**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-14508-2022
Date of decision: 20.02.2024**

Shri Nishant Goyal ….Petitioner.

Versus

State of Haryana ....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Ms. Sandhya Gaur, Advocate for
Mr. Suvir Sidhu, Advocate,
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

Mr. Satish Kumar Garg, Advocate,
for the complainant.

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SANJIV BERRY, J. (ORAL)

1. By way of present petition filed under Section 438 Cr.P.C, the petitioner seeks anticipatory bail in case FIR (Annexure P-1) as under: -

FIR No.	Dated	Sections	Police Station
531	30.12.2020	120-B, 406, 409, 418, 419, 420, 465, 467, 468 and 471 IPC	Sector 14, Gurugram.

2. Learned counsel for the petitioner submits that in compliance to the orders dated 21.04.2022 and dated 14.12.2022, the

petitioner has joined the investigation. She further contends that sofar as the liabilty of GST is concerned, the petitioner has already filed the appeal before the appropriate authority by depositing the requisite amount in pursuance to the notice dated 22.08.2022 issued by the department and have also deposited the requisite amount vide payment receipt dated 09.09.2022, the said receipt is taken on record and is marked as Annexure 'A'. She further contends that the petitioner shall be adhereing to the process of law sofar as the GST liability is concerned.

3. Learned counsel appearing on behalf of the complainant contends that the liability of the petitioner qua GST liability has to be fulfilled.

4. To this, learned counsel for the petitioner has again re-iterated that whatever will be the GST liability, the petitioner shall remain bound by the liability assessed by the competent authority in accordance with the law.

5. During the course of hearing on 21.04.2022, following order had been passed: -

> *"Fresh power of attorneys on behalf of petitioner as well as complainant have been filed and the same are taken on record.*
>
> *Learned counsel has argued that inadvertently, GST ID was created in the name of complainant Gaurav Gupta instead of his firm, namely, Gaurav Auto Products. It was opened on*

26.07.2017 and immediately complainant requested to change the said ID and the said change was reflected in October, 2017. He submits that certain transactions took place on the original account opened on 26.07.2017 as there was another client with the petitioner with the similar name i.e. Gaurav Gupta and the tax liability of Rs.24,00,000/- has already been made good bydepositing the said amount. According to him, there was no malafide intention in creating the account and this all was accidental. He submits that the petitioner willing to join the investigation.

The prayer is opposed by learned counsel for the complainant who has argued that while opening the GST ID account, the petitioner furnished the phone number and e-mail ID of his partner namely Tejpal Singh, who has already been arrested, however, it is not disputed that the tax liability of Rs.24,00,000/- raised by the department has already been deposited by them.

Adjourned to 29.8.2022.

Meanwhile, the petitioner shall join the investigation and would come present as and when called for and in the event of arrest, the petitioner shall be admitted to interim bail on his furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the conditions as specified under Section 438(2) Cr.P.C.

6. Later on, on 14.12.2022, following order had been passed: -

"Status report by way of an affidavit of Kapil Ahlawat, HPS Assistant Commissioner of Police, Old Gurugram filed on behalf of respondent/State, is taken on record.

The State counsel submits that presently the concerned Department has issued a show cause notice (Annexure R-1) *raising claim of Rs.1,42,12,254/- to the firm and the same is yet to be adjudicated upon.*

In reply to the aforesaid assertions made by the State counsel, the counsel appearing on behalf of the petitioner submits that in response to be aforesaid show cause notice, a reply dated 09.12.2022 has been filed and the copy of the same is furnished, which is taken on record.

Learned counsel for the petitioner submits that in order to adjudicate upon his liability from July 2017 to July, 2019, the petitioner has to represent the concerned firm before the revenue authorities or any other authorities. He further submits that demand of Rs.1,42,12,254/- is not sustainable in the light of circular No.171/03/2022 dated 06.07.2022 issued by Ministry of Finance Government of India, which is in the shape of clarification, and reads as under:-

> *'Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2) (b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under Section 74 of CGST Act, no penalty for the same act i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under Section 122.'*

Learned counsel appearing on behalf of complainant submits that present petitioner started managing the affairs of the concerned firm w.e.f. July, 2017, which remained in *existence till July, 2019 and the petitioner is responsible for all the acts and omissions committed by the said firm during the aforementioned period and further submits that the show cause notice (Annexure R-1), is still under adjudication.*

List on 14.03.2023.

The petitioner is hereby directed to join the further investigation with the police on 16.01.2023.

Interim order to continue."

7. Learned State counsel, on instructions, has submitted that the petitioner has joined in the investigation and is neither required for further investigation nor for any custodial interrogation.

8. Keeping in view the above submissions made by learned State counsel and the fact that the petitioner had joined the investigation consequent to the orders dated 21.04.2022 and 14.12.2022 passed by this Court, interim bail granted vide orders dated 21.04.2022 and 14.12.2022 is hereby confirmed, subject to conditions as envisaged under Section 438(2) Cr.P.C.

9. Further the petitioner is directed to join investigation as and when required in future by way of written notice for such purpose to be served by Investigating Officer of this case upon the petitioner; he will not tamper with the evidence nor will influence the witnesses and will not leave the country without prior permission of the Court.

10. The petition stands allowed.

11. It is made clear that anything contained hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(SANJIV BERRY)
JUDGE

20.02.2024
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i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No