216 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-M-3705-2024 (O&M)
Date of Decision: 30.01.2024

ASHOK SUKHIJA

…Petitioner

V/S

STATE OF HARYANA

…Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harpreet Singh Rakhra, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

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HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed 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 Indian Penal Code at Police Station City 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 around 63 years of age and has retired from his service in the year 2018 and he has been involved in the present FIR only on the ground that he was the Assessment Officer in the year 2014, when the alleged refunds on false and fabricated documents were availed by the accused- firm. Learned counsel further submits that similarly situated co-accused namely Gopi Chand Chaudhary, who retired as Deputy Excise and Taxation Commissioner, was granted the concession of regular bail by this Court on 01.12.2023 (Annexure P-3) passed in CRM-M-59682-2023 and the petitioner and other co-accused have been granted the concession of regular bail in another FIR on the same set of allegations, by a Co-ordinate Bench of this Court on 19.12.2023 passed in CRM-M-52902-2023 (Annexure P-4). Learned counsel further contends that case of the petitioner is at a better footing than that of the co-accused Gopi Chand Chaudhary. The entire case of the prosecution is based upon the documentary evidence and it is a settled principle of law that the provisions of Indian Penal Code cannot be invoked in case of availing of refund on the basis of false and fabricated documents as it would be covered by the special enactment i.e. Haryana Value Added Tax Act, 2003 and as such the registration of the FIR (supra) would be an abuse of the process of law. The petitioner has been involved in 15 more FIRs on the same set of allegations under the same Sections of Indian Penal Code, which is in violation of the

provisions of Sections 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 opposes the prayer of grant of regular bail to the petitioner on the ground that he is involved in 15 more cases and he was the person who has made the assessment at the relevant time, based upon the forced and fabricated documents and due to his connivance with the accused-firm, the State has suffered a huge loss of revenue.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 28.06.2023. Investigating Agency has already completed the investigation and filed the final report under Section 173 and none out of the 18 prosecution witnesses have been examined so far. Culpability, if any, would be determined at the time of the trial and the similarly situated co-accused have already been granted the concession of regular bail by this Court vide Annexures P-3 and P-4 respectively.

6. 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 cases cannot be the sole ground to deny him the concession of bail.

7. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner- Ashok Sukhija is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. 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

30.01.2024
Ajay Goswami

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