217 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-M-61359-2023(O&M)
Date of Decision: 11.12.2023

GOPI CHAND CHAUDHARY

…Petitioner

V/S

STATE OF HARYANA

…Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Ms. Geeta Sharma, DAG Haryana.

****

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. 659 dated 24.10.2020 registered under Sections 406, 419, 420, 465, 467, 468, 471 (Section 409 and 120-B of IPC added later on) of the Indian Penal Code at Police Station City Sirsa District Sirsa.

2. The present FIR was lodged on the complaint that a firm in the name of M/s Bhupinder Kumar Tushar Kumar Sirsa TIN 06892918729 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. 4417944/- 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 bearing No. R/C/2007/3186576, R/C/2007/3584986, R/C/2007/3584995, R/C/2007/3337304 and R/C/2007/3453594, R/C/2007/3625009 and R/C/2009/4443151. 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. 4417944/- 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 52 dated 17.11.2015 that no taxable goods were sold in the course of interstate sale by M/s R.D Overseas, 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 RD Overseas 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 'C' forms By submitting false and fabricated documents, have caused revenue loss amounting to Rs. 4613128/- to the State Exchequer as per revision order No. OSC dated 11.11.2014.

3. Learned counsel for the petitioner inter alia contends that the petitioner is 67 years of age and has retired in the year 2014 and he has been involved in the present case only on the ground that he was posted as Deputy Excise and Tax Officer in the year 2012, when the alleged refund on the basis of false and fabricated documents were availed by the accused Firm. The case of the petitioner is entirely based on the

documentary evidence, which is already in possession of the Investigating Agency. Moreover, it is a settled law that the provisions of Indian Penal Code cannot be invoked in case of availing of refund on the basis of bogus and fabricated documents as the special enactment i.e. Haryana Value Added Tax is a complete Code in itself, which provides for detailed mechanism for punishing the accused, who indulge in causing loss of revenue to the State on the Exchequer on the basis of bogus billings and fabricated documents and 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 not permissible in view of provisions of Section 219 and 220 of Cr.P.C. Therefore, only one FIR could have been lodged against the petitioner.

4. Per contra, learned State counsel has opposed the prayer for grant of bail to the petitioner on the ground that he was involved in 21 more cases and he was the In-charge of the department at the relevant period and 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 in custody since 29.05.2023. Investigation of the case is complete and the final report under Seciton 173 Cr.P.C. has already been presented. Trial is likely to take long time to conclude and the petitioner has already been granted regular bail by the court of learned Sessions Judge, Sirsa vide order dated 27.10.2023 (Annexure P-5) 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 three FIRs vide orders passed in CRM-M-49998-2023 and CRM-M-59682-2023 and CRM-M-60420-2023. 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, the involvement of accused in other criminal case 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

11.12.2023
Ajay Goswami

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