2024:PHHC:048271

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

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**CRM-M-33103-2023
Date of decision : 09.04.2024**

Ravindar Singh **...... Petitioner**

versus

State of Punjab **...... Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Bajaj, Advocate
for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

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PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing complaint No.CHA-170/2023 dated 27.03.2023, registered for the offence punishable under Section 132(1)(a)(b)(c) and (i) read with Section 69(1) of Punjab Goods and Services Tax Act, 2017.

2. The petitioner has been arrested in a complaint related to alleged scam wherein he has been accused of preparing fake rent note and consequential fake bills. It is being claimed that the petitioner floated one firm on his name and credentials and caused loss to the Government exchequer to the tune of Rs.5.40 crores.

3. The precise allegation as revealed from reply filed on behalf of respondent No.1 read as under:-

> "xx xx xx
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> 5. That the petitioner got the firm titled as M/s Guru

Har Rai Trading Co. registered on his name and credentials by fraudulent practice by preparing the fake rent deed having the forged signatures of the landlord Sh. Gurnam Singh who is an NRI and has been residing in the United Kingdom since 10.12.2019 and who has vehemently denied having his signature on the rent deed executed and uploaded on the department common GST Portal the applicant. Further the signature of Sh. Gurnam Singh is different on the rent deeds of the other firms of the co accused M/s North Vogue and M/s Dashmesh Trading Co.

6. That the petitioner having connivance with the other co accused has designed a mechanism by floating fake firms, creating/availing and passing on the bogus ITC to one another in the circular form (Circular Trading) and thereafter to the end users who rather than paying the tax on their own adjusted their tax liability with this fake ITC. The applicant declared the fake movements of the taxable goods through the vehicles which are scooters, motor-cycles, cars, other ones not liable to take such load, and most of the others have no record of being any type of vehicles. Further the owners of the other declared vehicles, which are otherwise trucks, have vehemently denied, in written that they did not let their vehicles to the firm for transporting the taxable goods and they even do not know the applicant and particularly declared by the firm whose proprietor is the applicant.

7. That the petitioner has floated the said firm on his name and credentials, by preparing, signing and uploading his credentials like PAN card, Aadhar card and signatures, and photos, moreover he has

signed most of the cheques for withdrawing the cash from the requisite bank account(s) from time to time and this way he has defrauded the state exchequer to the tune of more than Rs 5 Crores.

8. That the petitioner had no place of business, no godown, no office, no stock, no office related equipment. The physical verification was done with proper procedure by preparing the requisite Panchnama containing the statements of the nearby residents/shop keepers.

9. That the petitioner has made 99% of his inward supplies to the tune of Rs 24.13 Cr. with ITC to the tune of Rs3.73 Cr from the firms of the co accused i.e. M/s Dashmesh Trading Co. and the remaining 0.28% from M/s Shiv Shakti Enterprises and has made the outward supplies to 70 firms including M/s P.K. Trading Co., M/s Gagan Trading Co., Krish Trading Co and the applicant has paid no tax in cash and he has adjusted all his liability with the fake ITC from M/s Dashmesh Trading Co. The proprietors/controllers of all these firms are the co accused in this case and under scrutiny of the Hon'ble court of the Chief Judicial Magistrate, Jalandhar."

4. As per the prosecution, the petitioner was thrice summoned by the investigating officer. However, he failed to unleash his version and deliberately avoided the proceedings.

5. Counsel for the petitioner has argued that the petitioner is behind bars for more than 01 year, 02 months and 09 days. The maximum punishment prescribed under law for the offence for which he being tried is 05 years. It is triable by Magistrate. Investigation already stands concluded and the challan stands presented. Further relies upon

order dated 16.01.2024 passed in *CRM-M-43188-2023,* whereby co-accused Pankaj Kumar stands admitted to bail.

6. Bail plea being opposed by State counsel. It has been contended that the petitioner has caused huge loss to the State exchequer and thus keeping in view the seriousness of the allegations, he does not deserve to be released on bail.

7. Having heard rival contention of the parties and after going through the records of the case, this Court finds that State counsel is not in a position to dispute that the petitioner, if not at better footing shall still be at par with Pankaj Kumar.

8. Apex Court in the case of ***'State through CBI vs. Amaramani Tripathi'***, reported as ***2005(8) SCC 21*** while granting bail observed as under:-

> "xx xx xx
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> It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahalad Singh Bhati vs. NCT, Delhi* 2001 (4) SCC 280 and *Gurcharan Singh vs. State (Delhi Administration)* AIR 1978 SC 179). While a vague allegation that accused may

> tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

9. Coordinate Bench in *CRM-M-24033-2021* titled as ***Mohinder Sharma vs. State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab*** decided on 31.08.2022, relied upon tripod test to observe as under:-

> "xx xx xx
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> Further, while considering the grant of bail, the triple/tripod test would also be a relevant consideration. The three factors as set out in the said test are:- (i) Whether the accused is a flight risk; (ii) Whether the accused will tamper with the evidence, if granted bail & (iii) whether the accused could influence the witnesses, if granted bail.
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> 8. 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."

10. Supreme Court further in the case of ***'Satender Kumar Antil vs. Central Bureau of Investigation and another'***, reported as **2022 AIR (Supreme Court) 3386** held as under:-

> "66. What is left for us now to discuss are the

economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis."

11. The aforesaid precedents have been relied upon by this Court in Pankaj Kumar's case (supra) to hold as under:-

"11. In **Anil Kumar versus State of Punjab 2013(3) RCR (Criminal) 854** it was held:-

"xx xx xx

9. The latest judgment cited by the learned counsel for the petitioners is of the Hon'ble Supreme Court in Dipak Shubhashchandra Mehta (supra) wherein the entire law has been discussed. The Hon'ble Supreme Court in para No.18 in Dipak Shubhashchandra Mehta's case (supra) has held as under: -

"18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious

> offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

Further, the Hon'ble Supreme Court in the case of Sanjay Chandra (supra) has held as under:-

"15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation.

In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of nonbailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

10. In Sanjay Chandra's case (supra) also the Hon'ble Supreme Court has considered the entire law on the subject.

11. I am conscious of the fact that serious allegations of connivance and causing financial loss to the State exchequer have been levelled against the petitioners. There are also allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.

12. Second argument is regarding tampering with the evidence. I have considered this contention also. The entire case is based on the documentary evidence i.e. forged vouchers, bills and thereafter the payment to various contractors and others in connivance with the Government officials. This is not a case based on the oral testimony of individuals. No doubt the allegations against the petitioners are serious in terms of the alleged huge loss caused to the State exchequer, that by itself should not deter this Court from enlarging the accused on bail specially when they are already behind bars for about seven or more months. I do not see any good reason to continue the judicial custody of the petitioners that too after completion of investigation and submission of chargesheets/supplementary charge-sheets. The loss to the State exchequer have been levelled against the petitioners. There are also

> allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.
> 13. In view of this, I am of the view that petitioners are entitled to grant of bail pending trial on stringent conditions in order to allay the apprehension of the investigating agency. It is not necessary to canvass and go into the details of various other issues canvassed by learned counsel for the parties and the cases relied upon by learned counsel for the petitioners in support of their contentions. I have not expressed any opinion on the merit of the case."

12. Keeping in view the aforesaid precedents and after taking into consideration all the facts and circumstances of the case, this Court finds that the present petition deserves to be allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. Surrender of passport by the petitioner shall be a pre-condition for grant of bail. Apart from that the petitioner shall also file an undertaking before the Trial Court to the effect that he shall not change/alter/modify any documents/contact addresses/contact numbers and the formation of the companies/firms which are under investigation and are owned by the petitioner. In case the petitioner changes his

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mobile number, he shall inform the agency of such change.

13. In addition to the aforesaid condition, the trial Court shall be at liberty to add any condition.

14. Resultantly, the present petition is allowed in terms as stated hereinabove.

15. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

09.04.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No