer.

11. The allegation in the present case are very serious. There is alleged connivance of the transporters, passers and the officials to facilitate the evasion of tax. The investigation is going on, it appears that the officials were being paid bribe on monthly

basis.

12. At this stage, it would not be appropriate to go into the evidentiary value of the material collected during the investigation. The transcript and the call recording pose serious allegations that the petitioner was being paid amount regularly as is evident from discussion between Vijay Kumar and other person. The issue at present is not whether the evidence already collected would be enough to convict the petitioner, as the investigation is continuing. The retirement of the petitioner in March, 2020 does not debar the investigation, the incident is of prior period, the material and evidence being collected is for last one year. The fact that the petitioner had 30 years of spotless service or his telephone was not recorded, would not be a reason to conclude that custodial interrogation is not required. The information with investigating agency may be a tip of an ice berg. The contention of learned counsel for the petitioner that the statement of Sukhwinder Singh @ Shinda is vague, if determined at this stage would effect the investigation and the trial. The fact remains that there is *prima facie* evidence against the petitioner of his involvement in the connivance for evasion of tax, which needs to be looked into.

13. There is no quibble that the liberty of a person is of utmost importance. But when personal liberty is pitted against a sovereign function i.e. collection of tax which is life blood of the economy, the latter would prevail. Present is a case where arrest is imperative for fair and full investigation. The petitioner being an ex-officer of the department can influence the witness or temper with the evidence.

14. Considering the complexity of the issue, the tax impact on chain of sellers and purchasers, the material as on date with the investigating agency, the multi dimensional aspects involved which needs a deeper probe, no case is made out for grant of pre-arrest bail.

15. The petition is dismissed.

16. It is clarified that discussion made above is only for purpose of deciding the present petition, same shall not be construed as opinion on merits for purpose of investigation or trial.

[AVNEESH JHINGAN]
JUDGE

22nd September, 2020
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes