

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 16487 of 2021 (O&M)

Date of decision : 28.5.2021

...

Pawan Kumar

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Atul Goyal, Advocate for the petitioner

Mr. J.S. Ghuman, Deputy Advocate General,
Punjab.

Mr. Saurabh Goel, Advocate for the complainant.

...

H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-13831-2021

This is an application for pre-ponment of hearing in the
main petition which is fixed for 23.8.2021.

Heard.

The application stands accepted. The main petition is
pre-poned and taken up today.

Main case.

Petitioner - Pawan Kumar, aged about 50 years, s/o

Joginder Pal, resident of House No. 243-B, Bhagya Hoes, Jain

Colony, Basti Jodhewal, Ludhiana, was booked as an accused in complaint under Section 132 (1) (b&c) punishable under Section 132 (1) (i) of CGST Act, 2017, read with corresponding Sections of Punjab GST Act, 2007 and IGST Act, 2017.

As per allegations in the complaint, Sahil Jain, a co-accused was the mastermind in carrying out fake transactions and creating 14 firms in which his family members and close friends were shown to be proprietors/partners and on the strength of fake invoices, had availed of inadmissible input tax credit, besides passing on fraudulent input credits to the buyers on the strength of such invoices running into Rs.17.65 crores. He was arrested in this case on 12.1.2021. The prosecution failed to complete the investigation within the stipulated period of 60 days and file challan/complaint in the Court, as such on an application under Section 167(2) Cr.P.C., having been filed by accused – Pawan Kumar, that application was allowed and he was granted bail on his furnishing bail bonds in the sum of Rs. 1,10,00,000/- with two sureties in the like amount(at least one local) and subject to various conditions i.e.:-

1. Accused shall furnish a bank guarantee/FDR for an amount of Rs.55 Lakh to be forfeited to the State in case of violation of any of the terms and conditions imposed vide this order.
2. Accused shall come present on each and every date of hearing for appearance in the Court and for trial of the case.

3. Accused shall not leave the jurisdiction of this Country without permission of the Court. He shall surrender his passport in the court if he possesses the same and in case he do not hold any passport his undertaking in form of an affidavit that he will not get any passport issued in his name without permission of the court.
4. Accused shall not commit any offence of like nature or any other offence punishable under law.
5. Accused shall not try to influence the witnesses of the prosecution or tamper with the evidence.
6. Accused shall not change his appearance during the course of trial.
7. Accused shall not change his address without prior intimation to this Court.
8. Accused shall not induce, threat or promise any witness to refrain him/her from deposing in the case during the investigation or trial. Accused shall make available himself before I.O./ Authority holding investigation to assist the investigating machinery as and when called upon to appear before the authority concerned till final investigation or as and when directed by the Court and accused will cooperate with the investigation even during his release on bail.
9. In case of default by the accused in complying with the conditions of bail enumerated above, his bail shall be

cancelled, his bail bonds and surety bonds liable to be canceled and forfeited to the State and he shall be liable to be prosecuted under Section 446 of the Cr.P.C.”

The petitioner-accused found the conditions to be stringent and onerous, as such has approached this Court by way of filing the instant petition under Section 482 Cr.,P.C.praying that the conditions of heavy surety and bank guarantee/FDR be withdrawn.

Notice of this petition was given to the State of Punjab and complainant, who have put in appearance through counsel.

I have heard learned counsel for the petitioner, learned counsel for the complainant, as well as learned State counsel, besides going through the record and I find that the petition is doomed for failure.

It may be mentioned here that admittedly the petitioner had filed a revision petition before the Court of Sessions challenging such conditions. However, it was withdrawn abruptly. The petitioner had taken recourse to proper legal remedy but for the reason best known to him, did not opt to pursue the revision and withdrew it.

As far as his approaching this Court under Section 482 Cr.P.C., it needs to be mentioned here that Section 482 Cr.P.C which saves inherent powers of the High Court, is not a panacea for all the ills. The litigant should adopt a proper mechanism provided under the law for redressal of his grievances, instead of not doing so and rushing to this Court asking it to interfere in the matter, exercising the

power under Section 482 Cr.P.C. If such practice is allowed, then the litigants would rush to this court moving petitions under Section 482 Cr.P.C., in a hope to get early decision, instead of availing of the remedy provided under the law.

Nevertheless in the instant case, I do not see any reason to use the power under Section 482 Cr.P.C. since the conditions imposed cannot be terms to be onerous, arbitrary or stringent. Keeping in view the fact that the petitioner alongwith his co-accused is involved in a serious economic offence, resulting in scams, involving crores of rupees, causing loss of Rs.17.65 crores to the Government exchequer by passing the fraudulent ITC through issuance of invoices without actual supply of any goods. To ensure that he does not abscond and appear in the Court regularly and should not make any effort to tamper with the prosecution evidence, terms and conditions have rightly been imposed and no fault can be found with the same. The co-accused of the present petitioner, namely Sahil Jain, who was also granted bail under Section 167 (2) Cr.P.C., imposing such like conditions, had approached this court alleging the conditions to be unreasonable, praying for setting aside of the same. His petition under Section 482 Cr.P.C. bearing CRM-M-4374-2021 had been dismissed by a Co-ordinate Bench of this Court, vide detailed order dated 3.3.2021, copy Annexure R-3, discussing the factual and legal position on the subject in detail. The case of the present petitioner is similar and identical to that of his co-accused Sahil Jain. I do not see any reason to take a different view in the

matter. The order passed by learned Chief Judicial Magistrate. Ludhiana, is quite detailed, well reasoned and I do not see any reason to interfere with the same, as regards the conditions imposed for release of the petitioner on bail under Section 167 (2) Cr.P.C.

Learned counsel for the petitioner had referred to various judgments i.e. 1) *Sandeep Jain, vs. National Capital Territory of Delhi rep. By Secretary, Home Deptt. in Criminal Appeal No. 59 of 2000 (arising out of SLP (Crl.) No 1579 of 1999, decided on 18.1.2000;* 2) *Sumit Mehta vs. State of NCT of Delhi, Law Finder Doc Id # 479321;* 3) *Amarjit Singh vs. State of NCT of Delhi, Law Finder Doc Id # 9439* and 4) *Runa Pasricha Rajpoot vs. State of Haryana, Law Finder Doc Id # 1422210.* But those are not applicable due to different facts and circumstances and the context in which such observations had been made.

Finding no merit in the petition, the same stands dismissed.

28.5.2021
chugh

(H.S. Madaan)
Judge

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