

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52259-2022

Reserved on 02.02.2023

Pronounced on: 08.02.2023

Amit Kaushik

.... Petitioner

Versus

Sate of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Rajiv Malhotra and Mr. Tarun Kumar, Advocates
for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J.

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No. 405 dated 24.10.2020 registered under Sections 420, 467, 468 and 471 IPC at Police Station Faridabad Central, District Faridabad, Haryana.

Briefly, the aforesaid FIR was registered on the complaint made 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.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner has falsely been implicated in the instant case. Petitioner was not named in the FIR. The present FIR was registered on 24.10.2020, whereas, the petitioner was arrested on 29.09.2022 i.e. after the expiry of almost two years. The complainant-authority did not initiate any proceedings for two years for the reasons best known to them. No assessment order has been passed till date and no penalty has been levied so far. The firm in dispute was owned by co-accused Ashok, therefore,

the petitioner had no knowledge about the working of the said firm. The alleged tax evasion of Rs.2,05,79,076/- is less than Rs.5,00,00,000/-, therefore, the offence is bailable but officials of GST Department in order to harass the petitioner had given a false complaint. The petitioner is in custody since 29.09.2022. Nothing has to be recovered from him. The trial is likely to take a long time. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be released on regular bail.

On the other hand learned State counsel has opposed the prayer of the petitioner by filing reply by way of an affidavit dated 12.12.2022 of Sh. Satya Pal, Assistant Commissioner of Police (Central), Faridabad. It was alleged that the petitioner had forged the documents to register a fake firm and caused loss to the tune of Rs.2,05,79,076/- to the Government Exchequer. He is the kingpin of the aforesaid fraud. The petitioner is also involved in another FIR No. 53 of 2018 registered under Sections 323, 506, 509 read with Section 34 IPC at Police Station BPTP Faridabad.

I have heard learned counsel for the parties and carefully gone through the record.

As per prosecution version, the accused firm from January, 2017 to July, 2019 had shown sale and purchase of Rs.17 crores (approximately) by committing fraud and has evaded tax of Rs.2,05,79,076/- (approximately). Neither the firm has made any physical transaction of the goods nor money transaction to this effect was

reflected in the statements of account of the firm bearing account No. 0343104000188050 of IDBI Bank Limited, Palwal. On verification, the accused firm was not found running at the registered address. It was also found that the petitioner got registered two other fake firms i.e. Aqua Traders and R.K. Enterprises by using the documents of Rahul and Ankit without their knowledge and consent and also prepared forged rent agreement of the aforesaid firms. On the basis of disclosure statement of co-accused-Ashok Kumar, the present petitioner was arrested on 29.09.2022. The documents i.e. copies of PAN cards, Aadhaar Cards etc., used in making aforesaid fake firms, were recovered from the house of the petitioner and Section 120-B IPC was also added.

During investigation, statements of Ankit and Rahul have been recorded. In their statements, they both stated that the petitioner had taken photocopies of their Aadhaar Cards and PAN Cards to get them a good job. When the petitioner failed to do so, they demanded back their documents from the petitioner but he did not return the same. Later on, they came to know that the petitioner had floated bogus firms in their names by misusing their documents without their consent and knowledge and committed fraud as aforesaid to the Government Exchequer.

From the above factual position, it can safely be presumed that the petitioner in connivance with his co-accused-Ashok, had actively participated in making bogus firms i.e. Aqua Traders and R.K. Enterprises, in the names of Ankit and Rahul by preparing fake documents without their consent and knowledge. He had also prepared

several other fake firms. He was involved in utilizing bogus ITC through fake documents by floating the firm M/s A.S. Enterprises, on papers only, thereby causing a loss to the Government Exchequer.

Needless to say, such type of cheating is rampant in our society and is often adopted by fraudsters and unscrupulous persons by causing loss to the Government Exchequer. This has become a cakewalk to amass wealth illegally over night which needs to be curbed with an iron hand. In the instant case, as already noticed that the "pointing finger of accusation" against the petitioner is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the Government exchequer.

In view of the glaring peculiar facts and circumstances of the present case; and more particularly, the material on record, gravity and seriousness of the offence, prima facie involvement and complicity of the petitioner, I am of the considered view that this Court do not find any ground to grant concession of regular bail to the petitioner.

Dismissed.

Nothing said here-in-above shall be construed to be an expression of opinion on the merits of the case.

08.02.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether Reportable **Yes/No**