

CRM-M-33555-2021

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

CRM-M-33555-2021.
Date of Decision:-15.09.2021.

Govind

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jagmohan Bansal, Senior Advocate with
Mr. Anurag Bansal, Advocate and
Mr. Kapish Chawla, Advocate for the petitioners.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.42 dated 06.01.2019 under Sections 420,467, 468, 471, 201 and 120-B IPC, registered at Police Station Chandni Bagh, Panipat.

In the present case, FIR was registered by the Excise and Taxation Officer, Panipat on the allegation that one Rakesh Kumar S/o Sh. Daya Nand Singh was running a proprietorship firm, namely, M/s Saksham Enterprises and he had got himself registered under Central Goods and Services Tax Act/Haryana Goods and Services Tax Act, 2017 (for short 'the Act of 2017'), bearing GSTIN 06AWZPK9294K1ZC. It has been

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alleged that inquiries regarding the genuineness of the firm were conducted and that the said dealer had uploaded a rent agreement as proof of his address and a visit was made to the said address during inquiry, but no such firm was found functioning at the said address and that even the mobile number of the said Rakesh Kumar was not traceable. Thereafter, summons under Section 70 of the Act of 2017 were issued to Karnataka Bank Limited, Panipat regarding Bank Account No.6112000100052601 and the concerned Bank had informed that the account does not belong to M/s Saksham Enterprises and in fact existed in the name of M/s Divine Enterprises. It was thus, prima facie found that Rakesh Kumar had got himself registered under the Act of 2017 on the basis of fake and forged documents and deceived the Government Authorities by submitting the said fake documents for utilizing input tax credit for himself and passing input tax credit to other firms/taxable persons by generating E-way bills and issuing invoices with dishonest intention to evade payment of taxes. It is alleged that in the process, an amount of Rs.11265909/-, on account of GST, had been evaded by the accused.

The Learned Senior Counsel for the Petitioner has submitted that in the present case, the petitioner has not been named in the FIR. It is further submitted that the amount of Rs.11265909/- which is stated to be the evasion of GST, has already been recovered from Susheel Garg and Amit Garg. Reference in the said regard has been made to the statements of said Susheel Garg and Amit Garg which have been recorded under Section 161 CrPC. It has further been submitted that in the present case, the petitioner has been in custody since 27.11.2020 and the challan has already been

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presented and no recovery is to be effected from the petitioner. It is the contention of the learned Senior counsel for the petitioner that there is no incriminating material against the petitioner and there is no link evidence to even remotely show that the petitioner had opened the said firm or had issued any invoice. It is also highlighted that in fact the petitioner had not received any amount of GST input tax credit in his account nor did he have any account in which the GST refund was credited nor has he withdrawn any amount of GST refund from any account. It is submitted that the petitioner is only sought to be implicated on the basis of disclosure statements of Susheel Garg, Amit Garg and Rajesh Chopra and in the present case, only a recovery of Rs.7,000/- has been made from the petitioner, which does not even remotely link the petitioner with the alleged offence.

Learned Senior counsel for the petitioner has relied upon the judgment passed in ***CRM-M-12051-2020***, by a Co-ordinate Bench of this Court dated 17.06.2021 titled as “***Mewa Singh Vs. State of Punjab***” and the judgment passed in ***CRM-M-12997-2020 titled as “Daljit Singh Vs. State of Haryana”***, to contend that mere implication on account of disclosure statement should not come in the way of grant of bail to the petitioner. The relevant portion of ***Daljit Singh's (supra)*** judgment is reproduced hereinbelow:-

*“Petitioner seeks grant of anticipatory bail under
Section 438 Cr.P.C. in case bearing FIR No.188 dated
08.04.2020 registered under Sections 15, 18, 27A, 29 of
NDPS Act, under Sections 140, 188, 216, 419, 420, 467,*

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468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra. Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khaskhas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery

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of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs. of khaskhas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in

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case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of coaccused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

*Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of **Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.*

In view of aforesaid position, it would be just and

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appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

On the other hand, learned State counsel has submitted that in the present case, the petitioner as per his own version, was not a professional Accountant. It has further been submitted that it has been found that the proprietorship firm in the name of Saksham Enterprises had been registered on the basis of fake and forged documents and even fake invoices had been issued, thus, duping Government of the amount of Rs.11265909/-. It is further submitted that there are statements of Susheel Garg, Amit Garg and Rajesh Chopra, who have implicated the petitioner in the present case. Learned State counsel has also submitted that Rakesh Kumar has in fact stated that he had no knowledge about the said firm as he was only a labourer. It is further submitted that in fact there were several FIRs which had been registered after finding that several fake firms had been registered with the motive of getting input tax credit of GST, so as to dupe the Government and the petitioner has been made an accused in all the said cases. Learned State counsel has further submitted, on instructions from ASI Nepal Singh, that although in the present case, the challan has

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been submitted but none of the material witnesses have been examined and thus, opposed the bail application.

Learned Senior counsel for the petitioner in rebuttal has submitted that other than the three self-serving statements of the so-called three witnesses, there is no incriminating material against the petitioner in the present case. Reference has been made to the said statements to point out that even as per the statement of Susheel Garg and Amit Garg under Section 161 CrPC, it has been stated that they were dealing with Sandeep Sharma and Dinesh Bansal and the name of the petitioner has been mentioned in addition to the other two, without the said persons having any dealing with the petitioner and thus, the name of the petitioner has been mentioned only on the basis of the hearsay. It is argued that in fact even if there is any wrong-doing, then the same is on the part of the said Susheel Garg and Amit Garg, inasmuch as it is the said persons who had taken the benefit of input tax credit and have repaid the same to the Government even as per the case of the prosecution. It has been argued that surprisingly, the said persons have not been named as accused in the case and thus, the entire case of the prosecution fails inasmuch as the petitioner has not even taken the input tax credit but it is the said Susheel Garg and Amit Garg who had taken the input tax credit and, thus, even if the prosecution wishes to establish the link to the petitioner, although there is no legally admissible evidence on the said aspect, then also the said Susheel Garg and Amit Garg have to be the primary accused. It is further submitted that the petitioner has been falsely implicated in all the said cases on the basis of same/similar allegations and in fact even in the said cases, there is nothing to link the

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petitioner. It is also pointed out that in fact the petitioner has been granted anticipatory bail in one of the cases by a Co-ordinate Bench of this Court and has also been granted regular bail by a Co-ordinate Bench in one case. It is submitted that the Petitioner has been granted bail in 11 cases, and is in custody in the other 10 cases.

Learned Senior counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.T. and others*** reported as ***2012 (2) SCC 382***, to contend that it is the role and the material in the present case which the Court should consider to grant or refuse bail and not merely the fact that the petitioner is involved in other cases moreso, when the Petitioner is sought to be implicated in the other cases also on the basis of similar evidence without there being any link evidence establishing any evasion of tax by the Petitioner.

This Court has heard and considered the submissions of learned counsel for the parties.

A perusal of the FIR would show that the petitioner has not been named in the same. It is not disputed that the amount of Rs.11265909/- which is stated to be the amount of GST evaded, had already been deposited by Susheel Garg and Amit Garg, who are the persons who had taken the benefit of the input tax credit. The petitioner is sought to be implicated on the basis of the statements of Susheel Garg, Amit Garg and Rajesh Chopra under Section 161 CrPC. The relevant portion of the statement of Susheel Garg implicating the petitioner is reproduced hereinbelow:-

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*“XXX---XXX---It came to **our knowledge** later that these firms belong to different proprietors and the managers/masterminds behind the conduct of business in these firms are namely, Sandeep Sharma, Govind Sharma and Dinesh Bansal. They used to get the original goods delivered to us alongwith forged bills, and we used to transfer the payments against the goods **so received through RTGS as per the instructions of Sandeep Sharma and Dinesh Bansal** from our Bank Account of Taj Spinning Mills (HDFC Bank A/c No.502000223765001)/Taj Spuntex (HDFC BANK A/c No.50200006163567)/R.D. Fibres Pvt. Ltd. (HDFC BANK A/C No.50200005338465)/ AanyaSpuntex (SBI BANK A/C No.00000037868929963) and Shiv Polymer (HDFC BANK A/C No.50200015930985).*

XXX---XXX---XXX

The entire ITC pertaining to all 5 firms of mine, amounting to Rs.5,21,98,486/- has been deposited back with the GST DEPARTMENT, Panipat on various dates and the detailed report of Voluntary Tax (GST) Deposited is being produced before you.”

A perusal of the above would show that the said Susheel Garg had stated that he had gained knowledge that the petitioner along with Sandeep Sharma and Dinesh Bansal were involved. Nothing has been stated as to on what basis and how the said knowledge was gained. However, it has subsequently been stated that they used to transfer the payments against

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the goods so received through RTGS as per instructions of Sandeep Sharma and Dinesh Bansal from their accounts. Thus, as far as their dealings were concerned, the same were only with Sandeep Sharma and Dinesh Bansal and not with the petitioner. It is further apparent from the said statement that the amount of input tax credit taken by them has already been deposited in favour of the Government and the said amount included the amount which was in issue in the present case as is apparent from page 48 of the paper book in which reference has been made to the present FIR which is listed at Sr. No.14. To the similar effect is the statement of Amit Garg, the relevant portion of which is reproduced hereinbelow:-

*“XXX----XXX----**Later we came to know that these firms belong to different proprietors and organizer and conspirators of these all firms are Sandeep Sharma, Govind Sharma and Dinesh Bansal. They use to delivers us original goods and forged bills and on asking of Dinesh Bansal and Sandeep Sharma we sent the amounts of purchase of original goods from our bank account of Amit Spinning Mill of HDFC Bank Account No.50200022636225, G.G. Spuntex’s HDFC Bank Account No.50200006881623, Shiv Fiber Tex International Private Ltd.’s SBI Bank Account No.32219534915 through RTGS.***

XXX----XXX----XXX

My abovementioned five firms Input Tax Credit amounting to Rs.2,09,66,728 and a sum of Rs.29,44,786/- as

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interest, total amount of Rs.2,39,11,494/- had been got deposited in the GST office at Panipat on different dates.”

Rajesh Chopra, as per the prosecution case is the third person on the basis of whose statement under Section 161 Cr.P.C., the petitioner has been involved in the case. The relevant portion of the statement Rajesh Chopra under Section 161 Cr.PC. is reproduced hereinbelow:-

“XXX---XXX--After the receipt of summons in December 2018, I had contacted Sandeep Sharma and confronted him that you have given me the goods in original but the invoices for the same goods have been generated through 7 Bogus Firms, in response to which he told me that “Rajesh chopra Ji, you are taking about only 7 firms to be bogus, whereas I have created many firms alike through one of my friends, Govind Sharma. You have a very small quantum of work and hence why are you threatening me”. I came to know that Sandeep Sharma along with his friend Govind who is a well versed accountant have created many bogus firms and the entire business, banking transactions and all related activities were looked after by Sandeep only.XXX---XXX”

From the perusal of the above, it is apparent that even the said statement as far as involving the petitioner is concerned is on hearsay basis. In the present case, prima facie, other than the recovery of Rs.7,000/-, there is no other link evidence so as to involve the petitioner. The argument of the learned Senior counsel for the petitioner to the effect that in fact in the

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present case, in case there was any wrong doing then, Amit Garg and Susheel Garg who are the persons who have taken benefit of the GST input tax credit and from whom the recovery has been made of the amount in question should have been the primary accused, is weighty. Further, the argument that there was no firm in the name of the petitioner nor any invoice had been shown to have been issued in his handwriting nor has he received any amount of GST in his account and that amount of GST allegedly evaded has already been deposited, and thus nothing is to be recovered from the Petitioner, also carries weight. It is further pointed out that a perusal of Section 132 of the CGST Act, 2017 would show that in cases where the amount of tax evaded is more than 5 crores, then the same is cognizable and non-bailable and in cases where the amount of tax evaded is less than 5 crores, as in the present case, the offence would be bailable. It is submitted that although the FIR has been registered under Sections 420, 467, 468, 471, 201 and 120-B IPC, the gist of the allegation is with respect to the evasion of GST, which would be governed by the 2017 Act. It is also highlighted that even the offences under IPC would not prima facie be made out against the Petitioner as there is no handwriting expert report suggesting that any forgery has been done by the petitioner nor is there anything to show that the petitioner has cheated the authorities as no amount of input tax credit has been credited into the account of the Petitioner and thus, it is submitted that the petitioner would be entitled to bail. The said arguments raises very debatable issues as to whether the petitioner can be linked with the alleged crime. With respect to the other cases, it is the vehement argument of learned Senior counsel for the

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petitioner that the petitioner has been implicated on the basis of same/similar allegations and even in the said cases, the petitioner would be entitled to raise the same arguments as have been raised in the present case. It is apparent from the record that in one of the cases, even anticipatory bail has been granted to the petitioner by a Co-ordinate Bench of this Court. Relevant portion of the judgment dated 29.04.2019 passed in **CRM-M-8156-2019** titled as **Govind Vs. State of Haryana** is reproduced hereinbelow:-

“Prayer in this petition is for grant of anticipatory bail in FIR No.29 dated 06.01.2019 under Sections 420, 467, 468, 472, 120-B IPC, registered at Police Station Chandni Bagh, Panipat, District Panipat.

While granting interim bail to the petitioner, following order was passed by this Court on 22.02.2019 :-

*“Learned counsel for the petitioner submits that initially, the FIR was registered on the complaint of Excise and Taxation Officer, Panipat against one Balvinder Singh and thereafter, the police, during the investigation, arrested one Dinesh Bansal. It is further submitted that when the police made a request for remand of the said accused, **nothing has come on record to nominate the petitioner in the present FIR** and relies upon the remand papers (Annexures P-3 to P-5). Learned counsel further submits that the police wants to arrest the petitioner on the basis of **disclosure statement** made by aforesaid Dinesh Bansal that he along with his colleagues Sandeep and present*

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petitioner Govind, has created other fake company. It is also submitted that the petitioner is ready to join the investigation and to furnish all the details about M/s Shri Balaji Enterprises to the Investigating Officer.”

Learned counsel for the petitioner submits that in pursuance of the aforesaid order, petitioner has joined the investigation and is not required for any further investigation.

Learned State counsel, on instructions from Inspector Ramjeet Singh, has not disputed the factual position and states that the petitioner is no more required for any further investigation.

In view of the above, this petition is allowed and the interim bail granted to the petitioner vide order dated 22.02.2019 is made absolute subject to the conditions envisaged under Section 438 (2) Cr.P.C.”

It is also submitted that in one more case i.e. **CRM-M-19218-2021**, titled as “**Govind Vs. State of Haryana**”, regular bail has been granted by this Court by a Co-ordinate Bench of this Court. The said order is reproduced hereinbelow:-

“The matter has been taken up through video-conferencing on account of lockdown due to outbreak of pandemic COVID-19.

In this first regular bail application filed in case FIR No. 27 dated 06.01.2019 under Sections 420, 467, 468, 471, 201 and 120-B IPC registered at Police Station Chandni Bagh,

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Panipat by the petitioner Govind an accountant with Firm M/s Zensar Enterprises, Panipat. The primary allegations are as follows:-

“Jarnail Singh one of the proprietors of the firm got registered the firm under Central Goods and Services Tax Act, 2017 (in short, 'CGST Act') and Haryana Goods and Services Tax Act, 2017 (in short 'HGST Act'). The allegations against the principal accused Jarnail Singh are that he had got registration of the firm on the basis of forged and fabricated documents to avail of input tax credit (ITC) and on revelation of the modus operandi different FIR's numbering 23 were got registered against various firms including that of Jarnail Singh. The petitioner being accountant of the accused firm was apprehended on 10th of November 2020 on the allegations that there was fraud of 64 lacs by the firm in which the petitioner worked and which amount was subsequently got recovered from the beneficiaries”.

Mr. Jagmohan Bansal, learned senior counsel assisted by Mr. Mukul Singla, Advocate has argued at length submitting that petitioner is behind the bars since a long time and is merely working as an accountant, preparing the account books and has no specific role in the commission of the offence. It is contended that upto five crores of GST embezzlement offences are bailable and that nothing has been recovered from the petitioner who

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has no specific role to play in the commission of the offence. Lastly, the counsel submitted that similarly placed co-accused have been allowed bail by the different Courts and has also placed on record orders dated 19.04.2021 and 29.06.2021 granting bail to petitioner in other cases by the Courts below.

Mr. Gaurav Jindal, Addl. A.G. Haryana has forcibly opposed the prayer arguing that all these firms so involved in GST embezzlement were running the racket causing financial loss to the State. It is submitted that if allowed bail the petitioner might influence the trial and in view of the heinousness of the offence called for dismissal of the petition.

*Admittedly, the petitioner is mere an accountant in one of the firms being run by Jarnail Singh accused. **The reply of the State clearly illustrates that no specific role is attributed to the petitioner in the commission of the offence who merely was doing his duty as an accountant.** Moreover, all the accused have been allowed regular bails by the different Courts. The offences being bailable triable by the Magistrate and in view of Covid 19 pandemic, the trial is not likely to be concluded in near future and in view of the period of incarceration impels this Court to allow the bail. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned.*

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However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

Disposed off.”

It is also submitted that in as many as 09 other cases, the petitioner has been granted regular bail. Further, in **Maulana Mohd. Amir’s** case (supra), the Hon’ble Supreme Court has held as under:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the above-said facts and circumstances moreso, the fact that the Petitioner has been in custody since 27.11.2020 and there are as many as 23 witnesses, out of which none have been examined and the trial is likely to take time and the amount of GST said to have been evaded has already been recovered from Susheel Garg and Amit Garg and no amount of input tax credit has been credited in the account of the present petitioner and also since the petitioner was not named in the FIR and also since there are several debatable issues/arguments in the present case which have been elaborated hereinabove, and although the same would be finally adjudicated upon in the trial, this Court considers it fit to allow the present petition and grant regular bail to the petitioner.

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Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other cases.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the Trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

September 15, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No