IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.210

Case No. : CRM-M-27278-2024

Date of Decision : August 12, 2024

Deepak Sharma .... Petitioner

vs.

State of Punjab and another .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rajiv Sharma, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

Mr. Pardeep Kumar Singla - State Tax Officer, in person.

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GURBIR SINGH, J. :

1. Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.30 dated 15.02.2024, under Sections 420, 465, 468, 471 and 120-B IPC, 1860, registered at Police Station Mandi Gobindgarh, District Fatehgarh Sahib.

2. The instant case was registered on the complaint of one Pardeep Kumar Singla – State Tax Officer, Fatehgarh Sahib, which reads as under :-

> *".....An account was freezed by the Indian Bank, Partap Chowk Ludhiana on suspicion of ingenuine transactions and manager of the bank contacted State Goods and Service Tax Department for initiating proceedings under GST Act as bank account was opened on strength of GST Registration*

Certificate issued against PAN-BGPPS4292E. Investigation was conducted and it was found that Deepak Sharma s/o Surinder Pal Sharma resident of House No. 431, Surjit Nagar, Sector 10-A, Mandi Gobindgarh, Fatehgarh Sahib GSTIN 03BGPPS4292E1Z5, Trade Name GS Industries, Legal name Deepak Sharma Address of Principal place of Business Shop No 3, Dadheri Road, Near Ghuman Studio, Mandi Gobindgarh, Fatehgarh Sahib, PAN BGPPS4292E, Phone no 9855956312, Email-yatishgopal00039@gmail.com, Date of registration 29/07/2017, Status cancelled suo moto w.e.f. 10/10/2017.

Brief facts of the case are that Deepak Sharma for registration with Trade Name GS Industries on dated 29/07/2017 at Principal Place of Business, Shop No 3, Dadheri Road, Near Ghuman Studio, Mandi Gobindgarh, Fatehgarh Sahib Registration of tax payer was cancelled retrospectively w.e.f. 10/10/2017 for "Not operating from the declared place of business". A show cause notice u/s 74 of the Act ibid was served upon taxpayer by Deputy Commissioner State Tax, Ludhiana on dated 25/01/2023 confronting him about non genuine ITC claimed by him amounting to Rs 3.65 crore. Details of suppliers from whom the tax payer has shown inward supplies is as mentioned below. Name of ITC Taxpayer GSTIN Murlidhar and Company 031MDPS8207JIZR, ITC claimed 3,27,73,642 Date of cancellation 07/09/2017. Reason for cancellation - The tax payer has been cancelled suo motu due to *reason mentioned in notice as : in case, Registration is obtained by means of fraud, wilful misstatement, suppression of facts Name of ITC Taxpayer/GSTIN Moulik Enterprises/ 03AMRPB1165E1Z1, ITC claimed 37,49,434 Date of cancellation 01.07.2017, Reason for cancellation - The tax payer has been cancelled suo motu due to reason mentioned in notice as in case, Registration is obtained by means of fraud, wilful misstatement, suppression of facts. Taxpayer neither deposited the tax nor submitted any reply. This order u/s of the Act ibid was passed by the adjudicating authority on 13.06:2023 and a demand of Rs. 11.75 crore was created. Details of which is mentioned below: Tax 3,65,23076. Interest 4,45,00,116. Penalty 3,65,23076. Total demand 11,75,46,268. On further verification against PAN of Deepak Sharma, it came to light that there is one more firm registered on given PAN, details of which is as under :- GSTIN 03BGPPS4292E2Z4, Trade Name: Shri Salasar Balaji Industry, Legal name Deepak Sharma, Address of Principal Place of Business 1, Office No 108, BRM Tower, Miller Ganj, Ludhiana, PAN BGPPS4292E, phone no. 8146032375, Email :- Shrisalasarind701@gmail.com, Date of Registration 04/-1/2-28, Status cancelled suo motu w.e.f. 29/01/2020. The details of KYC documents and Bank Statement were called from Indian Bank Partap Chowk, Ludhiana for the current account against said PAN. On perusal of KYC documents submitted by proprietor at the time of account opening, it is found that Proprietor has submitted* *forged GST Registration Certificate GST REG- 06 to the Bank. GSTIN mentioned on this Registration Certificate is 03BGPPS4292E1Z0 registered on 26/09/2017 with Trade name: Shri Salasar Balaji Industry, Address of Principal place of Business 1, Shop No 13, Daba Road, GT Road Ludhiana Details mentioned on this Registration Certificate are totally different from actual issued GSTINs against the said PAN and no such GSTIN has been issued in all over India till date. Further, no GST return has been filed by the firm Shri Salasar Balaji Industry, whereas as per Bank account there are transaction worth Rs. 196 crores each on debit and credit side, which clearly shows that Deepak Sharma has made business transactions against which payments have been debited/credited in bank account. Further on analysis of bank account statement, it is found that the firm has made payment of more than Rs. 119 crores to a firm viz. Creative Forex and Rs. 15 crore to Regal Exchange, which seems to be transactions related with foreign exchange/money laundering. There is also a cash withdrawal of Rs. 2.75 crore from the bank. From the above facts, it is evident that Deepak Sharma s/o Sh. Surinder Pal Sharma has contravened the provisions of Indian Penal Code with an intention to defraud the Government Exchequer. It is requested to kindly take the action against the said person as per law."*

3. Learned counsel for the petitioner has argued that the allegations regarding wrong claim of Input Tax Credit (for brevity – ITC)

by the petitioner are *per se* false. The petitioner made genuine purchases/supplies from the firms, which were duly registered with GST Department but the selling dealers/suppliers allegedly did not pay goods and service tax, charged from the petitioner, to the Government. The petitioner had no control over the selling firms/ suppliers and did not have any means to know whether those firms deposited the tax or not. Fraud, if any, has been committed by selling dealers/suppliers. A Show Cause Notice dated 25.01.2023 was sent to the petitioner under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as – the CGST Act) (Annexure P-2). Subsequently, an ex-parte order dated 13.06.2023 (Annexure P-3), imposing tax amounting to Rs.3,65,23,076/- along with penalty and interest of Rs.4,45,00,116/-, has been passed against the petitioner. The petitioner has already filed an appeal (Annexure P-4) against the said order before the competent authority and the same is pending adjudication. It has further been argued that the provision, under which the fraud is alleged, does not attract any Section of IPC. As per provisions of Section 74 of the CGST Act, only penal action can be taken against the person, who has wrongly or fraudulently availed ITC in the shape of penalty equivalent to ITC amount and interest. Provisions of Indian Penal Code are not attracted. It has further been submitted that Section 132 of the CGST Act, 2017 is the only Section which provides for imprisonment as punishment of assessee for certain offences. The Department could only launch proceedings under Section 132 of the CGST Act, but no such proceeding, till today, has been initiated against the petitioner under the said

Section.

4. Learned counsel for the petitioner has further argued that the second allegation against the petitioner is that the petitioner had opened account with the bank and submitted fake GST Certificate in the name of his alleged firm M/s Salasar Balaji Industry. However, there is no allegation by any one including the complainant that there is any sale or purchase involving goods and service tax liability was done. The Court has also been apprised that the Challan in the present case has been submitted and there is nothing in the Challan that there is any tax evasion by using the said bank account. The said bank account was not used for taking any money from anyone or for making any sale/purchase involving GST liability. So, the petitioner be released on bail during pendency of the trial.

5. On the other hand, learned State counsel, accompanied by Pardeep Kumar Singla - State Tax Officer, Fatehgarh Sahib, has opposed the bail petition on the ground that the petitioner did not pay the in-genuine ITC claims amounting to Rs.3.65 crore (approximately), thereby making wrongful gain. A Show Cause Notice under Section 74 of the Act was served upon the petitioner on 25.01.2023. The petitioner neither deposited the tax nor submitted any reply. So, order for recovery of Rs.11,75,46,268/- was passed including tax amount of Rs.3,65,23,076/-, interest amount of Rs.4,45,00,116/- and penalty amounting to Rs.3,36,23,076/-. It has further been submitted that upon reviewing the KYC documents and bank statements, it was found that the petitioner had submitted a forged GST registration Certificate to the bank and opened the account in the name of

M/s Salasar Balaji Industry. Transfers of Rs.196 crores each on the debit and credits sides prove that petitioner had conducted substantial business transaction. The said firm of petitioner had made payment of Rs.119 crore to Creative Forex, Rs.15 crores to Regal Exchange and cash withdrawals of Rs.2.75 crores has also been made from the said account. It was also affirmed that the petitioner in this case was arrested on 17.02.2024 and is behind bars since then.

6. I have heard the respective contentions of learned counsel for the parties and perused the case file in detail.

7. Challan in this case has been presented on 06.03.2024. The first allegation against the petitioner is that he claimed amount of Rs.3,65,23,076/- by way of ITC, but that tax amount was not deposited by the firms, which supplied the goods. The Deputy Commissioner State Taxes, Ludhiana Division, Ludhiana has already passed the order dated 13.06.2023 (Annexure P-3), as per provisions of Section 74 of CGST Act, for recovery of amount of taxes, penalty and interest. The petitioner has already filed an appeal against the said order, which is still pending.

8. As per provisions of Section 132 of the CGST Act, if a person fraudulently obtains refund, then he is liable to be prosecuted under Section 132 of the CGST Act. Such prosecution can only be launched with the previous sanction of the Commissioner as per Section 132(6) of the CGST Act. Since it is a special Act, so, it is debatable whether provisions contained in Code of Criminal Procedure are applicable for prosecution of such person by lodging FIR.

9. The second allegation against the petitioner is that he furnished fake GST Certificate in the name of his alleged firm M/s Salasar Balaji Industry at the time of opening bank account, in which there are debit and credit entries of Rs.196 crores on each side. The firm of petitioner had made payment of Rs.119 crores to Creative Forex, Rs.15 crores to Regal Exchange and there is cash withdrawal of Rs.2.75 crores. The learned Sessions Judge, Fatehgarh Sahib, while passing the order dated 20.04.2024, declining bail, has observed that the police has not investigated the said fact during investigation, for the reasons best known to the Investigating Officer.

10. The Challan in this case has already been presented. Regarding first allegation, complaint under Section 132 of the CGST Act is maintainable. Regarding second allegation that the petitioner has used fake Certificate for opening bank account, no evidence has been collected, whether from the bank account in question, the petitioner has cheated anybody or not. The entire case is based on the documentary evidence. The case is triable by Magistrate. Culpability of the petitioner would be decided during trial of the case.

11. In view of the aforesaid facts and circumstances of the case, since completion of trial will take a long time, no useful purpose would be served by keeping the petitioner behind bars for a long time.

12. Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds in the sum of Rs.10,00,000/- (Rupees Ten Lakhs), with one surety of the like amount, to

the satisfaction of learned Trial Court/Duty Magistrate concerned. The petitioner shall also abide by the following conditions :-

> ***1.*** *The petitioner shall surrender his passport and shall not leave the country without the prior permission of the Trial Court.*
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> ***2.*** *The petitioner shall give his mobile number to the Trial Court and get the same registered, on which SMS shall be received from the CIS and shall not change his mobile number during pendency of the case.*
>
> ***3.*** *The petitioner shall not change his residence without prior intimation to the concerned Police Station and the Trial Court.*
>
> ***4.*** *The petitioner shall appear before the Trial Court on each and every date of hearing.*

13. The Trial Court is at liberty to impose any other condition that it may deem appropriate. It is further clarified that in case of default of any of the conditions, the concerned Court is competent to cancel the bail granted to the petitioner.

14. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present bail petition.

15. Pending applications, if any, shall stand disposed of along with the present petition.

August 12, 2024 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*