206 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-M-59682-2023 (O&M)
Date of Decision: 01.12.2023

GOPI CHAND CHAUDHARY

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aman Pal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 653 dated 24.10.2020 registered under Sections 406, 409, 419, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code at Police Station City Sirsa District Sirsa.

2. The present FIR was lodged on the complaint made by the office of Deputy Excise and Taxation Commissioner (ST) Sirsa on the allegations that various firms have claimed input tax credit on bogus billings during the assessment period of 2011-2012. The FIR was lodged against these firms which were found obtaining refund by using false and fabricated documents. It is informed in the complaint that a firm in the name of M/s Jai Bhagwati Trading Co., R/o H. No 98RSD Colony Sirsa TIN 06542918776 is found involved in claiming bogus refund on account of input tax credit. During the assessment Year 2011-12, this dealer has fraudulently obtained refund of Rs. 4,32,578/- by

using false and fabricated documents which includes sale invoices of cigarettes regarding interstate sale to Rajasthan, VAT D-3 forms showing sale of cement/tiles and C forms bearing No. R/C/2009/4443154. These refunds were obtained by using the above mentioned C forms procured from the dealers of Rajasthan who used to deal in the trading of tax free commodity i.e. khal, binola etc, on account of showing interstate sale of cigarettes against said C forms. On perusal of the record, it has been found that actually dealer has used forged and false documents of sale (as mentioned above) and without making any actual movement of goods during the course of inter-state sale, dealer has obtained the refund to the tune of Rs. 432578/-. This dealer has claimed input tax credit @21% on account of purchase of cigarettes and further shown disposal of these goods @2% in the course of interstate sale against 'C' forms. It has also been observed by the Special Refund Team in his report bearing No 49 dated 13.11.2015 that no taxable goods were sold in the course of inter-state sale by M/s Jai Bhagwati Trading Co., Sirsa, rather, in Rajasthan, against these 'C' forms, tax free goods (khal/Binola) have been shown accounted for which shows that benefit of input tax credit has been claimed and obtained by M/s Jai Bhagwati Trading Co., Sirsa despite the fact that no tax has been paid at any stage by the dealer. Moreover, claim of sale at concessional rate of tax against 'C' forms has been claimed wrongly. In this way, by claiming false ITC and claiming sales at concessional rate of tax against the 'C' forms by submitting false and fabricated documents, have caused revenue loss amounting to Rs. 63,70,815/- to the State Exchequer as per revision order No. 05E/2011-12 dated 11.11.2014. It is accordingly requested to register FIR against Sh. Kamal Bansal S/o Sh. Payre Lal R/o H. No. 98 RSD Colony Sirsa, Prop M/s Jai Bhagwati Trading Co., Sirsa TIN 06542918776 as per relevant provisions/sections of IPC and any other penal law if applicable, for investigation in the matter as per law.

3. Learned counsel for the petitioner inter alia contends that the petitioner is is 67 years of age and retired from service in the year 2014 and he has been involved in the present FIR only on the ground that he was Deputy Excise and Taxation Officer in the year 2012 when the alleged refund on false and fabricated documents were availed by the accused firms. He further contends that the entire case of the prosecution is based on documentary evidence, which is already in possession of the Investigating Agency. Moreover, it is a settled law that provisions of Indian Penal Code cannot be invoked in case of availing of refund on the basis of forged and fabricated documents. It would be covered by the special enactment i.e. Haryana Value Added Tax Act, 2003 as such the registration of the FIR would be an abuse of the process of law. The petitioner has been involved in 21 FIRs on the same set of allegations under the same Sections of Indian Penal Code registered at Police Station Sirsa which is hit by the provisions of Section 219 and 220 of Cr.P.C., according to which only one FIR is permissible under the said provisions.

4. Per contra, learned State counsel has opposed the prayer for grant of bail to the petitioner on the ground that he is involved in 21

more cases and he was the In-charge at the relevant period, his connivance is fully established and huge loss of revenue was caused to the State Exchequer.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars since 29.05.2023 and has been granted bail by learned Sessions Judge, Sirsa vide order dated 27.10.2023 (Annexure P-4) in one of the FIR's i.e. FIR No. 650 dated 24.10.2020 and this Court granted regular bail to the petitioner in FIR No. 657 dated 24.10.2020 (Annexure P-3) vide order dated 09.10.2023 passed in CRM-M-49998-2023. The Investigating Agency has already completed the investigation and filed the final report under Section 173 of Cr.P.C. on 25.09.2023 and the trial has not made any progress as none of the 30 prosecution witnesses, as cited by the prosecution, has been examined so far. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, it has been held that pendency of any other criminal case against the accused cannot be the sole ground to deny him the concession of bail.

6. In view of the above, petitioner -Gopi Chand Chaudhary is ordered to released on regular bail in this case only, if not required in any other case, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

8. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

01.12.2023
Ajay Goswami

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