2023:PHHC:158813

213 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-61470-2023
Date of decision: 12.12.2023

SANJAY KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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<u>HARPREET SINGH BRAR J. (ORAL)</u>

Prayer in the present petition is made for grant of regular bail in case FIR No.378 dated 24.10.2020 registered under Sections 406/409/419/420/465/468/471/120-B of Indian Penal Code at Police Station City Mandi Dabwali, District Sirsa, Haryana.

2. The FIR was lodged on the following allegations :

> *"…it is informed that a firm in the name of M/s Sanjay Agencies Dabwali TIN 06022919838 is found involved in the claiming bogus refund on account of input tax credit. During the assessment period 2013-14, this dealer has fraudulently obtained refund of Rs. 1875983/- by using false and fabricated documents which includes sale invoices of cigarettes regarding inter-state sale to Delhi, VAT D-3 forms showing sale of Cigarettes and C forms bearing No. 12117271061213, 12117277291213, 12117658691213, 12117631091213. These refunds were obtained by using the above mentioned C forms procured from the dealers of Delhi. Who used to manipulate those Transactions on account of showing interstate sale of cigarette 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 interstate sale, dealer has*

obtained the refund to the tune of Rs. 1875983/- 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. On verification of such type of cases it is held that this dealers have used false and fabricated documents only to obtained fraudulent refund. 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. 54826896/- (Refund interest penalty) to the Stare Exchequer as per re-assessment order dated 06.12.2019."

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 25.08.2023. The case of the prosecution is based on the documentary evidence and the documents are already in possession of the investigating agency. The allegations levelled in the FIR pertain to obtaining Input Tax Credit (ITC) on the basis of forged and fabricated documents. On these allegations, even if, they are taken to be true, FIR under Indian Penal Code cannot be registered. The allegations contained in the FIR are covered under the Value Added Tax (VAT) Act, which provides detailed mechanism for penalty as well as the penal provisions. He further placed reliance upon judgments in ***Pritpal Singh*** *verus* ***State of Punjab and another, CRM-M No.26116 of 2010 decided on 05.03.2012, Rakesh Kumar*** *versus* ***State of Punjab and another, CRM-M-134 of 2013, decided on 10.04.2013*** *and* ***Subhash Chander @ Subhash Kumar*** *versus* ***State of Punjab, CRM-M-2916 of 2014, decided on 17.11.2014.*** It is well-settled principle of law that if a special Statute lays down procedures, the one laid down under the general provisions of IPC would not be attracted as laid down by the Hon'ble Supreme Court in ***Jeewan Kumar Raut and another*** *versus* ***Central Bureau of Investigation 2009 (7) SCC 526*** and the judgment of this Court in ***Ajay Kumar***

Sandhu *versus* ***State of Haryana, CRM-M-29708-2014 (O & M).***

4. Per contra, learned State counsel opposes the grant of bail to the petitioner on the ground that due to the petitioner is involved in huge evasion of tax and he is causing loss to the State Exchequer by creating various bogus firms.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires the provisions of the Value Added Tax (VAT) Act provides for special provision with regard to provision of tax on the basis of false and fabricated documents. The petitioner is behind the bars since 25.08.2023 and the investigating agency has already completed investigation and submitted the final report under Section 173 of Cr.P.C. on 26.10.2023. The trial of the case has not made any progress as out of 25 prosecution witnesses cited, none has been examined so far and the trial of case would likely to take long time to conclude. The culpability of the petitioner would be seen at the time of the trial.

6. Accordingly, the present petition is allowed. The petitioner-Sanjay Kumar is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

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.

(HARPREET SINGH BRAR)
JUDGE

December 12, 2023
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No