IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 31.03.2021

1. CRM-M-37794-2020

Amit Kumar

...Petitioner

Versus

State of Punjab and another

.....Respondents

2. CRM-M-37853-2020

Vishesh Kumar

...Petitioner

Versus

State of Punjab and another

.....Respondents

3. CRM-M-41424-2020

Sahil Sharma @ Sahil Kumar

...Petitioner

Versus

State of Punjab and another .....Respondents

AND

4. CRM-M-1155-2021

Abhishek Moudgil

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. J.S.Bedi, Advocate,
for the petitioners in all these petitions.

Mr. Bhupender Beniwal, AAG, Punjab.

HARNARESH SINGH GILL, J.

This order of mine shall dispose of the above-captioned petitions praying for the grant of regular bail in case bearing Complaint No.AC No.22 of 2020 dated 18.08.2020, registered under Sections 132(1) (b) (c) of the Punjab Goods and Service Tax Act, 2017, Police Station Mandi Gobindgarh, pending before the learned Judicial Magistrate Ist Class, Amloh.

As per the allegations contained in the aforesaid complaint, the petitioners had issued bogus bills showing false Input Tax Credit (ITC) (Payment of Tax to State Government) through bogus firms created by them. They have been accused of causing a loss of about Rs.8.73 crore and Rs.7.74 crore, respectively, to the Government by way of tax evasion, by creating a chain of firms and showing sales and purchase without there being any actual and physical transactions.

Learned counsel for the petitioners contended that the petitioners have falsely been implicated in the present case inasmuch as there is no allegation of generation or originating of fake invoices i.e. invoices without payment of GST. Further, there is no evidence that the petitioners had facilitated any party to avail ITC without goods and the said party had ever utilized ITC for the payment of GST, which was payable on the actual supply of goods, and that there is no evidence against the petitioners with regard to the evasion of tax or loss of revenue. It was also contended that the matter is of civil nature and the liability is debatable. The maximum sentence under Section 132(1) (b) (c) of the Punjab Goods and Service Act is an imprisonment which may extend upto five years. Moreover, the department had uploaded on its website that there was no liability of tax against the petitioners and even a zero liability had been shown towards them.

It was further contended that there is a challenge to the vires of Section 69 and 132 of the Central Goods and Service Tax Act, 2017 in CWP No.8004 of 2020 titled as *Tarun Bassi Vs. State of Punjab and others* wherein notice stands issued to the State of Punjab and in a connected matter notice stands issued to the Union of India. It is further contended that the arrest under the Punjab Goods and Service Tax Act, 2017 is without jurisdiction. It is further argued that the petitioners have been in custody for the last more than 08 months and they are now not required for any investigation purposes.

It was also contended that the case is based on the documentary evidence and that no useful purpose would be served by keeping them in custody. He also relied upon the order dated 28.10.2020 passed by this Court in CRM-M-27425-2020, vide which similarly placed co-accused, Ganga Ram stands enlarged on bail. Further reliance was placed upon the orders dated 16.06.2020 passed by a Coordinate Bench in CRM-M-42451-2019, dated 18.06.2020 passed in CWP-8268-2020, titled as 'Rajiv Gupta Vs. Union of India and others', by a Division Bench of this Court and dated 15.03.2021 passed by a Coordinate Bench of this

Court in CRM-M-3957-2021.

On the other hand, learned State counsel submitted that the petitioners had caused a huge loss to the Government by way of tax evasion and issuing bogus bills through their bogus firms. It was also stated that the aforesaid offence had been committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. It was also stated that the allegations against the petitioners are very serious and in case, they are enlarged on bail, every effort may be made by them to tamper with the evidence. In support of his contentions, he relied upon the order dated 28.01.2021 passed by a Coordinate Bench in CRM-M-1511-2021, titled as 'Rakesh Arora Vs. State of Punjab'.

I have heard the learned counsel for the parties and also gone gone through the orders passed by the Division Bench of this Court seized of the matter qua challenge to vires of Section 69 and 132 of CGST Act as well as orders passed by this Court and the Coordinate bench wherein regular bail stands enlarged to the co-accused and similarly situated persons. The order relied upon by the learned State counsel wherein the regular bail had been denied to the petitioner therein, was primarily on the ground that the investigation was still incomplete. However in the instant case, the situation is different. The matter already stands investigated. The petitioners have been in custody since June, 2020. Trial of the case would take time to conclude.

In view of the above discussion, however without going into the merits of the case, I find that no useful purpose would be served by keeping the petitioners behind the bars. Thus, all the petitions are allowed and the petitioners are directed to be released on regular bail on execution of adequate personal/surety bonds amounting to Rs.10 lakhs each to the satisfaction of concerned trial Court/Duty Magistrate. The petitioners would surrender their respective passports before the concerned Court and will not leave India without prior permission of the Court.

However, any observation made herein shall not be construed to be an expression on merits of the case.

31.03.2021 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

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