2024:PHHC:090534

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

103 **CRM M-31262 of 2024**
Date of Decision: 18.07.2024

Rishi Kumar ...Petitioner

Versus

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rajan Bansal, Advocate for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 438 of the Cr.P.C. with a prayer to grant pre-arrest bail to him in case FIR No.0529 dated 27.07.2016 registered under Sections 406, 409, 419, 420, 465, 467, 468, 471 and 120-B IPC at Police Station City Sirsa, District Sirsa.

2. The FIR in the present case was registered on the basis of the complaint moved by the Office of Deputy Excise and Taxation Officer Ward No. 5, Sirsa and the copy of the same has been reproduced below:-

> *"From Excise & Taxation Officer Ward No.5 Sirsa To, Superintendent of Police Sirsa No.1235/TI dated 16/6/16 Subject:- To register complaint regarding the matter of crime committed by M/s Paras Trading Co., Sirsa holding TIN 06562918862 Asst Year 2013-14 Prop Smt. Shashi Bala w/o Sh Ashok Kumar r/o 98 RSD*

Colony Sirsa as changed address shop No.10 old BG Factory Shamshabad Patti Sirsa/s 406, 419, 420, 465, 468 and 471 IPC. Memo with the orders of Hon'ble Excise 85 Taxation Commissioner, Haryana Panchkula letter No., Whatsapp message (annexure) and DETC(ST) Sirsa vide memo No.441 dated 27-5-2016, directions have been given to the lodge an FIR against those dealers who are identified to be indulging in tax evasion, fraudulent claim of input tax credit, raising bogus bills or floating bogus firms. On the subject cited above, it is brought to your kind knowledge that M/s Paras Trading Co., Sirsa TIN 06562918862 was a registered dealer at Sirsa ward No.5. Main activity of the said firm deals in all kind of readymade garments etc. Later on, dealer did not apply for the addition of the tobacco products, cigarettes as trading goods. The dealer had made interstate sale of cigarettes against C Forms to the dealers of New Delhi. Inter State sale of course are governed by rate of taxation laid down in the Central Tax Act, 1956. M/s Paras Trading Co., Sirsa has been allowed refund worth Rs.24,17,057/- during 2013-14 mainly on the basis of ITC on the goods which have been sold in the course of ISS sale. As per the report of the Taxation Inspector submitted to the undersigned in connection to transportation of goods from Sirsa to Delhi, M/s Paras Trading Co., Sirsa has shown transportation of the goods (cigarette) to M/s Shree Gopal Enterprises 23B G.F. Molarganj Badarpur Extension, New Delhi, 110044. Since, It has been proved in enquiry conducted by Sh. Neeraj Garg, the then ETO that the firm M/s Gopal Enterprises New Delhi is involved in malpractice/false transactions by issuing the *bogus bills. It has also been held by the then ETO that there is no movement of goods from Sirsa to New Delhi. All documents have been manipulated only to obtain refund. By doing so, the dealer has caused revenue loss to the government exchequer worth Rs.24,17,057/- besides interest and penalty. Hence, forge and fabricated documents submitted by the dealer attract penal action u/s 406, 419, 420, 465, 467 and 471 IPC. Please be needful in the matter. Sd/- Dr. Naveen Nandal Excise & Taxation Officer Sirsa, Endst. No. /TI (5) dated the A copy is forwarded to the Ld Excise & Taxation Commissioner, Haryana Panchkula for information Please. Sd/- Excise & Taxation Officer Sirsa.".*

3. Learned counsel for the petitioner contends that the petitioner has neither named in the FIR nor any role has been attributed to him in the FIR. All the allegations in the FIR have been levelled against Mrs. Shashi Bala wife of Ashok Kumar. Learned counsel further contends that in the present case, the transactions had allegedly taken place during the assessment year 2013-2014, whereas, the FIR was got registered by the complainant after a delay of 02 years. After the registration of the FIR, the investigation was completed and challan was presented against the accused in the Court. During the process of investigation, there was not even a wishper against the present petitioner and now after a period of almost 08 years, the petitioner is sought to be arrested in the present case, without any basis. Learned counsel further contends that the petitioner had no concern with the firm or proprietorship of Mrs. Shashi Bala.

He was neither the proprietor nor partner in any of the firm, against whom, the allegations have been levelled in the present FIR. Learned counsel further contends that even against the other accused, at the most, the proceedings could be initiated under the Haryana VAT Act and the offence under various provisions of Indian Penal Code is not made out. By referring to orders (Annexures P-2 to P-7), learned counsel contends that the petitioner was implicated in 06 other FIRs also, however, the petitioner has been granted the concession of interim anticipatory bail in all these cases. He further contends that the petitioner is ready to join the investigation.

4. Notice of motion.

5. On the asking of Court, Ms. Sheenu Sura, DAG, Haryana accepts notice on behalf of respondent-State.

6. Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the involvement of the petitioner was found during the process of investigation and his custodial interrogation is required. Even, huge money from the Government Exchequer had been siphoned off by the accused in the instant case.

7. I have heard learned counsel for the parties and perused the record carefully.

8. In the instant case, it is apparent that the transactions, which are subject matter of the case, had taken place in the year 2013-2014 and the FIR was ordered to be registered against the

accused on 27.07.2016. Even, the prosecution could not cite any good reason for implicating the petitioner in the present case after a gap of about 02 years. Still further, even though, other cases were also ordered to be registered against the present petitioner, but the petitioner has apparently joined the investigation in those cases, in compliance of various interim orders passed by this Court. Even otherwise, the case is based on documentary evidence and the petitioner is entitled to be released on anticipatory bail by this Court.

9. Without commenting any further on the merits of the case, the present petition is allowed. The petitioner is granted concession of anticipatory bail, subject to the conditions as provided under Section 438(2) of the Cr.P.C. It will be open for the Investigating Officer to call the petitioner to join investigation, if so required, by issuing a written notice in this regard and he shall abide by the conditions mentioned in Section 438(2) of the Cr.P.C.

18.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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