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

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CRM-M-31157 of 2020
Date of Decision: 7.10.2020

Som Nath Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pradeep Virk, Advocate for the petitioner.
Ms. Rashmi Attri, AAG Punjab.

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AVNEESH JHINGAN, J. (Oral)

The matter is taken up for hearing through video conference due to COVID-19 situation.

Som Nath s/o late Sh. Sadhu Ram has filed the present petition seeking anticipatory bail in FIR No. 9 dated 21.8.2020, under Section 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 and Section 7, 7(a) and 8 of the Prevention of Corruption Act, 1988, registered at Polie Station Vigilance Bureau, Phase-1, Mohali.

The FIR was registered on an information received by the Vigilance Bureau that Som Nath owner of Sadhu Transport s/o Phagwara had been indulging in tax evasion in connivance with the officer/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 amount 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 of Excise and Taxation Department have been named in the FIR. It was stated that apart from the allegations 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.

It would be pertinent to note that the office of the petitioner was raided from where register continaing the details of payment made from various officials etc was recovered, computers and other electronic equipments used for the purpose of tax evasion were seized.

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.

Learned counsel for the petitioner argued that no further recovery is to be made from the petitioner as the Vigilance Bureau is already in possession of the register and computers. He being an ordinary person cannot be in a position to influence the witnesses or temper with the evidence. The call details are there with the Vigilance Bureau and same cannot be tampered with. It is submitted that the petitioner is ready to join the investigation and cooperate.

Learned State Counsel contended that the petitioner is the main accused, it is on an information received that 8 trucks were checked which fortified the information regarding tax evasion. She further contended that it is a big scam and custodial interrogation is required to get further details.

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 nonexistant, would impact the entire chain.

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.

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.

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.

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.

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 paid huge amount to officials of Excise and Taxation Department over a period of last 3 years. The allegations are further linked by the discrepancies found in the files and the way the detained vehicles were being dealt by the officers concerned. There are indicators that the minor penalties imposed and recovered in cash were even not deposited in the Government Treasury.

The investigating agency had initiated action on the basis of the the information. The allegations against the petitioner is that he is running a transport business and in connivance with the officials of Excise and Taxation

Depatment, a racket is being run with the help of others to dent the public exchequer. The contention of learned counsel for the petitioner that no recovery is to be made is not well founded. Merely the fact that the computers and registers are already with vigilance department would not be enough to say that custodial investigation of the petitioenr is not required. Rather it is during investigation of the petitioenr that full picture would emerge. The information with investigating agency may be a tip of an ice berg. The register and computers already with the Vigilance Department could only give and window with regard to the transcation which are doubted. Moreover, the petitioenr being transporter would be in possession of GR and other documents used for such transaction.

The contention that the petitioner is not in a position to influence the witnesses and temper with the evidence is noted to be rejected. He is hand in glove with the officials of Excise and Taxation Department. The material evidence is in possession of the petitioner. He is in a position not only to help himself out by not producing or tampering with the evidence but would be of great help to the official of the Excise and Taxation Department named in the FIR. From the pleadings and arguments it is forth coming that it was a well knitted trap for evasion of tax. The officials were being paid on monthly basis and the petitioner was in a position to even negotiate for the monthly payment to be made.

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.

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.

The petition is dismissed.

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

7th October, 2020
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Whether speaking/reasoned: YES

Whether reportable: YES