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

207 **CRM-M-56039 of 2022**
Date of Decision:03.03.2023

Ashu Gupta
....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Vikram Chaudhari, Senior Advocate, with
Mr. Sajal Bansal, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.123 dated 09.08.2019, under Sections 420, 467, 468, 471 IPC and Section 132 of the Goods & Services Tax Act, 2017 added later on, registered at Police Station Sector 20, Panchkula.

It has been submitted by learned senior counsel for the petitioner that the petitioner is in custody for the last one year and investigation of the case has been completed and thereafter the *challan* has been presented before the competent Court but charges have not been framed till date.

Learned senior counsel for the petitioner submitted that the present is the second bail petition filed by the petitioner and his earlier bail petition in CRM-M-23068 of 2022 was dismissed as withdrawn at that stage on 24.08.2022.

Learned senior counsel for the petitioner submitted that the present FIR was lodged on the basis of a complaint made by the Excise & Taxation Officer, Panchkula with the allegation that the petitioner stated to be a proprietor of M/s Recycle With Us, Plot No.329 I.A., Phase 2, Panchkula had allegedly committed a fraudulent activity and which was detected on the basis of physical verification of the aforesaid firm and on the basis of which the present FIR was lodged under Sections 420, 467, 468 and 471 IPC and later on Section 132 of the Goods & Services Tax Act, 2017 was also added vide report dated 12.04.2022 under Section 173 of the Code of Criminal Procedure. He submitted that the Goods & Services Tax Act, 2017 is a self contained Code itself and under the Act only a complaint can lie to the Magistrate on the basis of a complaint made by the competent officer of the GST Department whereas in the present case an FIR has been lodged against the petitioner under Sections 420, 467, 468, 471 IPC and Section 132 of the Goods & Services Tax Act, 2017 on the allegations which are a subject matter of the GST Act pertaining to the receipt of Input Tax Credit in an illegal manner.

Learned senior counsel for the petitioner submitted that in fact an FIR could not have been registered under the aforesaid provision of IPC and instead of filing of a complaint before the Magistrate under the GST Act, the aforesaid FIR has been lodged which is an abuse of process of law and therefore the petitioner is entitled for the grant of bail.

Learned senior counsel further submitted that even otherwise the allegations in the present case are with regard to the amount which is stated to be Rs.2,68,74,696/- and even if the allegations are presumingly taken to be true pertaining to the aforesaid amount even then the offence under Section 132 of the Goods & Services Tax Act, 2017 is a bailable offence since the value is less than Rs.5,00,00,000/- and therefore the petitioner was entitled for the grant of bail on that count as well. He submitted that considering the custody of one year of the petitioner, he may be considered for the grant of bail.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has filed an affidavit of the Assistant Commissioner of Police, Headquarters, Panchkula, which is taken on record and a copy of which has been supplied to learned counsel for the petitioner. She submitted that on the last date of hearing the Court had dealt with the submissions made by learned counsel for the petitioner as to whether the guidelines and directions issued by the Hon'ble Supreme Court in **Arnesh Kumar versus State of Bihar and another** 2014(8) SCC 273 has been complied with or not and therefore the present affidavit has been filed in this regard. She submitted while referring to the paragraph 6 of the affidavit to state that the aforesaid judgment of the Hon'ble Supreme Court in ***Arnesh Kumar***'s case (supra) is not applicable to the present case because the provision under which the FIR was registered are 420, 467, 468 and 471 IPC and the maximum sentence under Section 467 IPC is imprisonment for life and therefore the directions issued by the Hon'ble Supreme Court in ***Arnesh Kumar***'s case will not apply in the present case.

Ms. Nidhi Garg, learned AAG, Haryana submitted that it is a case where the allegation against the petitioner was that on the information received by the Taxation Department that the petitioner was indulging into fraudulent activities physical verification was conducted at the given address of the firm namely M/s Recycle With Us, Plot No.329 I.A., Phase 2, Panchkula and at the aforesaid address no such firm was found in the aforesaid name and therefore notice was issued to the petitioner to submit his reply to which the petitioner had appeared and submitted his reply in which he stated that the petitioner was doing his business from Plot No.330, Industrial Area, Phase 2, Panchkula and thereafter again the Excise and Taxation Officer mark an enquiry to two Taxation Inspectors to enquire into the matter who visited the site and recorded the statement of one Shri Satish Kumar son of Shri Santilal, partner of firm M/s S.K. Steel Industries, 330, I.A., Phase-2, Panchkula who stated that neither the firm exists in the name and style of M/s Recycle With Us at Plot No.330, I.A., Panchkula nor he has ever rented out his premises to the present petitioner for conducting any business. The aforesaid person also stated that he has never seen any such kind of business activity of this firm in the aforesaid Plot No.330, Industrial Area, Phase-2, Panchkula which was stated by the petitioner when his reply was sought. Similarly, the owner of Plot No.329 of the Industrial Area, Phase-2, Panchkula was also asked about the petitioner who had stated that the petitioner was on his rent from April 2016 to April 2018 and thereafter he left the business premises. In the enquiry, it was clear that the petitioner was doing fake transactions without physically receiving the supply of goods nor supplying the goods physically to the receipients for the commodities/goods in which he deals. The Input Tax Credit (ITC) received by him was without passing of goods physically and it was non-genuine and bogus and in this way the petitioner has committed a fraud pertaining to an amount of Rs.2,68,74,696/- besides interest and penalty. She further submitted that even a Special Investigation Team was constituted by the Deputy Commissioner of Police, Panchkula and detailed investigation was conducted and documents pertaining to the sale/purchase of the goods for the years 2017-18, 2018-19 and 2019-20 which were produced by the complainant were taken into possession and record of the Registration Authority, Mohali were also obtained in respect of various vehicles which were stated to be used in the offence and on further enquiry, it was found that the firm was existing at the address of Plot No.329, Industrial Area, Phase-2, Panchkula from 01.04.2016 to 30.04.2018 and the firm was not found to work at Plot No.330 and it was found that the petitioner during 01.07.2017 to 21.06.2019 had made out sale of Rs.33,68,05,709/- having tax of Rs.2,68,74,696/-. The petitioner had reflected the said figures in his return during 2017-2019 and he has taken the benefit of its customers for Rs.2,68,74,696/- and has played foul play. There was no physical movement of any article and in fact the vehicles which are reflected in the E-way bills to make sale/purchase to different firms were not identified and out of the aforesaid identified vehicles some of them two wheelers, three wheelers, school buses, Innova car, Maruti car and other taxi vehicles whereas identified goods are unable to carry goods in tones and therefore the petitioner during 2017-2019 made purchase/sale of goods worth

Rs.33,68,05,709/- and availed GST benefit from the customers with intent to cheat the Government by foul playing by not deposting Rs.2,68,74,696/- with the GST Department.

Learned State counsel also submitted after referring to the affidavit filed by the State that if the concession of bail is granted to the petitioner then he can threaten the witnesses as till date no prosecution witness has been examined by the trial Court. She further submitted that so far as the argument raised by leanred counsel for the petitioner that no FIR can be registered in the present case because the offence would fall under the provisions of GST Act which is a self-contained Code, is not sustainable because the offences under the IPC are separate and distinct offences and there is no bar for registering of an FIR under the aforesaid offences since the allegation of fabricating of bills for the purpose of cheating national exchequer is involved.

I have heard the learned counsel for the parties.

The allegations against the petitioner are pertaining to cheating and fabrication of bills and documents. The argument raised by learned senior counsel for the petitioner that no separate FIR could be filed and only a complaint under the GST Act could have been filed would not be sustainable since offences under the GST Act and that of the provisions of the IPC as are in the present case are separate and distinct. Even maximum punishment under Section 467 IPC is upto life imprisonment. The allegations against the petitioner were with regard to getting benefit of about Rs.2,68,74,696/- as wrongfully by way of Input Tax Credit and as per the allegations there was no physical movement of any goods and it was all a paper transactions and even as per learned counsels for the parties, the FIR was initially lodged under Sections 420, 467, 468 and 471 IPC and thereafter Section 132 of the Goods & Service Tax Act, 2017 was added.

The earlier bail petition was dismissed as withdrawn by the petitioner on 24.08.2022 and the present petition has been filed on 29.11.2022 and till date there is no change of circumstance. This Court is of the view that considering the gravity and the magnitude of the allegations involved in the present case and also the apprehension expressed by learned State counsel that in case the petitioner is released on bail, then he may threaten the witnesses, this Court does not deem it fit and proper to grant bail to the petitioner. Consequently, finding no merit in the present petition, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 03, 2023
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Whether speaking : Yes/No
Whether reportable : Yes/No