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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:10.05.2022

1. CRM-M-36421-2021 (O&M)
Ashish Kumar .. Petitioner
Vs.
State of Haryana ..Respondent

AND

2. CRM-M-44819-2021 (O&M)
Sonu Kumar Khuswah .. Petitioner
Vs.
State of Haryana ..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Aashna Gill, Advocate for the petitioner in CRM-M-36421-2021.

Mr. S.S. Swaich, Advocate for the petitioner in CRM-M-44819-2021.

Mr. Sukhdeep Parmar, DAG, Haryana.

...

Manoj Bajaj, J. (Oral)

Petitioners have prayed for grant of regular bail under Section 439 Cr.P.C, pending trial in case FIR No.91 dated 04.04.2019 registered under Sections 420, 467, 468 and 471 IPC, (Sections 132(1)(i) and 132(1)(iv) CGST Act, 2017, Sections 66, 66D and 71 IT Act, 2000, and 419 and 120-B IPC added later on) at Police Station Cheeka, District Kaithal.

The FIR was registered on the statement of Shiv Kumar and the allegations as noticed by the ld. Addl. Sessions Judge, Kaithal in the order dated 12.08.2021are as under:

> "*.... lodged on the complaint of Shiv Kumar, Proper Officer-cum-ETO-cum-State GST Officer, Ward No.5 Kaithal, while stating that as per letter dated 05.01.2019 regarding lodging of First Information Report against bogus/fake firms; that one firm namely Mansi Alloys, village Bhagal was identified*

on verification and it was found that no firm exist on the given address and was floated in papers only and during the course of further inquiry neither proprietor Rinku Aggarwal could be traced nor the firm and lateron it revealed that it is a non-existent firm tht has hoodwinked the Government Exchequer of Rs.5,59,56,262/- by claiming input tax credit through bogus sale of Rs.31,10,42,067/- without paying any GST taking the total losses discovered to Rs.5,59,56,262; that lateron it came out that sale shown to one of the firm M/s Sai Ram Traders, Mandi Gobindgarh, which is also not in existence and on papers only is also in nexus with them to cheat State exchequer and hatched conspiracy. On this, instant First Information Report was lodged."

Learned counsel have argued that as per prosecution, a firm, namely, M/s Mansi Alloys alleged to be proprietorship firm of Rinku Aggarwal was floated by accused persons in order to make wrongful gain by claiming input tax credit against invoices without supply of materials and the petitioners, namely, Ashish Kumar and Sonu Kumar Khuswah are not the beneficiaries of the alleged crime, as they have been implicated on the basis of criminal conspiracy. It is argued that the FIR was registered in the year 2019 and after a long delay, the petitioner Ashish Kumar was implicated on the strength of statement made by Rinku Aggarwal recorded under Section 161 Cr.P.C. (Annexure P-2), who stated that accused Ashish Kumar had obtained the photocopies of his Aadhaar Card, PAN Card and cancelled cheque, etc. on the pretext of providing loan to him, but neither the loan was got sanctioned nor the photocopies of identity documents were returned back to complainant. Learned counsel further submitted that the said fake firm is creation of co-accused Rahul Sharma, who had issued the bills to various purchasers and claimed the tax benefits. According to them, the investigation of the case is complete, and the charges have also been framed on 27.10.2021, but no prosecution witness has been examined so far, therefore, they have prayed for bail.

Learned State counsel assisted by ASI Vikram has argued that the accused persons by creating this bogus firm in the name of M/s Mansi Alloys, have made a wrongful gain of approximately Rs.5,69,00,000/- by claiming input tax credit against the total sales of approximately Rs.31,00,00,000/-. According to him, in fact, the proprietor of the firm, namely, Rinku Aggarwal, who is a prosecution witness, was not aware of this firm, as his documents were illegally used by the co-accused Rahul Sharma, who had issued the invoices to various purchasers and they had even taken a shop of one Dhanpat on rent in the name of Rinku Aggarwal and the said lessor is also a prosecution witness. He submits that the photocopies of the identity proofs of Rinku Aggarwal were misused by the accused persons in order to complete other formalities relating to creation of firm. Learned State counsel further submitted that these accused persons are also involved in case FIR No.111 dated 25.04.2019, registered under Sections 420, 467, 468, 471, 120-B and 201 IPC Sections 132(1)(i) and 132(1)(iv) CGST Act, 2017, and Sections 65, 66D and 71 IT Act, 2000, at Police Station Cheeka, District Kaithal, wherein in a similar manner, they had floated another firm, namely, M/s B.K. Steel, therefore, the petitioners do not deserve the concession of bail. However, it is not disputed that the role of these petitioners is distinguishable from the other co-accused Rahul Sharma, who is instrumental in taking tax benefits in the name of non-existent firm. He states that only two prosecution witnesses have been examined out of total thirty four prosecution witnesses.

At this stage, learned counsel for the petitioners have argued that except for the statement of Rinku Aggarwal, there is nothing to indicate the involvement of the petitioners and in the other case, they have already been released on regular bail vide order dated 11.11.2021 and 29.03.2022 respectively. Learned counsel have produced the copies of the bail orders during the course of hearing.

After hearing the learned counsel for the parties, considering the above background and custody of the petitioners, this Court is of the opinion that the conclusion of trial is likely to consume considerable time, as only two prosecution witnesses have been examined out of total thirty four prosecution witnesses, therefore, further detention of the petitioners may not serve any useful purpose, who are presently confined in judicial custody after their arrest. Apart from it, the material witnesses are police officials and officials of Excise Department and presently, there does not seem to be any possibility of their being won over.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail in the above case, subject to their furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

10.05.2022
Jasmine Kaur

Whether speaking/reasoned Yes No
Whether reportable Yes No