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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19401-2023 (O & M)
Date of decision: 22.08.2023

Puneet Sonkar …... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Salil Dev Singh Bali, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in this second petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.401 dated 12.10.2018 under Sections 420, 467, 468, 471, 201 and 120-B IPC registered at Police Station Farakpur, District Yamuna Nagar, Haryana.

2. The brief facts of the case are that Bhupender Nath, Excise and Taxation officer, gave a complaint to Superintendent of Police, Yamuna Nagar for taking legal action against Rayyan s/o Irfan proprietor M/s Boston International, 55-Krishna Colony, Yamuna Nagar GSTIN 06CGIPR7078D122 and others. In the said complaint it was alleged that Rayyan got himself registered under the GST law in the name of M/s Boston International at Yamuna Nagar w.e.f. 16-02-2018. In this regard, inquiry of the firm was conducted and it was found that the dealer had uploaded a rent

agreement alongwith an electricity bill of Property No.55, Krishan Colony, Yamuna Nagar as proof of address of the business premises. During the course of inquiry, the given address was visited by the ETO but no such firm was found functioning at the said address. Further the person in whose name the rent agreement was entered, was contacted and it was found that Kamal Khetarpal was working in a bank at Jallandhar and his father Nar Singh Khetarpal was available at the said address i.e. 55, Krishna Colony, Yamuna Nagar. The rent agreement was shown to Nar Singh Khetarpal to ascertain the genuineness of the same. Nar Singh disclosed that his son was not living in the city and that he had not entered into any agreement of rent with Rayaan and no such firm in the name of Boston International was working at the given address or in the nearby shops. In this regard, Kamal Khetarpal was also contacted who stated that he did not know the said person. All this indicated that Rayaan had got himself registered on the basis of fake and false documents. Further as per information available on the GST portal, the dealer had supplied goods to the tune of Rs.12.33 crore from March 2018 to June 2018 to different dealers within the State of Haryana and out side of Haryana and the purchasing dealers had taken the benefits of Input Tax Credit (ITC). Since there was no such firm in the existence at the given address, prima facie, it appeared that the dealer had issued tax invoices and Excise bills without supply of goods with the purpose to extend the benefit of input tax credit to the other dealer, thereby attempting to defraud and cause revenue loss to the State. Legal action was sought against Rayaan, leading to the registration of the present FIR.

After registration of the case, the investigation was carried out by SI Bhupinder Singh. Later, as per the order of the DGP, Crime, the investigation of the case was transferred to Crime Branch on 12-03-2019. After receipt of the police file on 18-03-2019, the record from the concerned Excise and Taxation Department was taken into police possession. The statements of Subham Pal ETO and Bhupinder Nath ETO were recorded. During the course of investigation, investigation was conducted regarding the bogus firm M/s Boston International having GSTIN 06CGIPR7078D122. The statement of the owner namely Nar Singh Dass Khetarpal of the house where the above mentioned firm had been shown to exist was recorded, who stated that no firm in the name of M/s Boston International was working at the said address. The documents pertaining to the statement of account No. 10008635961 maintained with IDFC Bank, New Delhi were taken into police possession, where Rayyan had got opened the account in the name of Boston International. The ID proof of Rayyan was taken into police possession and his address was found to be Rajiv Nagar, Harsh Vihar, East Delhi. Thereafter, from the Labour Department record pertaining to the aforesaid firm M/s Boston International was taken into police possession and it was found that Rupinder Singh was occupier/employer of the said firm. Notice was sent to Rupinder Singh to join him in the investigation and it was found that he had died on 31-03-2019.

During the course of investigation, record pertaining to the transactions of M/s Boston International firm with other firms was taken into police possession and it was found that the said firm had done transactions with 53 firms. So, inquiry was made from the said firms and on inquiry, it was found that the representative of the said firms had deposited the amount in the account No. 10180004585601 and 10180000781981 through RTGS/NEFT in Bandhan Bank, Delhi. So, record pertaining to the said 53 firms were taken into police possession and it was found that Boston International had caused loss of revenue worth Rs.3,05,10,099/-and records in respect of GSTR-1, GSTR-2, GSTR-3 and other related record were taken into police possession and in this regard, the statement of Amit Gupta, representative of Lotus Machine Pvt. Ltd. Company was recorded.

On 11-02-2022, an SIT was formed under the supervision of Amit Dahiya IPS to conduct the investigation of the case. On 04-07-2022, Rayyan of M/s Boston International was joined in the investigation. The said person stated that his documents were taken by Mohsin Tyagi on the pretext of a job. The documents were given to the petitioner and by misusing those documents, the petitioner had formed a bogus firm. Rayyan was found innocent and his statement u/s 161 Cr.P.C. was recorded.

On 05-07-2022, Mohsin Tyagi was joined in the investigation and his statement u/s 161 Cr.P.C. was recorded. Mohsin Tyagi stated that he had given the documents of Rayyan to the petitioner for a job. On 05-07-2022, the petitioner was joined in the investigation and he disclosed that he had taken the documents of Rayyan from Mohsin Tyagi for granting him a job.

Thereafter, on 07-07-2022, Dhruv Jain was joined in the investigation and his statement was recorded. He stated that he was doing a job with the petitioner. Dhruv Jain was found innocent as he was working as an employee of the petitioner.

On 13-07-2022, Sumit Agarwal was joined in the investigation and his statement was recorded. He stated that he was an employee of the petitioner and petitioner was looking after the entire work of the firm M/s Boston International, 55, Krishna Colony, Yamuna Nagar. The said Sumit Agarwal was found innocent and his statement u/s 161 Cr.P.C. was recorded.

On 19-07-2022, the death certificate of Rupinder Singh was taken into police possession and on 20-07-2022, the statement of account no. 10180004585601 and 10180000781981 were taken into police possession.

Thereafter, the petitioner was arrested on 21-07-2022 and he was interrogated and his disclosure statement was recorded. He disclosed that he had done B.Com from Delhi and he had not passed any course regarding GST and since the last 15 years he was working as a Tax Consultant without any license and also working as a commission agent in Sales Tax Department, Delhi. After ending of VAT tax, the government had imposed GST Tax and with intention to get good money, he had opened two firms in the name of Boston International GSTIN 07BYFPS4314F1ZH, Plot No. 119B, ETO Zone No. 5, Ward NO. 62, Peergarhi, Delhi and M/s Om Traders GSTIN 06BYFPS4314F1ZJ at Plot No.141, Shop No. 62, Geeta complex, Rohtak. In the month of February 2018, he had met Mohsin Tyagi and told him that he would get registered the firm in the name of his

(Mohsin Tyagi's) relative and he will do work. Thereafter, he got the documents of Rayyan, the relative of Mohsin Tyagi and misused these documents and registered the firm M/s Boston International at Yamuna Nagar in the name of Rayyan and M/s Boston International at Delhi in the name of Rupinder.

Thus, it was found that the petitioner had formed bogus firms and had caused loss of revenue to the tune of Rs.3,05,10,099/-to the state exchequer.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. He was merely filing the documents relating to GST, etc, as he was a tax consultant for which no formal degree was required. The main accused was Rupinder Singh who was running the firms alongwith his employees. As the petitioner was in custody since 21.07.2022 and 22 out of the 33 prosecution witnesses had been examined so far, he was entitled to the concession of bail, moreso, as the case was triable by the Court of a Magistrate and he was a first-time offender.

4. The learned counsel for the State, on the other hand, contends that the petitioner was the main accused. He incorporated fictitious companies by misusing the documents of other person and defalcated an amount of more than Rs. 03 Crores thereby causing loss to the State exchequer. Therefore, the petitioner was not entitled to the concession of bail. He, however, concedes that the petitioner was a first-time offender, in

custody since 21.07.2022 and 22 out of the 33 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. This Court in the case titled as ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(O&M) Decided on 31.08.2022*** has held as under:-

> "*Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.*"

7. The veracity of the prosecution case shall be adjudicated upon during the course of trial. Admittedly, the case is triable by the Court of a Magistrate. The petitioner is in custody since 21.07.2022 and 22 out of the 33 prosecution witnesses have been examined so far. Therefore, the trial in the present case is not likely to be concluded any time soon. No serious apprehension has been expressed by the State that the petitioner would abscond from justice, tamper with the evidence or influence witnesses if granted the concession of bail. Therefore, in this situation, the further incarceration of the petitioner is not required.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Puneet Sonkar, is

ordered to be released on bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.5,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

August 22, 2023 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

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