203 (1)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-28786-2020
Date of Decision: 22.09.2020

Manjit Singh

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rakesh Sobti, Advocate for the petitioner.

Ms. Samina Dhir, Deputy Advocate General, Punjab *instructed by Aashish Kapoor, AIG Vigilance, Flying Squad.*

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AVNEESH JHINGAN, J (Oral):

1. Manjit Singh, Assistant Excise and Taxation Officer, presently posted at Mobile Wing, Amritsar, has filed this petition against order dated 11th September, 2020 rejecting prayer for anticipatory bail in FIR No. 9, 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 registered was a sequel of information received by the Vigilance Bureau that Som Nath owner of Sadhu Transport R/o Phagwara had been indulging in tax evasion in connivance with the officers/ officials of Excise and Taxation Department, Punjab. It is alleged that the tax was being evaded by ensuring that there was no checking or verification of the documents or goods, while being transported to & from State of Punjab. Heavy monthly amounts were being paid as bribe to the officers and officials of taxation department to ensure the same. The information was that Shiv Kumar, Clerk of Som Nath and Pawan Kumar (who is stated to be working as driver with some of the Excise and Taxation Officer) were actively involved in distributing money to the officers. The mobile numbers used by these persons were pin-pointed and after obtaining permission from the competent authority, technical inputs were collected and call detail records were gathered. From the conversations recorded, names of certain officers came forth, as also the amount to be paid or paid to them. There was also a discussion that due to COVID-19 situation, less sum be paid to the

officers. The Vigilance Department pursued the call details and inputs of the mobile numbers in question, for last one year. It was further stated in the FIR that bogus bills were used to transport the goods, the descriptions and the values of goods were changed. Other officials were also involved, who gave the prior information to the transporters and passers about the checking. Various officers have been named in the FIR. It was also stated that apart from the officers/officials named in the FIR, other inputs having incomplete details are being investigated and if more names come to light, they would be nominated for necessary action.

3. Apprehending the arrest, the petitioner moved petition under Section 438 of Cr.P.C. Seeking anticipatory bail, the petition is directed against rejection of the prayer.

4. Learned counsel for the petitoner argued that the petitioner has not been named in the FIR. He was neither apprehended or any recovery made. It is result of the disclosure statement of the co-accused ETO that the name of the petitioner has surfaced. It is submitted that the incident referred for registering the FIR is of 17th March, 2020, at that time, the petitioner was not posted at Mobile Wing, Amritsar. The petitioner was given posting

in the Mobile Wing on 2nd July, 2020, earlier he was at Ferozepur and Faridkot. The argument is that the vigilance bureau has collected call details of Som Nath, owner of Sadhu Transport and his *Munshi*, it nowhere relates to the petitioner.

5. Learned State counsel argued that 12 officers were named in the FIR. Though the petitioner was not specifically named, but his name was disclosed by co-accused ETO during investigation. Further as result of disclosure statement of Shiv Kumar, *Munshi* of Som Nath, a register was seized which contains sums paid to the officers/officials. As per register, the petitioner was paid ₹ 5,55,000/- for the period June, 2014 to 13th October, 2019 as ETO and a sum of Rs.1,00,000/- in the month of July, 2020 as AETC Amritsar. The matter is still being investigated. The files dealt with by the petitioner were also inspected to ascertain his role. Fifty one files were inspected of road-side checking and it was found that the statutory procedure was done away with. Number of vehicles detained were let off by levying minor penalties, there were no order sheets or orders for imposing penalties. The vehicles were being released without ascertaining the actual origin and destination of the goods. In one of the files, the case was dealt with without making

physical inspection holding that full fledged truck was hired for transporting 70 shirts from Ludhiana to Amritsar. The prayer is that the instances given, indicate that the petitioner was hand in glove with the passers and the transporters. It is highlighted that collection of GST at State level has dropped. The evasion of tax is by connivance of transporters, officers/officials of Excise and Taxation Department and passer, if it is not checked nor taken seriously, the tax regime 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 that the mobile number of the petitioner is not mentioned in FIR and the entries in the register have no evidentiary value.

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, 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 a chain of sellers and

purchasers, There is an inter-connection 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 accounted for and on reaching the destination, the documents are done away with leaving no trail of the transaction. This enables usage of the 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 a monthly basis.

12. At this stage, it would not be appropriate to go into the evidentiary value of the material being collected during the investigation. The allegations are that petitioner has been paid amount of ₹ 5,55,000/- for a period June, 2014 to 13th October, 2019. The allegations are further linked by the discrepancies found in the file and the way detained vehicles were being dealt by the petitioner. There are indicators that the minor penalties were imposed for releasing vehicles without comparing accompanying documents with the goods or determining actual origin and

destination. Merely the fact that the name of the petitioner does not figure in the telephonic conversation or its transcript and he is not specifically named in the FIR, would be a no reason to conclude that custodial investigation is not required. The information with investigating agency may be a tip of an ice berg.

13. The in-roads of the passer Pawan Kumar in the Excise and Taxation Department is evident from the fact that Pawan Kumar though not an employee of Excise and Taxation Department but was being used by various officers as a Driver when the regular drivers were not available. The contention that petitioner was not posted at Mobile Wing, Amritsar on 17th March, 2020 is of no avail as the vigilance bureau has considered the details available with it pertaining to last one year. The conversation between Somnath and his *Munshi* was lead for further investigation, it would be at appropriate stage, when the evidence collected would be weighed.

14. During the course of arguments, the counsel for the State has pointed out that the petitioner has absented himself from the duty and is not attending the office.

15. There is no quibble that the liberty of a person is of utmost importance but when 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 official position of petitioner can be used to influence witness or temper with evidence.

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

17. The petition is dismissed.

18. 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