

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

CRM-M-4952-2024 (O&M)
Date of Decision: 06.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Ms. Geeta Sharma, DAG Haryana.

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. 658 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. Present FIR was lodged against one Sunil Kumar S/o Sh. Ram Diya R/o H. No. 260 Shiv Nagar Hisar, Prop M/s R.D. Overseas Shop No. 19D, IInd Addl. Mandi Sirsa TIN 06052919094 on the allegations that a firm in the name of M/s R.D. Overseas, 19-P, IInd Addl Mandi, Sirsa TIN 06052919094 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. 14,60,490/- 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/2007/3186559, R/C/2007/3186575, R/C/2009/4443164. 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 inter-state 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. 14,60,490/- 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 inter-state sale against 'C' forms. It has also been observed by the Special Team (Refund) in his report bearing No. 46 dated 04.11.2015 that no taxable goods were sold in the course of inter-state sale by M/s R.D Qxas Sirsa, rather, in Rajasthan, against these 'C' forms, tax free goods Chandigarh (khal/Binola) have been shown accounted for which shows that benefit of input tax credit has been claimed and obtained by M/s R.D. 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. 14,60,490/- to the State Exchequer as per revision order No. OSC dated 11.11.2014.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is 63 years of age and he has retired from his service in the year 2018. The petitioner has been nominated as an accused in the FIR(supra) 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 for the petitioner further relies upon order dated 06.12.2023 (Annexure P-3) passed by this Court in CRM-M-60420-2023 and order dated 19.12.2023 (Annexure P-4) passed in CRM-M-52902-2023 passed by a Co-ordinate Bench of this Court, vide which the petitioner and other co-accused have been granted the concession of regular bail in another FIR on the same set of allegations. Moreover, 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) is an abuse of the process of law. Petitioner has been involved in 15 more cases on the same set of allegations, which is in violation of the provisions of Section 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 for 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 forged and fabricated documents and due to his connivance with the accused-firm, the State has suffered 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 concluded the investigation and submitted the final report under Section 173 of Cr.P.C. Culpability, if any, would be determined at the time of the trial. Similarly situated co-accused have already been granted regular bail by this Court vide orders dated 06.12.2023 and 19.12.2023 passed in CRM-M-60420-

2023 and CRM-M-56316-2023.

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. In view of the above, the present petition is allowed and 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.

06.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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