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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49998-2023 (O&M)
Date of decision: October 09, 2023

Gopi Chand Chaudhary

….Petitioner

versus

State of Haryana

….Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Aman Pal, Advocate,
Mr. Madhur Panwar, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a caseFIR No.657 dated 24.10.2020, registered under Sections 120-B,406, 409, 419, 420, 465, 467, 468, 471 of the Indian Penal code, 1860 (hereinafter referred to as 'IPC'), at the City, Police Station in Sirsa.

2. The prosecution's case is that on October 24, 2022, a letter dated 11.12.2019 was received from the office of Deputy Excise Taxation Commissioner (ST), Sirsa Vanijya Bhawan, Barnala Road, Sirsa, from Excise Taxation Officer Ward No.5, Sirsa, to the Superintendent of Police, Sirsa, requesting the lodging of an FIR against Madan Lal, son of Shri Sunder Ram, resident of H.No.85, Village Shaidanwali, Tehsil District Sirsa, Proprietor of M/S. J.C. Enterprises, Sirsa, Holding TIN 06722918871.

2.1. In the said letter, it was informed that a firm by the name of M/s. J.C. Enterprises, Janta Bhawan Road, Sirsa, was found involved in claiming a bogus refund on account of input tax credit. During the assessment period 2011-12, this dealer fraudulently obtained a refund of Rs. 29,29,035/- by using false and fabricated documents, including sale invoices of cigarettes regarding interstate sales to Rajasthan, VAT D-3 forms showing the sale of cement/tiles, and C forms bearing No. R/C/2007/3186552, R/C/2007/3186571, R/C/2007/3186573, R/C/2007/4443156. These refunds were obtained by using the above-mentioned C forms procured from the dealers of Rajasthan who dealt in the trading of tax-free commodities, i.e., khal, binola, etc., claiming interstate sales of cigarettes against said C forms. It was found that the dealer used forged and false documents of sale (as mentioned above) and obtained the refund without any actual movement of goods during the course of interstate sale, amounting to Rs. 29,29,035/-. This dealer claimed input tax credit at 21% on account of purchases of cigarettes and further showed disposal of these goods at 2% in the course of interstate sale against C forms. The Special Refund Team's report in related cases observed that no taxable goods were sold during the interstate sale by M/s. J.C. Enterprises, Sirsa; instead, in Rajasthan, tax-free goods (khal/binola) were shown as accounted for, indicating that M/s. J.C. Enterprises claimed and obtained the benefit of input tax credit despite no tax being paid at any stage by the dealer. Moreover, the claim of sale at a concessional rate of tax against forms was made wrongly, resulting in a revenue loss of Rs. 29,29,359/- to the State Exchequer, as per revision order No. 05A/2011-12 dated 11.11.2014. An FIR was registered.

2.2. During the course of the investigation, initially, co-accused Mahesh was arrested, and after his arrest, the petitioner's name surfaced, ultimately leading to the petitioner's arrest on May 29, 2023, where he has remained in custody since.

3. Learned counsel for the petitioner contends, among other things, that the petitioner was not named in the FIR. He retired as a Joint Commissioner of Excise and Taxation in 2014. He further submits that the petitioner was transferred to Sirsa in 2009 as a Deputy Excise and Taxation Commissioner and remained at Sirsa until 03.07.2012. All the alleged refunds granted to different firms during the petitioner's tenure as Deputy Excise and Taxation Commissioner were approved on the provisional assessment of Mr. D.P. Beniwal, the then Excise and Taxation Officer (E.T.O.) of the ward of the Excise Department. He further submits that it is evident from the provisions of the Haryana Value Added Tax, 2003, that the E.T.O. is responsible for conducting physical verifications of the firm, examining the returns, and verifying the documents of the firm. The prosecution has failed to produce any documentary evidence implicating the petitioner in the alleged allegations. He further submits that the provisions of the IPC cannot be invoked in cases of fraudulent bank claims, as the entire issue falls under the special enactment, i.e., the Haryana Value Added Tax Act, 2003, with no provision for registering an FIR in such matters of alleged tax evasion.

3.1. Learned counsel further contends that there is a delay of more than 8 years in lodging the FIR in question, for which there is no sufficient reason; rather, it appears to be a work of fiction and concocted to tarnish the petitioner's reputation and that of his family members. Nothing is to be recovered from the petitioner.

3.2. Learned counsel submits that the petitioner is a patient suffering from hypertension and diabetes. He underwent an eye operation, and according to jail records, he remained in the hospital from June 24, 2023, to July 01, 2023.

3.3. Learned counsel further urges that the petitioner has been falsely implicated in 15 other cases, and intriguingly, all these cases were registered on the same day, i.e., on 24.10.2020, based on complaints from the same person, under the same sections, with the same set of allegations and the same modus operandi.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that the allegations against the petitioner are serious. He submits that petitioner is involved in 22 other cases and only in 01 case, he is on bail.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Abhay Ram, learned State counsel informs that the challan has already been filed. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since May 29, 2023, for more than 04 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

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

10. The petitioner is stated to be a 67-year-old senior citizen having family to look after. Being a family man and having a family to look after, a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. Considering the overall scenario, 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 by keeping the petitioner in further preventive custody.

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

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

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

15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

MAHAVIR SINGH
2023.10.10 10:32
I attest to the accuracy and
authenticity of this order/ judgment