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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5758-2023
Reserved on: 07.10.2023
Date of decision : 11.10.2023

Ram @ Raman Chaggar .....Petitioner

versus

Superintendent (Anti Evasion) of CGST Commissionerte, Ludhiana and another ..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present :- Mr. Rahul Aggarwal, Advocate and
Ms. Iyana Vasudeva, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate with
Ms. Shivani Sahni, Advocate
Mr. Tej Bahadur, Advocate and
Ms. Geetika Sharma, Advocate
for the respondents.

Ms. Akshita Chauhan, DAG, Punjab.

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RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of regular bail in the complaint case No.COMA-92015-2022 CNR No.PBLD03-092667-2022 dated 18.11.2022 titled as *Superintendent (Anti Evasion) Vs. Ram @ Raman Chaggar* for the offence under Sections 132(1) (B, C & L) punishable under Section 132(1)(1) of CGST Act, 2017 and under Clauses (B), (C) & (L) of Sub-section (1) of Section 132 of Punjab State Goods & Services Tax Act, 2017 both read with Section 20 of the Integrated Goods & Service Tax Act, 2017 pending in the Court of learned Chief Judicial Magistrate, Ludhiana.

It has been vehemently contended by counsel for the petitioner that the petitioner has been made a scapegoat by falsely and frivolously implicating him in the present case. He submits that the petitioner was just an employee of Gurbax Lal @ Happy Nagpal who was arrested by the respondents-State and hence, the petitioner was clandestinely implicated in this case. He has submitted that as per the allegations made in the complaint, petitioner has been alleged to be an abettor and an employee in some of the companies controlled and managed by co-accused Yashpal Mehta. It has been further alleged that two firms were registered in the name of petitioner which were controlled by Yashpal Mehta. However, no evidence has been produced substantiating the allegations levelled against the petitioner. He has further submitted that some officials from the CGST Ludhiana Department in connivance with the co-accused Gurbax Lal @ Happy Nagpal implicated the petitioner in this case. He submits that the co-accused Gurbax Lal @ Nagpal has already been enlarged on bail by learned Chief Judicial Magistrate, Ludhiana vide order dated 22.11.2021. He submits that on 20.09.2022 at about 06:45 AM, 7-8 unknown officials in civil uniform claiming themselves to be officers of the CGST Department, entered the house of the petitioner and started behaving in an inhuman manner. He has submitted that no warrant/summons/notice as per mandate of Sections 69 and 70 of CGST was issued to the petitioner and thus, he was illegally arrested in this case. He has submitted that aggrieved by the highhandedness of the CGST officials, wife of the petitioner filed a petition in the nature of habeas corpus bearing No.CRWP-9147-2022. A Warrant Officer was appointed by the Court in the same. He has submitted that Warrant Officer found the petitioner who had been tortured by the CGST Officials. He has submitted that though there were allegations against the petitioner regarding committing fraud in floating the bogus firms and usurping the tax of an exorbitant amount however, no evidence was produced regarding the same. He has submitted that nothing has been placed on record showing that ITC had been received by the petitioner in his account or otherwise. He has submitted that though the petitioner has been alleged to have abetted the alleged offence in connivance with the co-accused Gurbax Lal @ Happy Nagpal and Yashpal Mehta however, Gurbax Lal had been granted default bail whereas Yashpal Mehta has been granted the anticipatory bail. He has submitted that once the main accused are already on bail, the incarceration of the petitioner who is behind bars since 21.09.2022 without any justification. He submits that the investigation in the case has already completed and the petitioner having no criminal antecedents deserves to be granted bail. He has submitted that the petitioner approached the Court of learned Additional Sessions Judge, Ludhiana for grant of bail however, after hearing counsel for the parties, learned Additional Sessions Judge declined the same primarily on the ground that petitioner has not joined the investigation and the case is under investigation, hence he illegally declined his bail. However, as on date out of the three accused, only petitioner is behind bars and as the investigation is complete, petitioner deserves to be granted bail.

Per contra, learned counsel for respondent-CGST has vehemently opposed the contentions raised by counsel for the petitioner. He has filed the detailed reply regarding active role played by the petitioner and the details of investigation has been explained in the reply. He submits that relying upon the intelligence that certain individuals were indulged in creating bogus firms and fraudulently availing and passing on ITC and thus, defrauding the Government Exchequer, an investigation was initiated by Anti Evasion (Headquarters), CGST Commissionerate Ludhiana. It is submitted that on the investigation it was found that 78 bogus firms were created and more than Rs.1367 crores of bogus bills of outward supplies were issued in order to avail input tax credit of more than Rs.215 crores by the Controllers, Operator and proprietors of the firms. He has submitted that the investigation was commenced which resulted in the arrest of 10 key accomplices and kingpin of the scam i.e. Vishal Kumar, Sandeep Kumar, Rajinder Singh, Gurbax Lal @ Happy Nagpal, Rohit Mehta, Harsimranjot Singh Bambhi, Kawaljot Singh, Sukiran Tej, Rajesh Kumar @ Sonu @ Rajesh Pruthi, Ram @ Raman Chaggar (petitioner). Besides this, 39 firms/companies/partnership firms along with their proprietors, directors, partners, controller and operators have been prosecuted vide 02 prosecution complaints i.e. 15650/2021 dated 28.11.2021 and 92015 dated 18.11.2022 before learned trial Court. He has submitted that during investigation, co-accused Gurbax Lal @ Happy Nagpal made statements dated 20.09.2021 and 21.09.2021 that he supplied approximately 80% bogus invoices to the firms controlled and operated by Yashpal Mehta and operating dummy/bogus firms i.e. M/s A.R. International (wherein the petitioner Ram @ Raman Chaggar himself was partner along with Atul Gulati) and M/s RA Enterprises in the name of his relative namely, Ram @ Raman Chaggar. He has submitted that based on the investigation, residential premise of Yashpal

Mehta was searched by the CGST team. He has further argued that the residential premise of petitioner was also searched by the CGST team on 12.11.2021. He has submitted that petitioner has concealed the fact that his wife Smt. Kavita Rani had provided rent deeds for registration of 02 bogus firms involved in bogus billing network. He submits that the CGST department made best of the efforts to deliver the summons but Smt. Kavita Rani wife of the petitioner refused to receive the same and hence, summons were pasted on the wall of the residential premises of the petitioner. He has submitted that as per investigation petitioner is one of the partners in M/s A.R. International and Proprietor of M/s RA Enterprises and thus, he actively connived with Sh. Atul Gulati, the other partner of M/s AR International and Yashpal Mehta, the controller of the firm. He has submitted that the petitioner availed ITC fraudulently to the tune of Rs.6,30,08,361/- and utilized ITC fraudulently to the tune of Rs.5,32,89,973/- and further passed on ITC to the tune of Rs.4,48,68,270/- in M/s AR International and M/s RA Enterprises. He vehemently submits that thus petitioner actively connived with Atul Gulati and others and monetized ITC availed fraudulently to the tune of Rs.66,88,631/- in M/s AR International on the strength of bogus invoices. He has submitted that the petitioner was partner in M/s AR International and the firm was found to be bogus and non-existent at its principle business premises as well as proprietor in M/s RA Enterprises and during investigation, suppliers and recipients of both the firms were found to be bogus and non-existent. He has submitted that from the facts and circumstances which surfaced during the investigation the offence under Section 132 of the CGST Act, 2017 was duly made out against the petitioner and hence, petitioner has been rightly prosecuted for the same and thus, was arrested in accordance with the statutory provisions of the Act. He has submitted that petitioner has committed non-bailable offence under Section 132(1)(b)(c) of CGST Act 2017 as the amount of ITC fraudulently availed was more than Rs.500 lakh of Rupees. He has submitted that the investigation in the case is complete and in all there are 22 prosecution witnesses but no witness has been examined till date. He further submits that the main accused Gurbax Lal has been granted default bail whereas co-accused Yashpal Mehta was granted anticipatory bail.

Learned State counsel has also opposed the prayer of the petitioner for grant of bail and has stated that keeping in view the gravity of offence allegedly been committed by the petitioner, he is not entitled to be released on bail.

Heard. After hearing counsel for the parties and perusing the record, it is evident that the petitioner has been prosecuted in the complaint case No.COMA-92015-2022 CNR No.PBLD03-092667-2022 dated 18.11.2022. As per the complaint filed, the petitioner was found to be partner in M/s AR International and proprietor in M/s RA Enterprises who actively connived with Atul Gulati, other partner of M/s AR International, Yashpal Mehta, controller of the firm along with other accomplices namely, Gurbax Lal, Rajesh Bajaj, Pruthi @ Sonu, the petitioner availed ITC fraudulently to the tune of Rs.6,30,08,361/- and utilized ITC fraudulently to the tune of Rs.5,32,89,973/- and further passed on ITC to the tune of Rs.4,48,68,270/- in M/s AR International and M/s RA Enterprises. He had been allegedly actively connived with

Atul Gulati and others and monetized ITC availed fraudulently to the tune of Rs.66,88,631/- in M/s AR International on the strength of bogus invoices. Besides this, he had been alleged to be abetter in the firms namely, M/s Guruji Industries and 78 bogus firms. Thus, the offence under Section 132 of CGST, 2017 read with Section 20 of the IGST Act, 2017 was allegedly made out against him. As submitted before this Court, in all there were 06 accused, out of which, 03 accused were arrested, however, petitioner is the only accused who is behind bars as on date. The total credit availed by the petitioner fraudulently was about Rs.215 crores however, the main accused as argued before this Court namely, Yashpal Mehta and Gurbax Lal @ Happy Nagpal are already on bail. There is nothing brought on record regarding the antecedents of the of petitioner having involved in offence of similar nature or any other case. As submitted by learned State counsel, in all there were 22 prosecution witnesses and none has been examined as on date. Admittedly, investigation is complete and now trial has commenced.

Section 132 of CGST Act is reproduced as under:-

> ***132. Punishment for certain offences.****— (1) Whoever commits or causes to commit and retain the benefits arising out of any of the following offences, namely:—*
> *(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*
> *(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
> *[(c) avails input tax credit using the invoice or bill referred to in clause (b); or fraudulently avails input tax credit without*

any invoice or bill;]

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6)A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

> *Explanation:- For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.*

Thus it is evident from the perusal of the above-mentioned statutory provision that the maximum punishment provided is five years. The petitioner has already completed an incarceration of more than one year.

The veracity of the allegations and counter-allegations would be assessed by the trial Court on the basis of the evidences to be led by both the sides and thus, this Court would refrain from commenting anything on the merits of the case. However, confining itself only to the prayer made by the petitioner for grant of bail, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
11.10.2023 **JUDGE**
m. sharma

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