(230)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6218-2024
Date of Decision: 12.02.2024

KANWAR SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ajay Arora Bharti, Advocate for
Ms. Divya Narula, Advocate
for the petitioner.

Mr. Ravish Kaushik, Addl. A.G., Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.1167 dated 26.11.2018 registered under Sections 406, 409, 419, 420, 465, 467, 468, 471, 114 and 120-B IPC, 1860 at Police Station City Sirsa, District Sirsa.

2. The present FIR came to be registered at the instance of Satyawala, Dy. Excise Taxation Commissioner (ST) Sirsa and reads as under:-

> *"Office of The Supdt. of Police Dairy 5557 dt. 23.10.18 Sirsa-125055(Hry). From Dy Excise Taxation Commissioner (ST) To The Superintendent of Police, Sirsa. No. 4971/IT Dated 23.10.18. Subject:- To lodge an FIR Against Sh. Ashok Sukhija, Excise Taxation Officer (Retired) and other proprietors of firms. Shri Ashok Sukhija, ETO (Retired) during his posting at Sirsa from 2.7.2013 to 25.8.2014 issued 93 refunds. Shri Vinod Kumar S/o Sh. Hari Singh*

made a complaint against Sh. Ashok Sukhija which was marked to Sh. Ashok Sharma (the then Additional Excise and Taxation Commissioner), for preliminary enquiry Sh. Ashok Sharma submitted report dated 7.2.2014. Further, departmental enquiry under rule 7 was initiated' against Sh. Ashok Sukhija and Sh. R.P.Bajaj, District Session Judge (Retired) was made the inquiry officer. Sh. R.P.Bajaj, Inquiry Officer in his report dated 24.6.2016 indicted Sh. Ashok Sukhija, ETO (Retired) to the extent that Sh. Ashok Sukhija for non compliance of instructions for verification of payment of input tax in the treasury by the assessing officers recommending/ordering the refund under section 20 of the Act. In any case, it involves allegation of connivance between the two. In the result, the charge is proved against the delinquent to the extent indicated above." Further the directions received from Hon'ble Excise Taxation Commissioner, Haryana to lodge FIR against Sh. Ashok Sukhija, ETO (Retd). As Sh.Ashok Sukhia, ETO(Retired) issued refunds to the dealers without verification of payment of input tax to the State Treasury thereby causing loss to the State Exchequer, hence the FIR is to be lodged against the above named retired officer. The names of firms/dealers to who refunds were issued without proper verification shall be intimated later on as and when received from Head Office You are hereby requested to lodge an FIR against Sh. Ashok Sukhija and others under relevant provisions of law. Sd Satyawala Dy. Excise Taxation Commissioner (ST) Sirsa."

3. Initially, the investigation was conducted by the Police PP HUDA, Sirsa. Thereafter, it came to light that the investigation of similar cases was being conducted by an SIT and therefore, the investigation in the present case was also entrusted to the said SIT. During the course of the investigation, on 17.08.2023, the record of the firm M/s Omparkash Ashwani

Kumar, Sirsa was obtained from the office of DETC, Sirsa. According to the record, the proprietor of the firm was Ashwani Kumar son of Omparkash and the guarantors of the firm were M/s Rohit Trading Company, Sirsa through its proprietor Ramkishan son of Nand Kishore who had expired and M/s Haryana Sales, Sirsa through its proprietor Vinod Kumar son of Sagar Singh. These were bogus firms and a separate FIR had been registered against M/s Rohit Trading Company, Sirsa. According to the rent agreement, the owner of the shop was Kamla Devi wife of Brahmanand. According to the record, local purchase of the firm was found from M/s Triupati Traders Sirsa, M/s Vijay Trading Company, Sirsa, M/s Ganga Ram Traders, Sirsa, M/s Nank Chand Ashok Kumar, Sirsa, M/s Rajat Traders Sirsa, M/s Hazari Lal Shyam Sunder, M/s Bansal Traders, Sirsa, M/s Padam Kumar Amit Kumar Sirsa, M/s Jain Agro, Sirsa, M/s Shiv Corporation Sirsa, M/s Charanjit Naurang Lal and sons Yamuna Nagar, M/s Jindal Agencies Narnaul, M/s Mahavir Parshad Ravinder Kumar, Fatehabad, M/s Krishan Agencies Kurukshetra and Inter-state Sale of Cigarette and tiles was with M/s Jai Bhawani Trading Nohar, M/s Ashoka Traders Nohar, M/s Jagdamba Trading Company Delhi, M/s Shri Shyam Sales Delhi, M/s Shri Prakash Enterprises Delhi, M/s Balaji International Delhi from year 2012-13 to 2014-15. In the record, it also came to light that during the year 2012-13, the accused firm M/s Omparkash Ashwani Kumar had obtained a refund of Rs.19,98,558/- on the provisional assessment of accused Ashok Sukhija, the then ETO, Sirsa on the order of Narender Kumar Ranga, the then DETC, Sirsa and adjusted input tax credit of Rs.1,40,64,483/-. In the year 2013-14, the accused firm had adjusted input tax credit of Rs.1,06,72,186/- and in the year 2014-15 had adjusted input tax credit of Rs.51,90,867/-. As such a total refund and tax adjustment of Rs.3,19,26,094/- was obtained by the accused firm during the year 2012-13 to 2014-15. On the basis of the record and the investigation conducted, Sections 406, 419, 420, 465, 467, 468, 471, 120-B IPC were added.

On 26.08.2023, the statement of Navin Nandal, the then ETO, Sirsa was recorded in which he stated that during scrutiny assessment for the year 2013-14 conducted by him in pursuance of the order No.1489, dated 18.01.2016 issued by the then DETC, Sirsa, the accused firm was found bogus and the inter-State sale shown by the accused firm was shown to be false. A demand of Rs.1,11,11,133/- was made against the accused firm for the year 2013-14.

On 21.09.2023, the record of the Bank Account No.3326000101583295 of the accused firm was taken in possession from PNB, Sirsa. In the bank record, it was found that during the year 2012 to 2015, the accused firm had transactions crore of rupees with the firm M/s Padam Kumar Amit Kumar, Sirsa, Proprietor Amit Bansal and Bansal Traders, Sirsa, Proprietor Padam Bansal.

During investigation, on 19.09.2023, the records of firms M/s Jai Bhawani Trading Company Nohar and M/s Ashoka Traders Nohar, with which the accused firm had shown inter-State business were obtained from CTO, Hanumangarh. It came to light that these firms dealt with the business of tax free commodities Khal/Binola but the accused firm had falsely shown inter-State business/sale of cement and tiles with these firms.

On 02.10.2023, Harish Kumar son of Brahmanand and Sanjay Gupta were joined in the investigation. In his statement Harish Kumar stated that he had rented out his shop to Sanjay Gupta in the year 2010 to 2019 whereas Sanjay Gupta stated that he ran Kiryana shop during the period 2010-2019. In this way, the rent agreement was found to be fake and fabricated.

On 10.10.2023, accused Amit Bansal and accused Ashok Sukhija were joined in the investigation and were arrested. Amit Bansal and Ashok Sukhija suffered their respective disclosure statements in which they named the petitioner-Kapil Gupta and other accused involved in the commission of the crime. Amit Bansal specifically disclosed in his disclosure statement that Kapil Gupta (granted bail vide order dated 04.01.2024 passed in CRM-M-62515-2023) used to take a commission @ 5-10% on the refund and he managed to get setting/settlement with the concerned officials of Taxation Department for bogus refunds.

On 11.10.2023, on the basis of the disclosure statements of the arrested accused in the case namely, Amit Bansal, co-accused Asha Rani wife of accused Padam Bansal and Kapil Gupta were joined in the investigation and were arrested. Asha Rani and Kapil Gupta suffered their disclosure statements. Asha Rani got recovered Rs.1,00,000/- and Kapil Gupta got recovered Rs.50,000/-. Section 114 IPC was added in the case.

On 12.10.2023, on the basis of the disclosure statements of the accused arrested in this case namely, Amit Bansal, co-accused Padam Bansal was joined in the investigation and arrested. Padam Bansal suffered his disclosure statement and got recovered Rs.50,000/-.

On 17.10.2023, the statement of Sant Swaroop, the then Steno DETC, Sirsa was recorded under Section 164 Cr.P.C. In the said statement, Sant Swaroop stated that accused Padam Bansal used to pay commission @ 25% in lieu of bogus refunds to the officials of Taxation Department, Sirsa through him.

On 27.10.2023, the statement of Ashwani Kumar, Proprietor of the accused firm was got recorded under Section 164 Cr.P.C. In the said statement, he disclosed that he was employed as Driver with the accused Padam Bansal and Amit Bansal. Both the accused had created a bogus firm in his name by getting his signatures on blank papers and had done fake business and had purchased properties from the money earned from the fake business.

On 25.11.2023, Kanwar Singh (petitioner) son of Mam Chand, the then Taxation Inspector, Sirsa who had conducted the verification of the business place of the accused firm on the spot was joined in the investigation and was arrested.

On 28.11.2023, complainant-Satyawala was joined in the investigation and her statement was recorded under Section 161 Cr.P.C. in support of her complaint.

During the course of investigation, it was found that the accused firms M/s Omparkash Ashwani Kumar Sirsa was created fraudulently by Padam Bansal, Amit Bansal and Kapil Gupta in the name of Ashwani Kumar by showing him as a proprietor of the accused firm. The business of the above-said firm was falsely shown at the local level and the inter-State with various firms. Thus, by showing bogus purchase billing of cigarette and cement tiles from the said firms by preparing fake bills in the names of above-said firms had taken bogus return in lacs of rupees by producing bogus

C-form showing inter-State trade, in collusion with Kapil Gupta, accused Ashok Sukhija, the then ETO, Sirsa, Narender Ranga, the then DETC, Sirsa and other co-accused.

The report under Section 173(2) Cr.P.C. was presented against Kapil Gupta, Padam Bansal, Amit Bansal, Asha Rani, G.C. Chaudhary and Ashok Sukhija on 03.01.2024 under Sections 114/ 406/ 409/ 419/ 420/ 467/ 468/ 471/120-B IPC.

4. The learned counsel for the petitioner contends that as per the prosecution case, the petitioner had attested/verified the place of business of the accused firm. He had no participation or involvement in the refund of tax to any of the dealers and it cannot be said that he had wrongly conducted verification on account of any dishonest intention or that he had gained financially in any manner. One of the main accused namely, Kapil Gupta had been granted the concession of bail by this Court vide order dated 01.01.2024 (Annexure P-2). As the petitioner was in custody since 27.11.2023, the report under Section 173(2) Cr.P.C. stood submitted but none of the 19 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail moreso when the case was triable by the Court of a Magistrate.

5. On the other hand, the learned State counsel contends that as per the investigation, the petitioner had verified the business place of the accused firm and therefore, he could not absolve himself of any liability. Hence, he was not entitled to the concession of bail. He, however, concedes that the petitioner was in custody since 27.11.2023, none of the 19 prosecution

witnesses had been examined so far, the case was triable by the Court of a Magistrate and that Kapil Gupta one of the main accused had been granted the concession of bail by this Court vide order dated 04.01.2024 (Annexure P-2).

6. I have heard the learned counsel for the parties.

7. This Court in the case titled as ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(O&M) Decided on 31.08.2022*** has held as under:-

> "*Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.*"

8. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, the petitioner is in custody since 27.11.2023 and none of the 19 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. There are no serious apprehensions expressed by the State that the petitioner would abscond from justice, tamper with the evidence or influence witnesses if granted the concession of bail. Therefore, in this situation, the further incarceration of the petitioner is not required moreso when a co-accused namely, Kapil Gupta has been granted the concession of bail by this Court vide order dated 04.01.2024 (Annexure P-2).

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Kanwar Singh son of Mam Chand is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

11. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

12.02.2024
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No