2024:PHHC:018036

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-5396-2024
Date of decision : 08.02.2024

Ashok Sukhija ...... **Petitioner**

versus

State of Haryana ...... **Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. H.S. Rakhra, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

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PANKAJ JAIN, J. (Oral)

1 Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case bearing FIR No.651 dated 24.10.2020 registered for the offences punishable under Sections 406/409/419/420/465/467/468/471/120-B IPC at Police Station City Sirsa.

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

> "OFFICE OF DY EXCISE TAXATION COMMISSIONER (ST) SIRSA, VAHILYA BHAWAN, BARNALA ROAD SIRSA From Excise Tasation Offmeer Ward No. 3 Sirsa To, The Superintendent of Police Sirsa No. 3606/ dated 11-12-19 Subject:- Regarding registration of FIR against Smt. Shashi Garg W/o Sh Ashok Kumar R/o 39 New Housing Board Colony Sirsa, Prop M/s Parns Trading Co., Sirsa TIN 06562918862 Memo On the subject cited above, it is informed that a firm in the name of M/s Paras Trading Co., Sirsa TIN 06562918862 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. 1916804/- 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 form bearing No. R/C/2009/4434430. 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 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. 1916804/- 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 48 dated 9.11.2015 that no taxable goods were sold in the course of inter- state sale by M/s Paras 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 Paras Trading Co. 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. 3537778/, to the State Exchequer as per revision order No. 05F dated 11.11.2014. It is accordingly requested to register FIR against Smt Shashi Garg W/o Sh Ashok

Kumar R/o 39 New, Housing Board Colony Sirsa, Prop M/s Paras Trading Co., Sirsa TIN 06562918862 as per relevant provisions/sections of IPC and any other penal law if applicable, for investigation in the matter as per law. s/d Excise Taxation Officer Ward No. 5 Sirsa Endst No 3607-08/T1 dated 11-12-19 A copy is forwarded to the following for information please: 1. The Excise Taxation Commissioner, Haryana Panchkula 2. The Dy Excise Taxation Commissioner (ST) Sirsa s/d Excise Taxation Officer Ward No. 5 Sirsa."

3 Learned counsel for the petitioner submits that the petitioner was posted as ETO and had passed final assessment order which was approved by his Superior namely Gopi Chand Chaudhary, who was at the relevant time posted as ATC. Gopi Chand Chaudhary stands admitted to regular bail vide order dated 18.12.2023 passed in ***CRM-M-59913-2023*** observing as under :-

"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."*

4 He further relies upon order dated 19.12.2023 passed in CRM-M-52902-2023 titled as ***Ashok Sukhija Vs. State of Haryana*** whereby the petitioner stands admitted to bail observing as under :-

"4. On behalf of petitioner-Ashok Sukhija, it is contended by ld. counsel that petitioner had joined his services at Sirsa on 02.07.2013, whereas the case in hand pertains to refund for the year 2011-12. It is Sh. D.P. Beniwal, the then Excise and Taxation Officer, who was responsible for conducting the physical verification of the firm, examine the returns and verify documents of the firm. It is said D.P. Beniwal, who had conducted the necessary verification and that petitioner had simply passed the final assessment order on the basis of assessment done and the refund order issued by D.P. Beniwal, and in this way, petitioner was not concerned in any way with the allegations made in the FIR.

5. (i) Apart from above, ld. counsel for both the petitioners, have drawn attention towards the fact that loss to the State exchequer to the tune of Rs.29,29,359/- had come to the notice of the respondent/State only on 11.11.2014, when the revision order was passed, as is evident from the contents of the FIR itself. It is more than 5 years from the date of that final order in the revision, that letter was sent to the Superintendent of Police, Sirsa to register the case and another approximately about one year, the FIR has been lodged on 24.10.2020 and in this way, there is an unexplained delay of more than 8 years from the date of alleged commission of the offence.

(ii) Ld. counsels further contend that entire case is dependent upon documentary evidence; that investigation already stands concluded and there is no prospect of any of the petitioners absconding from justice and so, they be allowed regular bail, inasmuch as co-accused Gopi Chand Chaudhary has already been allowed bail by this Court.

6. Opposing the bail petitions, ld. State counsel contends that petitioners committed economic offences causing loss to the State exchequer to the tune of more than Rs.29 lakhs; that though the allegations make out violation of the provisions of the Act, but at the *same time, there is nothing which precluded the police to investigate a crime under the provisions of IPC, in case allegations leveled in the FIR make out the commission of offences under the IPC. Ld. State counsel contends that fraud and fabrication of documents on the part of petitioners is writ large, as they are involved in evading of VAT by claiming input tax credit on the basis of forged documents. Prayer is made for rejecting both the petitions.*

7. I have considered submissions of both the sides and have appraised the record carefully.

*8. A Co-ordinate Bench of this Court in **CRM-M-23662-2016** decided on 16.05.2023 titled **Ashwani Kumar** Vs. **State of Punjab** examined the provisions of Sections 57 & 58 of the Punjab Value Added Tax Act, 2005 [‘for short ‘the 2005 Act’], providing for penalty for failure to issue invoices and use of false invoices and observed that allegations of the FIR are squarely covered under the provisions of Sections 57 & 58 of the 2005 Act. It was further observed that the 2005 Act is a complete Code in itself and there is no provision provided in the 2005 Act for registration of the FIR. It was further observed that the 2005 Act only provided for imposition of penalty in case there is any contravention of its provisions and since the 2005 Act is a special law, principle of generalia specialibus non derogant would apply, meaning thereby it would operate in exclusion to the general law i.e., the IPC. While holding so, the Court relied upon **Pritpal Singh Vs. State of Punjab [CRM-M-26116-2010 decided on 05.03.2012]**, which in turn had relied upon a judgment of Hon’ble Supreme Court rendered in **Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and another, 2005(4) RCR (Criminal) 855**, holding that provisions of the Act are sufficient and equipped to deal with the matter, where an attempt is made to evade the Tax and the registration of FIR in such like matters is totally an abuse of the process of law.*

*9. However, this Court notices that in the absence of factual matrix in **Ashwani Kumar’s case (Supra), Pritpal Singh’s case (Supra) and Dilawar Singh’s case (Supra),** it is not possible to comment as to whether in those cases also, there were allegations regarding bogus refund of input tax credit based on false and fabricated documents. In these circumstances, it will be a debatable issue as to whether the provisions of IPC shall be applicable to the present case or not.*

10. At the same time, it is not disputed even by the ld. State counsel that FIR pertains to the bogus refund of input tax credit in respect of

Assessment Year 2011-12, in which the alleged loss of Rs.29,29,359/- to the State exchequer was finalized at least on 11.11.2014 in revision order, as is mentioned in the FIR itself. No explanation is given in the FIR about the delay of more than 5 years so as to write a letter to the Superintendent of Police, Sirsa on 11.12.2019 to take action against the culprits and then another approximately one year for getting the FIR registered on 24.10.2020.

11. Apart from this unexplained huge delay, the case is mostly based upon documentary evidence. Investigation is already complete. Challan already stands presented before the Court concerned. Co-accused Gopi Chand Chaudhary, the then Excise and Taxation Commissioner, has already been allowed bail by a Coordinate Bench of this Court vide order dated 09.10.2023 passed in CRM-M-49998-2023. As per the status report, even the charges are yet to be framed. Mahesh Kumar @ Mahesh Bansal (petitioner in CRM-M-56316-2023) is in custody ever-since 01.05.2023 i.e., for the last more than 7 months; whereas Ashok Sukhija (petitioner in CRM-M-52902-2023) is in custody since 31.05.2023 i.e., for the last more than 6 months. Trial may take time to conclude."

5 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner by now has undergone more than 5 months and 28 days. Majority of the cases as shown in the custody certificate involve similar allegations and were registered in the same circumstances.

6 Learned State counsel is not in a position to dispute the aforementioned factual assertions based on record.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 Without commenting on the merits of the case and considering the incarceration suffered by the petitioner and the fact that the challan stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate,

concerned.

9 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

08.02.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No