203 (2)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CRM-M-28841-2020
Date of Decision: 22.09.2020

Sushil Kumar

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner.

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

****

AVNEESH JHINGAN, J (Oral):

1. Sushil Kumar, Excise and Taxation Officer, presently posted at Mandi Gobindgarh, 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. Twelve officers including the petitioner have been named in the FIR. It is also alleged that atleast 40 calls were made by Pawan Kumar to Sushil Kumar (petitioner) on his mobile. It was 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. for grant of anticipatory bail, the present petition is directed against rejection of prayer.

4. Learned counsel for the petitioner argued that the name of petitioner does not figure in the recorded conversation. It is submitted that merely that Pawan Kumar had made 40 calls to the petitioner is not in itself enough to prove an offence. 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. To support the prayer for anticipatory bail, it is submitted that no forgery of passes or bills is attributed to the petitioner.

5. On behalf of the State, it is contended that the names of 12 officers figured in the FIR and the petitioner has been specifically named. Further that during the investigation, Shiv Kumar *munshi* of Som Nath, made a disclosure statement whereby register was seized. The register maintained contains details of amounts paid to Excise and Taxation Officers / officials. As per register, ₹ 8,25,000/- was given to the petitioner for the period 13.10.2017 to 20.07.2020. It is submitted that matter is still under investigation and the files dealt with by petitioner were inspected. It was found that trucks detained by him were not dealt with as per the statute, number of them being let off by imposing minor fine without making any physical verification. In some cases, the penalty to be imposed by the Assistant Excise and Taxation Commissioner was imposed by the petitioner and the vehicle was released without there being any penalty order. It has come to the light that some of the cash penalty recovered was not deposited in the Government Treasury. During the investigating, it surfaced that there are no entries of detained

vehicles maintained for the period January, 2020 to April, 2020. In some cases in spite of original bills being there on file, minor penalties were imposed by the petitioner on the ground that goods were not accompanied with bills. It is submitted that these instances indicate that the petitioner was hand in glove with the passers and transporters. The submission 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 refuted the contentions of the State by submitting that the petitioner was not on active post of Excise and Taxation Officer from 1st January, 2020 to 20th March, 2020 and was posted only in Mandi Gobindgarh for last two months only. It is argued that Pawan Kumar was one of the driver used in the department when the regular departmental drivers were not available, there is nothing special if there are 40 phone calls made by him to the petitioner.

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 a 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 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 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 ₹ 8,25,000/- over a period of last 3 years. The allegations

are further linked by the discrepancies found in the file and the way the detained vehicles were being dealt by the petitioner. There are indicators that the minor penalties imposed and recovered in cash by the petitioner were even not deposited in the Government Treasury. Merely the fact that the name of the petitioner did not figure in the telephonic conversation or its transcript would not be a reason to conclude that custodial investigation of the petitioner 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 arguments raised by counsel for the petitioner 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. Yet there appears no occasion for such a person to make 40 calls to the petitioner on his mobile number. The contention that petitioner was not on active duty from January, 2020 to March, 2020 is of no avail, the vigilance bureau considered the details pertaining to last one year.

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 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 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 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.

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