IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102 **CRM M-31206 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.0651 dated 24.10.2020 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 (ST) Sirsa and the copy of the same has been reproduced below:-

> *"OFFICE OF DY EXCISE TAXATION COMMISSIONER (ST) SIRSA, VANLJYA BHAWAN, BARNALA ROAD SIRSA, From Excise Taxation Officer Ward No.5 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 Paras 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 forms 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., Sirsa

> *despite the fact that no tax has been paid at any stage by the dealer. Moreover, claim of sale at concession 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.35,37,778/-, 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/TI 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".*

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 Garg wife of Ashok Kumar. Learned counsel further contends that in the present case, the transactions had allegedly taken place during the assessment year 2011-2012, whereas, the FIR was got registered by the complainant after a delay of 08 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 04 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 Garg. 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 2011-2012 and the FIR was ordered to be registered against the accused on 24.10.2020. Even, the prosecution could not cite any good reason for implicating the petitioner in the present case after a gap of about 04 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