IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRM-M-5343-2022**
Date of decision: March 15, 2022

Manjit Kumar and another
....Petitioners

Versus

Superintendent of CGST Commissioner and others
….Respondents

2. **CRM-M-44640-2021**

Manjit Kumar and others
....Petitioners

Versus

The Union of India and others
….Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Gagan Oberoi, Advocate
for the petitioners.

Mr. Sourabh Goel, Advocate
for the respondents.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Arvind Moudgil, Advocate
for Enforcement Directorate.

Mr. Sumeet Goel, Senior Advocate with
Mr. Paramveer Dhull, Advocate
for the respondent-CBI.
(through video conferencing)

ARVIND SINGH SANGWAN, J.

This order shall decide the above mentioned two petitions, in which the petitioners prays for anticipatory bail and for not taking any coercive action against them in case they appear in compliance of the summon/notice dated 28.5.2021 and 13.11.2021, respectively, issued under Section 70 of the Central Goods and Services Tax Act, 2017.

It is worth noticing that the petitioners have filed connected CRM-M-44640-2021 titled ‘Manjit Singh and others Vs. Union of India and others’ in which a direction is sought to hand over the investigation of the aforesaid complaint titled as ‘Inspector (Preventive) CGST Commissionerate, Ludhiana Vs. Baljinder Singh’ to some other office; like Central Bureau of Investigation and to provide protection to the petitioners.

Counsel for the petitioners submit that the petitioners are whistle blowers as they have made complaints against the officers to the various departments of Central Bureau of Investigation and Central Vigilance Commission and also filed a Criminal Writ Petition before this Court to take action on their complaints.

Counsel for the petitioners further submit that, in fact, the petitioners have brought to the fore of the misdeed of one Baljinder Singh against whom Central Goods and Services Tax Department has filed a criminal complaint under Section 132 (1)(b), (c), (f) and (i) of CGST Act, 2017 and punishable under Section 132 (1)(i) of Central Goods and Services Tax Act, 2017 and corresponding provisions of Punjab State Goods and Service Act, 2017 both read with Section 20(xv) of the Integrated Goods and Services Act, 2017.

It is further submitted by counsel for the petitioners that Baljinder Singh is a black sheep in the CGST department and was granted default bail under Section 167(2) Cr.P.C. by the Additional Chief Judicial Magistrate, Ludhiana vide order dated 25.5.2021. Counsel for the petitioners further submitted that after filing of the complaint, the other accused have already been arrested but the petitioners are apprehending their arrest, therefore, being whistle blowers, they may be granted protection.

In both the petitions, the petitioners have set up a case on similar facts as noticed above and have stated that it is Baljinder Singh, who, along with one Sammy, is indulged in committing fraud worth hundred crores of rupees in collusion with the officials of the CGST, Ludhiana and, therefore, they have now made complaint before the Central Vigilance Commission, New Delhi and the Central Bureau of Investigation, Chandigarh but no action has been taken so far.

It is worth noticing that while issuing notice of motion, a co-ordinate Bench has granted the stay of arrest on 21.2.2022 till the next date of hearing, i.e. today, primarily on the ground that the petitioners are the whistle blowers and have approached the various departments; like CBI and CVC, etc. regarding the misdeeds of aforesaid Baljinder Singh, who is extending threats to the petitioners.

Similar order has been passed in CRM-M-44640-2021, wherein the petitioners are seeking transfer of the investigation.

Status report on behalf of CGST is filed in the Court and as per the same, it is stated that the petitioners have deliberately and intentionally misled this Court by concealing the correct facts. By giving details of all the persons, who were summoned by the department, including the petitioners in the status report, it is stated that some of the accused have already been arrested but the petitioners, who were summoned, did not appear and are evading their appearance. It is further submitted that the complaint against the persons who have joined the investigation have already been filed and the supplementary complaint will be filed against the petitioners as due to pendency of these two petitions, it could not be filed.

In para 40 of the status report it is specifically stated that both petitioners Manjit Kumar and Hardeep Singh appeared before Superintendent, CGST Commissionerate, Ludhiana on 9.3.2022 and submitted their letters as per directions of this Court claiming to be whistle blowers in the bogus billing case of Baljinder Singh. They were issued summons under Section 70 of the CGST Act, 2017 and both of them confessed that, they in connivance with Baljinder Singh are receiving benefits on the basis of bogus bills without supply of any material in the firm owned by them, namely M/s R.N.G. Traders, M/s Raj Enterprises, M/s Deep Enterprises and M/s Diksha Yarn Traders are thus, availing and passing fake ITC. It is further stated that there is no intentional lapse on the part of the department and, in fact, the petitioners, in a calculated and noble method, have started filing the complaints against Baljinder Singh and the officials of the department by posing themselves as a whistle blowers though they themselves are partners with Baljinder Singh in different firms. Both the petitioners are hand in glove with the master mind Baljinder Singh @ Bunty of bogus billing racket as both the petitioners are involved in banking transactions for him and on behalf of the other firms.

It is further stated that petitioner No.1-Manjit Kumar @ Manjit Singh encashed self cheque issued by Gurbakhash Singh from his bank account. Said Gurbakhash Singh already stands arrested for fraudulently availing fake ITC. Petitioner-Manjit Kumar in connivance with Baljinder Singh has created two fake firms under the name and style M/s Raj Enterprises and M/s R.N.G. Traders for the sole purpose of transacting invoices which without actually supply of goods have passed fake ITC to suppliers. As per the enquiry and GSTR-3B return data, both the firms of petitioner-Majit Kumar issued fake taxable invoices for Rs. 80.46 crores involving ITC of Rs. 7.69 crores and had availed fraudulent ITC of Rs.7.72 crores on the strength of said bogus invoices as there was no transaction of goods.

Counsel for the respondent submits that even petitioner No.2-Hardeep Singh also in connivance and being hand in glove with master mind Baljinder Singh @ Bunti created two firms M/s Deep Enterprises and M/s Diksha Yarn Traders for transacting invoices without actual movement of goods to pass fake ITC to the buyers. It is stated that as per GSTR-3B return, these two firms issued fake tax payable invoices valued at Rs.75.15 crores involving ITC of Rs.7.6 crores and, in fact, availed fraudulent ITC of Rs.7.11 crores on the basis of bogus invoices.

Counsel for the respondents has further submitted that the petitioners are not at all whistle blowers and are, in fact, fake whistle blowers and just to divert the mind of this Court has set up complaint to take action, whereas they themselves are the accused who have availed ITC worth Rs.7.72 crores and Rs.7.11 crores in fraudulent manner.

Another status report was filed. The operative part of the status report reads as under :-

"40. **STATEMENTS OF MANJIT KUMAR AND HARDEEP SINGH**

Both Manjit Kumar and Hardeep Singh appeared before the Superintendent (Anti-evasion), CGST Commissionerate, Ludhiana on 9.3.2022 and submitted their respective letters dated 9.3.2022, wherein both *inter alia*, submitted that they have appeared voluntarily to tender statement as per directions of Punjab and Haryana High Court in the case filed by them stating them to be whistle blower in the bogus billing case of Baljinder Singh.

Accordingly, summons under Section 70 of the CGST Act, 2017 were issued to both Manjit Kumar and Hardeep Singh and their statements were recorded on 9.3.2022 by the Superintendent (Anti-Evasion), CGST Commissionerate, Ludhiana wherein, inter alias, both confessed to have connived with Baljinder Singh in receipt and issuance of bogus bills without any materials in the firms owned by him, namely, M/s RNG Traders and M/s Raj Enterprises and thus availing and passing on of fake ITC.

41. From the foregoing, the investigations conducted by the department can broadly be summarised as under :-

In the present scam of bogus billing eight persons have been arrested by the CGST Department so far out of which seven persons have been arrested after Baljinder Singh was arrested on 25.3.2021, detailed as below :-

Sr. No..	Name of Person arrested	Related firms	Date of arrest
01.	Baljinder Singh @ Bunty	Prop. of M.B. Enterprises and Director in Japji Knitwears Pvt. Limited	25.3.2021
02.	Vishal Singh	Prop. of Shri Giriraj Trading Co.	25.3.2021
03.	Gurtej Singh	Prop. of R.K. Fabrics	31.3.2021
04.	Sagar	Prop. of S.D. Fabrics	31.3.2021
05.	Mohan Lal Verma	Director in Lavyansh Textiles Pvt. Ltd. and Prop. of Emm Ess Fabrics	14.11.2021
06.	Mukesh Verma	Director in Lavyansh Textiles Pvt. Ltd. and Prop. of M.K. Enterprises and Prop. of G.S. Fabrics	14.11.2021
07.	Sukhvir Kumar	Prop. of S.K. Traders and Prop. of Ess Kay Fabrics	27.11.2021
08.	Gurbakhash Singh	Prop. of G.S. Enterprises and Director in Japji Knitwears Pvt. Ltd.	23.12.2021

(ii) Numerous summons have been issued and statements have been recorded of various persons which are directors/partners/proprietors of firms controlled and operated by Baljinder Singh @ Bunty.

(iii) Numerous letters have been written to different banks and account details of the firms/persons which are directors/partners/proprietors of firms controlled and operated by Baljinder Singh @ Bunty, has been obtained.

(iv) Tehsilder, Khanna jhad been requested many times to supply information in respect of properties owned by Baljinder Singh @ Bunty.

(v) The jurisdictional CGST and SGST Officers have been requested for physical verification of firms controlled and operated by Baljinder Singh. A few verification reports have been received and the rest are awaited.

(vi) Enquiries in respect of transport vehicles has been conducted from various RTOs/DTOs located in the State of Punjab as well different States outside Punjab.

(vii) Based on few reports received from RTOs/DTOs, summons have been issued to different vehicle owners and statements of a few recorded under Section 70 of the CGST Act, 2017.

(viii) Summons to numerous buyers/recipients of ITC passed on by various firms controlled by Shri Baljinder Singh @ Bunty have been issued as result of which reversal of ITC has been made by various such buyers. In some cases, interest and/or penalty has also been paid besides the ITC amount involved.

SUBMISSIONS

I. As directed by the Hon'ble Court vide order dated 23.11.2021, that "under what circumstances, Baljinder Singh was able to secure a default bail", it is humbly submitted that :-

(i) As explained above, the investigation in the cases of fraudulent availment and passing of fake Input Tax Credit on the basis of fake invoices without accompanying goods needs thorough examination considering various angles such as analysis of GST Returns, Bank Documents, Statements of persons involved in the case, E-way Bill Portal data, Physical Verification, Analysis of Electronic Devices, analysis through Analytical tools of the GST Department. For completing the investigation, the above mentioned examinations are usually done which takes a long time as most of the investigation is dependent on the persons/documents which are outside the control of GST Department, therefore, through summons, letters, reminders they are pursued.

(ii) In the instant case as the complete evidences were not available with the department in respect of the 20 firms, controlled and operated by Baljinder Singh alias Bunty in connivance with various persons on whose name these firms were created, therefore, the investigation could not be completed within 60 days of the arrest of Baljinder Singh alias Bunty and therefore, the complaint/prosecution against him could not be filed by the GST

Department and hence, Baljinder Singh alias Bunty was able to secure a default bail.

(iii) Further, it is submitted that there is no intentional lapse on the part of department in so far s the non-filing of prosecution within sixty days of arrest of the first the accused is concerned. IN the instant case, sincere efforts were made to complete the investigation and file the complaint within sixty days, but the following difficulties deterred the department from filing of prosecution within sixty days :-

(a) The sixty days' period starts from the arrest of first person out of many persons involved in the case and due to involvement of such many persons filing of prosecution before recording statements and without all the facts and figures of the case could be premature;

(b) The persons, who are *prima facie* co-accused in the case, adopt measures to escape from the investigation by department, like giving wrong addresses of unit as well as residence; refusing the summons; escaping from the premises when department staff visits their premises; switching off mobile phones, etc, which makes the documentation of prosecution incomplete and it becomes difficult to file it within sixty days of arrest of first accused;

(c) The registered addresses of the co-accused are scattered in the State of Punjab. These addresses are most of the times found bogus or non-traceable, which makes it difficult to trace the person for furtherance of investigation;

(d) Records procured from different authorities during investigation especially bank account statements, thousands of invoices, etc. are voluminous and take time to explore with reference to the case.

(e) Downloading different GST returns like GSTR-3B, GSTR-1 and GSTR 2-A from the GST portal in respect of every party involved in the fraudulent availment and passing on ITC and analysis thereof is a time taking process.

(f) Further, each case involves checking thousands of invoices issued and reflected in GSTR 1 of the suppliers and the impugned parties.

(g) Also analysis of e-way Bill portal vis-a-vis toll date is a time consuming process. Further for alleged intra-state movement of goods shown, the vehicles declared are checked in Government portal like Parivahan website and takes much time for each and every vehicles involved.

(h) Further, it pertinent to mention her that in majority of the cases being investigated by other economic agencies also, it usually takes more than 60 days and the accused are able to secure default bail. There is no provision to file additional complaint like there is provision of file additional challan/charge sheet under the Cr.P.C., hence to ensure that the prosecution does not fail the case/complaint is submitted only when majority of the aspects have been dealt with.

(i) Above all, for past few months there have been COVID-19 pandemic which also prevented regular functioning of the offices.

(j) Further, shortage of staff at executive level also hampered the department from completing the investigation and filing the complaint within sixty days.

(iv) Further, this office has also filed a complaint dated 7.12.2021 under Section 174 and 175 of the IPC in the Court of Hon'ble Chief Judicial Magistrate, Ludhiana against the Proprietors/Partners/Directors involved in the instant case who had not complied to the summons issued by this office.

II. Further, submissions of the petitioners that they are actually the whistle blowers to the misdeed of Baljinder Singh, are vehemently denied. All the three petitioners in CRM-M-44640-2021, namely, Manjit Kumar, Hardeep Singh and Gurbakhash Singh have created bogus firms in connivance with Baljinder Singh @ Bunty and have availed and passed on Input Tax Credit under CGST law fraudulently without movement of any goods as detailed in Table-12 below :-

TABLE 12

Name of person	Name of firm M/s	ITC availed	ITC passed on
Manjit Kumar	Raj Enterprises	6,37,43,858	6,35,54,402
	RNG Traders	1,34,27,824	1,33,41,622
Hardeep Singh	Deep Enterprises	5,09,86,550	5,04,77,064
	Diksha Yarn Traders	2,01,05,396	2,00,92,014
Sukhvir Kumar	Ess Kay Fabrics	2,44,90,234	2,44,81,444
	SK Traders	2,25,26,164	2,18,70,445
Total		**19,52,80,026**	**19,38,16,991**

The above stated facts have also been admitted by Shri Baljinder Singh @ Bunty in the voluntary statements dated 24.3.2021 and 25.3.2021 tendered by him under Section 70 of the CGST Act, 2017.

Further, one petitioner in the CRM-M-44640-2021, namely, Shri Sukhvir Kumar in his voluntary statements dated 26.11.2021 and 27.11.2021 has also admitted the connivance with Shri Baljinder Singh @ Bunty in creating bogus firms mentioned above and having availed and passed on fake ITC without movement of goods as also being involved in banking transaction in respect of firms controlled and operated by Shri Baljinder Singh @ Bunty. Shri Sukhvir Kumar was placed under arrest under authorisation of Section 69(1) of the CGST Act, 2017.

Further, Manjit Kumar and Hardeep Singh in their respective statements dated 9.3.2022 recorded under Section 70 of the CGST Act, 2017 and confessed to have connived with Baljinder Singh in receipt and issuance of bogus bills without any materials and thus, availing and passing of the ITC."

After hearing the counsel for the parties, I find no merit in the petitions for anticipatory bail filed by the petitioners as well as in the petition seeking direction to transfer the investigation of the case to an agency like; CBI/CVC for the following reasons : -

(a) In both the petitions, the petitioners have deliberately concealed their status of being an active partner of main accused Baljinder Singh and having created four firms, i.e.

two firms by petitioner No.1 i.e. M/s R.N.G. Traders and M/s Raj Enterprises and two other firms by petitioner No.2, i.e. M/s Deep Enterprises and M/s Diksha Yarn Traders.

(b) It is the case of the department that by creating the said firms and, as per CGST returns, i.e. GSTR-3B, both the petitioners have availed the benefit of ITC to the tune of Rs.7.32 and Rs.7.91 crores, respectively, in a fraudulent manner. Thus, it is a deliberate and intentional concealment on the part of the petitioners in both the petitions.

(c) The petitioners by posing themselves to be the whistle blowers have concealed their status that they are the partners of main accused Baljinder Singh, who was arrested and, later on, granted bail.

(d) A perusal of the representations given to Central Vigilance Commission as well as to Central Bureau of Investigation also reveals that the petitioners have concealed the fact that they are partners of Baljinder Singh in the aforesaid firms and have put the State agency in motion by posing that no action is being taken on their complaints as whistle blowers.

(e) It is relevant to mention here that under The Whistle Blowers Protection Act, 2014, where a person has concealed the facts or misled the competent authority, complaint can be dismissed under Section 5(6) of the Act.

In the instant case, it is a glaring act, where the petitioners themselves being accused, by concealing their status are levelling allegations against the co-accused and officials by posing themselves as whistle blowers, in fact, which is contrary to the record.

In view of the above, CRM-M-5343-2022 filed for grant of anticipatory bail to the petitioners, is dismissed.

The petition, i.e. CRM-M-44640-2021 for transferring of the case to some other agency, like CBI/CVC is also dismissed with a cost of Rs. One Lac (Rs.1,00,000/-). The cost will be deposited with the Punjab and Haryana High Court Bar Association Advocates' Welfare fund within a period of four months from today.

(ARVIND SINGH SANGWAN)
JUDGE

March 15, 2022
satish

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