205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21774-2021 (O&M)
Date of Decision : 03.08.2021

Ankush ....Petitioner

Versus

State of Haryana ....Respondent

CORAM: HON'BLE MR JUSTICE JASGURPREET SINGH PURI

Present : Mr. P.S. Jammu, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

JASGURPREET SINGH PURI, J. *(Oral)*

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.47 dated 06.03.2019 under Sections 406, 420, 467, 468, 471, 120-B and 201 of the Indian Penal Code registered at Police Station Agroha, District Hisar.

As per the allegations which has been contained in the FIR which has been attached as Annexure P-1 with the present petition, the petitioner is a proprietor of firm M/s Ankush Cotton and Ginning, Agroha, District Hisar holding GSTIN-06BTYPA95101ZO and as per the FIR the petitioner was found to be involved in evasion of tax by way of getting re-registration under GST Act, 2017 by means of fraud, willful mis-statement and suppression of facts in the name and style of M/s Ankush Cotton and Ginning, Agroha, District Hisar holding GSTIN-06BTYPA95101ZO. As per the allegations the petitioner was fraudulently involved in wrong availment and utilization of input tax credit for disposal of out-tax liabilities without actual payment of tax resulting into loss of State exchequer.

Learned counsel for the petitioner has submitted that it is a case where the investigation of the case is already complete and the challan has already been presented on 28.04.2021 and the petitioner is in custody since 17.02.2021. He has submitted that the lodging of the FIR itself was an abuse of the process of law because no case was made out under Sections 406, 420, 467, 468, 471, 120-B IPC and the offence under Section 201 IPC which was added lateron was also an abuse of the process of law. He has submitted that the primary case stated by the prosecution was that the petitioner has made a firm which is not in existence and he has applied for a GST number fraudulently. However, while referring to Annexure P-2, learned counsel has submitted that this letter dated 27.08.2019 was written by Excise and Taxation Officer Ward No.4, Hisar to the State Crime Branch wherein it has been mentioned that as per the record a penalty of Rs.41,364/- has been imposed upon M/s Ankush Cotton & Ginning Agroha and furthermore, as per serial No.8, no refund has been claimed by the firm. He has submitted that the letter itself shows that the company was in existence and a penalty was imposed and that no refund has been demanded by the petitioner. Further the prosecution has lodged the present FIR by stating that there is no firm in the name of M/s Ankush Cotton & Ginning Agroha and if there is some irregularity with the record of the payment of GST then that would be covered under the GST Act and not under the provisions of IPC. He has further submitted that since no recovery is to be effected from the petitioner and the investigation of the case is already complete therefore, he may be considered for the grant of bail. He has further submitted that till date he is not involved in any other case whatsoever of any type.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that reply has been filed by Deputy Superintendent of Police, Detective, Hisar in which it has been stated that the petitioner has committed offence by using GSTIN which has been got fraudulently by the firm which does not exist in reality for the purpose of passing of Input Tax Credit which is accumulated on account of his paper/bogus transaction without the actual payment of the tax. He has further referred to the affidavit and stated that the non claiming of the refund does not imply that there is loss to State exchequer and it is the use of Input Tax Credit which is claimed on account of paper transactions to set off the liabilities of the firm amounting to Rs.2.15 crore which is a clear cut case of loss of the government revenue. Learned State counsel has further submitted that after the registration of the case the investigation was conducted and during the course of investigation record pertaining to GST of M/s Ankush Cotton & Ginning Agroha was obtained from the Excise and Taxation Department and the petitioner was arrested on 15.02.2021 and on his disclosure statement it is stated that the record has been destroyed by him due to which Section 201 IPC was added. He has further submitted while referring to the affidavit that there is an apprehension of absconding of the petitioner from trial, if the petitioner is granted bail.

Further while replying to the contentions made by learned State counsel it has been stated by the learned counsel for the petitioner that the stand taken by the State in the affidavit is contrary to Annexure P-2 where the existence of the firm itself has been shown and that it why a penalty was imposed. He has further submitted that so far as the disclosure statement made before the police is concerned the same is inadmissible in law. The true facts would come only at the stage of trial.

I have heard learned counsel for the parties.

Custody period of the petitioner is not in dispute and it is also not in dispute that the investigation of the case is already complete and the challan has been presented on 28.04.2021. It is also not in dispute that no recovery is to be effected from the petitioner. It is a case where the allegation pertained to the wrongful adjustment of Input Credit Tax for setting off the tax liability without actual payment of the tax amount. At this stage it is to be seen that in case the petitioner is granted bail, then whether he is likely to influence any witness or tamper with any evidence or may flee from justice or not. A perusal of the affidavit which has been filed by the State shows that it has been apprehended by the State that in case the petitioner is granted bail then he may abscond. However, it has not been stated in the affidavit that in case the petitioner is granted bail then he may influence any witness or may tamper with any evidence. So far as the apprehension of absconding of the petitioner during trial is concerned, on query being put to the State counsel whether there is any material available to substantiate the aforesaid apprehension, the learned State counsel has not been able to justify the same. The trial of the case may take some time and therefore, considering the totality of circumstances of the present case, this Court is of the considered opinion that the petitioner is entitled for grant of regular bail.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

03.08.2021 **(JASGURPREET SINGH PURI)**
Rakesh **JUDGE**

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