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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 05.11.2024

Rakesh Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Gautam Dutt, Advocate and
Mr. Ribhav Singla, Advocate
for the petitioner

Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.0446 dated 15.09.2020 registered under Sections 420, 467, 468, 471 IPC (Section 132 C GST Act, 2017 added later on) at Police Station Kundli, District Police Sonipat.

2. The above-mentioned FIR was got registered on the basis of complaint made by Prashant Kadyan, Excise & Taxation Officer-cum- Proper officer (GST), Sonapat. The contents of the FIR are reproduced herein below :-

“The case of prosecution is that a complaint/letter addressed to SHO, Police Station, Kundli was received from Prashant Kadyan, Excise & Taxation Officer-cum- Proper officer (GST), Sonapat, Ward No.2 Office of Dy. Excise & Taxation Commissioner (ST), Sector-27, near Mapsko City, HUDA Building, Sonapat. The complaint was directed against M/s Bawa International, now Jasper Trading House, Office



No.5, Ground Floor, Main GT Road, Kundli, Sonapat whose proprietor is Rakesh Sharma accused/applicant who has played fraud with the state exchequer in connivance with numerous of inward and outward suppliers. Further that said firm had obtained registration certificate under the Haryana Goods & Service Tax Act, 2017 R/W CGST Act 2017 against GSTIN 06AYEPS1722RIZY with registration date 01.10.2018 through auto approval mechanism. Upon enquiry, neither the person in the name of Rakesh Sharma could be traced at the given address nor were the business premises of said firm found at the given address. Efforts were also made to contact the said proprietor at the given mobile number but the number was found switched off. As per online returns files in the office, said firm during the year 2018 to 2019 and 2019 to 2020 has declared supplies of Rs.61,47,58,547/- with passing of input credit amounting to Rs.68,63,92,191/-. This tax has been passed on to various firms as input credit. Further, firm while filing the application, the online portal has uploaded the copy of Rent Agreement and a bank account No.052610024360 of Dena Bank 2408 Ward No.5, Chawri Bazar, Delhi was mentioned in the online application but upon the verification from bank it was found out to be fake. Upon the contents of the said application the case was got lodged against accused/applicant. who alleged that the Petitioner's Firm seems to have been floated with malafide intention to cause loss to state exchequer and as per the provision of Section 132 of HGST Act read with CGST Act and IGST Act if any one commits such fraud exceeding Rs. 2 Crores he is liable to be prosecuted under HGST Act therefore action under the provision of Criminal Law needs to be taken against the accused.”

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case and the main accused have not been impleaded. He further submit that the petitioner has undergone actual custody of 11 months and 26 days and there is one another case registered against him, in which he is on bail.



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Learned counsel submits that the trial is triable by the Magistrate and has placed reliance on the orders passed in ***Ashutosh Garg vs. Union of India, SLP No. 8740 of 2024*** decided on 26.07.2024, ***Ratnambar Kaushik vs. Union of India, SLP No. 10319 of 2022*** decided on 05.12.2022, ***Ashish Gupta and another vs. State of Haryana, CRM-M-40083 of 2022*** decided on 09.09.2022 and ***Asha and others vs. State of Punjab, CRM-M-43836 of 2022*** decided on 31.03.2022.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 11 months and 26 days and there is one another case registered against him. He submits that charges were framed on 29.09.2023 and out of 12 prosecution witnesses, three prosecution witness have been examined and one witness has given up.

5. Heard the rival submissions made by learned counsel for the parties.

6. Admittedly, the charges were framed on 29.09.2023 and out of total 12 prosecution witness, three prosecution witnesses have been examined till date and one witness has given up. Further detention of the petitioner will not serve any useful purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in ***"Dataram Singh vs. State of Uttar Pradesh and another", (2018) 3 SCC 22.***

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in ***"Abdul Rehman Antulay and others v. R.S. Nayak and another", 1992(2) RCR (Criminal) 634*** observed that Right to Speedy Trial



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flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and only three prosecution witness have been examined till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and order dated 07.02.2024 is made absolute. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which they are accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed



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independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

05.11.2024

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(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No