296

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 18th of December, 2023

CRM-M-61725-2023

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 FIR No.266 dated 26.08.2016, registered for the offences punishable under Sections 406, 419, 420, 465, 467, 471 IPC and Sections 409, 120-B IPC added later on at Police Station City Mandi Dabwali, Distt. Sirsa.

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

> "12. From Excise & Taxation Officer Ward No. 7 Dabwali, To, The Superintendent of Police Sirsa No. 1650/TI dated 22/8/16 Subject:- To register complaint regarding the matter of crime committed by Sh. Parven Kumar S/o Sh. Gajanand Prop of M/s Jagdamba Trading Co., Dabwali TIN 06392918325 Asst Year 2010-11 Memo With the orders of Hon'ble 'Excise & Taxation Commissioner, Haryana Panchkula letter No., WhatsApp message (annexure) and DETC(ST) Sirsa vide memo No. 441 dated 27-5-2016, directions have been given to the lodge an FIR against those dealers who are identified to be indulging in tax

evasion, fraudulent claim of input tax credit, raising bogus bills or floating bogus firms. On the subject cited above, it is brought to your kind knowledge that M/s Jagdambaa Trading Co., Dabwali TIN 06392918325 was a registered dealer at Sirsa ward No.7. the RC was granted for the business of commission agent of food grains. Later on he applied for addition of bidi, cigarette, tiles and other tobacco products. The dealer had made inter state sale against C forms to the dealers of Rajasthan. Inter State sale of course are governed by rate of taxation laid down in the Central tax Act 1956. The retail invoices and other documents relied upon the dealer to claim of lower rate of tax under CST Act 1956 were not produced at the time of assessment/re-assessment of the firm. In view of the verification made from the office of CTO Hanumangarh, it has been noticed that the dealer of Rajasthan has accounted for tax free commodity in their returns filed before the authorities of Rajasthan whereas dealer of Sirsa district has shown sale to them cigarettes which is taxable commodity in Rajasthan. The copy of return filed before the authority of Rajasthan is placed of the file. It means this dealer has not sold any taxable commodity to the dealer of Rajasthan and the entire sale of Cigarette (for which the dealer has submitted the C forms to the office of DETC (ST) Sirsa) is made as local sale within the State of Haryana. Therefore, fabrication and forgery committed the relevant provisions of the code are thus invoked against the dealer. Reports from Commercial Tax Officer Circle A Hanumangarh, Commercial Tax Department, Government of Rajasthan are placed on the file which reveals that the dealer has made fraudulent inter state transactions while the dealer of the Rajasthan State deals in tax free goods. It clearly indicates that the dealer is intentionally not paying the tax with the support of proper planning by showing the false interstate sales on bogus documents and causing the loss to the government exchequer. Through this systematic crime, government has to face a lot of financial loss. Besides, it is very pertinent to mention here that M/s Jagdamba Trading Co.,

> Dabwali TIN 06392918325 has taken an amount of Refund of Rs. 496433/- from the government exchequer on the basis of interstate sales of cigarette against C forms by issuing the bogus bills. Hence, forge and fabricate documents submitted by the dealer attract penal action u/s 406, 419, 420, 465, 467 471 I.P.C. Please be needful in the matter. Sd/- Excise & Taxation Officer Sirsa Endst No. /TI(5) dated the A copy is forwarded to the Ld Dy Excise and Taxation Commissioner (ST), Sirsa for information please Sd/- Excise & Taxation Officer Sirsa."

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

4. State Counsel submits that role of the petitioner is similar to the one in the connected CRM-M Nos.57559, 60624 and 59913 of 2023.

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