214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47866-2023
Date of Decision:03.11.2023

Amit Kaushik …Petitioner

Vs.

State of Haryana …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rajiv Malhotra, Advocate
for the petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

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N.S.Shekhawat J.

1. The petitioner has filed the instant petition under Section 439 Cr.PC with a prayer to grant regular bail in case FIR No. 405 dated 24.10.2020, registered under Sections 420,467,468 and 471 of IPC (Section 201, 120-B IPC added later on), Police Station Faridabad Central, District Faridabad.

2. The FIR in the present case was got registered on the basis of the complaint moved by Rajesh Kumar Yadav, Excise and Taxation Officer, alleging therein that an information was received from the office of Excise and Taxation Commissioner, Panchkula regarding involvement of M/s A.S. Enterprises, Flat No. 68, ECWS Ground Floor Sector 81, Faridabad, having GSTIN 06BWTPA 3969EIZA, in utilizing bogus Input Tax Credit (ITC) through fake documents. On physical verification of the business premises of the abovesaid firm and registration certificate uploaded by the taxpayer on the GST Portal, it was found that the taxpayer had not done any business at the address provided in the registration certificate. The firm was floated on the

papers only. During investigation it was found that the abovesaid firm was registered through proprietor Ashok S/o Raj Kumar having PAN No. BWTPA3969E, Mobile No. 9671321265, Aadhaar No. 861469337689 resident of Rehrana Floor No. 81, Palwal. It was found that the firm was not only non-existing but also claimed ITC from other fake firms. The firm had not made any physical transaction of the goods. The goods were neither received nor supplied in actuality but only paper transactions were done which is in contravention to proviso of Section 132(1)(B)(C) HGST Act, 2017. Thus, the firm had created a loss to the tune of Rs.2,05,79,076/- to the Government Exchequer. Therefore, it is well established that Ashok, proprietor of M/s A.S. Enterprises had fraudulently registered the said firm under GST Act, solely for the purpose of doing fraud with the Government Revenue, by way of utilizing bogus ITC via paper transactions only, with mala fide intention of not paying taxes.

3. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case. In fact, as per the complainant, the involvement of M/s A.S. Enterprises was allegedly found in utilizing bogus input tax credit through fake documents. Upon physical verification of the premises of the said firm, it was found that no business was carried out at the stipulated address and the firm not only was non-existing, but had also claimed utilised ITC from other fake firms, whereas, the firm had not made any physical transaction of the goods. Thus, the goods were neither received nor supplied in reality, but everything was done in paper transactions and the loss totalling Rs.2,05,79,076/-was caused to the Government. Learned counsel for the petitioner contends that in the present case, the FIR was registered on 24.10.2020, whereas the petitioner was arrested illegally after a period of

almost 02 years i.e on 29.09.2022. Learned counsel further contends that no assessment order has been passed till date and no penalty has been verified so far. However, the challan has been filed before the Court after a long delay. He next contends that the alleged total tax evasion is of Rs.2,05,79,076/, which is less than five crores and thus, the petitioner was not required to be arrested as per the provisions contained in the Central Goods and Service Act, 2017 (hereinafter referred to as the “CGST Act”). Still further, the firm in question was owned by the main accused Ashok and the petitioner was not even remotely related to Ashok, main accused.

4. Still further, as per the contents of the complaint as well as the FIR, it has been falsely alleged that the petitioner firm was involved in utilizing the fake ITC and committed the offence as provided under Section 132(1) of the CGST Act/HGST Act,2017, so the case was covered under the CGST/HGST Act and the FIR on the basis of the complaint moved by the complainant was not maintainable. Learned counsel has also referred to Section 69 and 132 of the “CGST Act” to contend that the petitioner was wrongly arrested in the present case and the FIR was not maintainable against him. Learned counsel for the petitioner further contends that an offence under the CGST Act, can only be investigated, enquired into, tried or otherwise dealt with according to the provisions of “CGSTAct” 2017 and also relied upon the law laid down by this Court in CWP-1393-2021, where in it has been held as follows:-

> “*Where a special enactment has been enacted for recovery of taxes, under enabling provisions contained in Section 4 of the Cr.P.C, this Court is of the prima facie view that the Parliament is empowered under Article 246-A of the Constitution to enact special laws with regard to Goods and Service Tax. The legislation enacted,*

is for levy and collection of taxes on supply of Goods and Services having special provisions for recovery of revenue. It being a fiscal matter, a distinct procedure appears to have been evolved by the Parliament by virtue of a special enactment which is permissible under Section 4 of the Cr.P.C."

5. Learned counsel further submits that he had earlier filed a petition for grant of bail, however, the said bail application was ordered to be dismissed by this Court on 08.02.2023 (Annexure P-2), however, after the dismissal, the charges have been ordered to be framed against the petitioner under Sections 120-B, 420,467,468,471,201 of IPC vide order dated 02.03.2023. Thereafter, six material witnesses have been examined in the present case and no witness has been able to bring any material on record, against the petitioner. Learned counsel further submits that since the petitioner is in custody for the last more than one year and the trial is going on at snails pace, consequently, this itself, would be a ground for grant of concession of bail to the present petitioner.

6. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had caused huge loss to the Government exchequer and such offences should be taken seriously. Apart from that, the petitioner was also part of the systematic fraud, which was committed by the petitioner and his co-accused.

7. I have heard the learned counsel for the parties and perused the record.

8. From the record it is apparent that the petitioner is in custody since 20.09.2022 i.e for the last more than one year. All the offences are triable by

the Court of Magistrate and the conclusion of the trial may take quite a long time. Thus, the fact as to whether the FIR in the present case is maintainable or not, shall be adjudicated by the Trial Court during the course of trial.

9. Keeping in view the custody of the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate.

(N.S.SHEKHAWAT)
03.11.2023 **JUDGE**
hitesh

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