**215**

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

**CRM-M-11033-2021 (O&M)**
**Date of decision: 31.08.2023**

Vikram Garg

….Petitioner

Versus

Excise and Taxation Officer cum Proper Officer (State Tax)

...Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:-** Mr. Deepak Gupta, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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**ARUN MONGA, J. (ORAL)**

After being declined bail by the trial Court, petitioner before this Court seeks regular bail in a case bearing No.GST/PNP/02 of 2020 and Complaint No.252/2020 dated 24.12.2020 registered under Section 132 of the Haryana GST Act, 2017 and Central GST Act, 2017 read with Section 20 of IGST Act, 2017.

2. As per prosecution case, tax returns of the firm, M/s Emm Vee Trading Company, whose proprietor is the petitioner, were examined for the financial years 2018-2019 and 2019-2020. It was discovered that the turnover of the taxpayer, i.e., the alleged proprietor concern of the petitioner, during this period, displayed significant and abnormal fluctuations, which were not typical in the normal course of business. Petitioner-the accused had thus engaged in tax evasion exceeding Rs. 5 crore. Additionally, tax authorities noted that the firm was registered at a residential address in the city, with no additional place of business specified in its registration certificate. Business activities were indicated to have been conducted from the same residential location. However, during inquiries, local residents denied seeing any business activities, such as loading, unloading, or the movement of transport vehicles to and from the registered firm. Upon examining the e-way bills generated for the firm's inward and outward supplies, which showed a turnover of approximately Rs. 85.8 crore, it was revealed that these e-way bills had been issued by the firm, M/s Emm Vee Trading Company. However, when authorities investigated the actual movement of goods and obtained ownership details of the vehicles mentioned in the e-way bills

from registration authorities, it emerged that the owners of these vehicles denied any association with the firm or its owner, the petitioner-accused. They stated that they had never transported or supplied any goods as indicated in the respective e-way bills. Furthermore, ownership details of vehicles listed in the e-way bills for inward supplies and purchases by the firm were obtained from the transport authority, and statements from some vehicle owners were recorded. These statements also confirmed their lack of familiarity with the firm or its proprietor.

2.1. The tax involved in the invoices, with a taxable value of Rs. 88 crore, amounted to approximately Rs. 5.57 crore. However, no actual supply of goods had occurred. Thus, the firm, M/s Emm Vee Trading Company, whose proprietor is the petitioner, has violated the provisions of Sub Clauses (b) & (c) of Sub-Section 1 of Section 132 of the Act. Demand notice of Rs. 13.96 crore was raised against the proprietorship unit of the petitioner-accused under Section 74 for violating the provisions of the Act. FIR was also registered and the petitioner-accused was arrested from Meerut (Uttar Pradesh) on 29.10.2020.

3. Learned counsel for the petitioner submits that allegations against petitioner, as per complaint, are that petitioner on the introduction of GST migrated to GST regime and during 2018-19 and 2019-20 made turnover of Rs.88 crore, whereas, petitioner neither received nor supplied goods as shown in invoices.

3.1 He contends that petitioner was neither originator of invoices nor ultimate user/beneficiary of invoices. The actual user of invoices are beneficiaries thereof . Thus evasion of tax has taken place at the end of buyers and not at the end of petitioner. Complainant has neither implicated suppliers nor buyers of the petitioner though role of the petitioner is very limited. Actual culprits have been let free, whereas petitioner who worked for small amount of commission, has been implicated and made a scapegoat being an easy target. Different documents of the petitioner were allegedly used to create the firm, but he is not proprietor of the firm. Just to save others, entire liability has been wrongly fastened upon the petitioner. Petitioner is not required for further custodial interrogation as complaint has already been filed before the competent court.

3.2 Learned counsel further contends that there is no material with GST authorities to connect the petitioner with the crime in question. Even if any demand of tax evaded is to be made from the tax payer, that has to be done in accordance with Sections 73 to 84 of GST Act, but in the present case, no securitization and audit of the GST returns has been done.

3.3. Learned counsel for the petitioner further submits that petitioner has been implicated on the allegation that he had wrongly availed and passed on Input Tax Credit (ITC) to the tune of Rs.5.57 crore. He submits as per Section 132 of the GST Act, such an offence is bailable if amount involved is up to Rs.5 crore. He further submits that petitioner was intermediate between different buyers and sellers. In other words, petitioner at the most has abetted the commission of the offence, if any committed, and no buyer, who took ITC was implicated though they joined the investigation. Similarly, no seller, who issued invoices and joined investigation, was arrested. He further argues that he was carrying on business of brokering the sale transactions of steel and iron between prospective buyers and sellers and has lost his entire business owing to his incarceration.

3.4 Learned counsel for petitioner also submits that nothing is to be recovered from the petitioner. He is not required for custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. He would further submit that petitioner was arrested on 29.10.2020 and remained in custody till 25.05.2021 i.e., date on which he was released on interim bail on the ground of COVID-19 till 27.12.2021. Thus petitioner has already suffered incarceration of almost 07 months. Vide order dated 14.12.2021 passed by a Division Bench of this Court, his interim bail was extended till further orders, wherein, the provision of GST Act have been challenged. He has never misused his concession.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed an offence of huge economic magnitude and

adopted a unique mode of conniving with other persons. He is a mastermind of procurement and issuance of bogus invoices with an intention to fraudulently and illegally avail and transfer Input Tax Credit. He may abscond or may flee from the country leaving a huge amount of Govt. revenue in jeopardy.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On a Court query, learned State counsel submits that challan was filed. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial. There are 64 prosecution witnesses. Matter is now fixed for 06.09.2023 for pre-charge evidence of complainant. Commencement/conclusion of trial will take some time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner remained in custody with effect from 30.10.2020 to 25.05.2021, per custody certificate. He however, admits that no other case is pending against him.

7. Petitioner is being sought to be kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. Be that as it may, offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime.

9. Petitioner is stated to be 45-year old family person, and in his absence, his family members are living in sheer penury. He is only breadwinner of his family. He has already lost his livelihood due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to further incarcerate the petitioner.

11. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

**(ARUN MONGA)**
**JUDGE**

**31.08.2023**
vandana

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