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

Date of decision : 18th of December, 2023

232-4

CRM-M-60624-2023

GOPI CHAND CHAUDHARY ....Petitioner

Versus

STATE OF HARYANA ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.348 dated 24.10.2020, registered for offences punishable under Sections 406, 419, 420, 465, 468, 471 IPC and (Sections 409, 467, 120-B IPC added later on) and Section 132 of Central Goods and Services Tax Act, 2017, at Police Station Civil Line Sirsa, District Sirsa.

2. As per the contents of the FIR it has been alleged as under :

> "OFFICE OF DY EXCISE TAXATION COMMISSIONER (ST) SIRSA VANIJYA BHAWAN BARNALA ROAD SIRSA. From Excise Taxation Officer Ward No. 6 Sirsa To The Superintendent of Police Sirsa No. 3621 dated 11-12-19 Subject Regarding registration of FIR against Smt. Shabina Devi W/o Sh. Satiah Kumar R/o New Housing Board Colony, Sirsa, Prop M/s Shree Balaji Trading Co., Sirsa TIN 06282917949 Memo On the subject cited above, it is informed that a firm in the name of MIs Shree Balaji Trading Co., Sirsa TIN 06282917949 is found

involved in claiming bogus refund on account of input tax credit. During the assessment period 2011-12, this dealer has fraudulently obtained refund of Rs. 494272/- by using false and fabricated documents which includes sale invoices of cigarettes regarding inter-state sale to Rajasthan, VAT D-3 forms showing sale of Cigarettes and C forms issued by the dealer of Rajasthan. 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. 494272/-. This dealer has claimed input tax credit @21% on account of purchases 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 Team (Refund) in his report bearing No 46 dated 4.11.2015 that no taxable goods were sold in the course of inter-state sale by M/s Shree Balaji 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 Shree Balaji 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 1TC 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. 12005963/- to the State Exchequer as per revision order No. 1107A dated 11.11.2019. It is accordingly, requested to register FIR against Smt. Shabina Devi W/o Sh Satish Kumar R/o New Housing Board Colony, Sirsa, Prop M/s Shree Balaji Trading Co., Sirsa TIN 06282917949 as per relevant

> provisions/sections of IPC and any other penal law if applicable, for investigation in the matter as per law. Sd. Excise Taxation Officer Ward No. 6 Sirsa."

3. The FIR relates to allowing refund on the basis of forged and fabricated documents.

4. Status report filed by way of affidavit of Jagat Singh, HPS, DSP (HQ) Sirsa, District Sirsa specifying the role of the petitioner as under :

> "24. That now the petitioner/accused has filed the present petition seeking the relief of regular bail. In this regard it is submitted that from the report obtained from taxation department, petitioner/accused Gopi Chand Chaudhary has illegally issued a refund of Rs.4,94,272/- to the accused firm in this case and has issued total refund of Rs.3, 18, 14,528/- in all the cases registered against him. The petitioner/accused was found involved in total 20 cases and has been arrested in all the 20 cases. There is apprehension that in the event of bail, the petitioner/accused may abscond in order to delay the fair trial of all the cases registered against him. Present petitioner is involved in organized economic crime and has caused heavy loss to State Exchequer in collusion with his co-accused persons by giving refunds to bogus firms. xxx"

5. On the specific query being asked to Counsel representing the State as to what was the role of the petitioner in issuing refund to the accused-firm as unearthed in the investigation, he on instructions from the Investigating Officer submits that the petitioner used to charge 2% to 3% commission on refund.

6. Having heard rival contention of the parties, this Court finds that the allegation in the FIR is w.r.t. the assessee having claimed refund wrongly by submitting forged and false documents of sale. Thus the role of the petitioner primarily relates to error in judgment. There is no such allegation that the petitioner acted in cahoots with the assessee to award refund illegally.

7. It is not disputed by State Counsel that the Challan already stands presented. Investigation is complete and as on date the evidence w.r.t. meeting of minds between the petitioner and the main accused remains amiss.

8. The petitioner is stated to be 67 years old Senior Citizen earning pension from the State. It is also not disputed that the petitioner served State with clean record and has no criminal antecedents.

9. In view of above this Court finds that there is no reason to prolong custody of the petitioner as a punitive measure. Resultantly, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 18, 2023 **(Pankaj Jain)**
Dpr **Judge**

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