



In The High Court for the States of Punjab and Haryana
At Chandigarh

(I) CRM-M-49906-2024 (O&M)
Date of Decision:- 14.11.2024

Jatinder Menro Petitioner

State of Punjab Versus Respondent

(II) CRM-M-50988-2024 (O&M)

Mandeep Singh Petitioner

State of Punjab Versus Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Preetinder Singh Ahluwalia, Advocate,
for the petitioner.

Mr. Japjot Singh, AAG, Punjab.

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FIR NO.	DATE	POLICE STATION	OFFENCES
106	05.07.2018	Mandi Gobindgarh, District Fatehgarh Sahib	420, 120-B IPC and Section 132(1) of the Punjab Goods and Services Act, 2017 to which Sections 465, 467, 468, 471 IPC added subsequently vide DDR No.6 dated 26.12.2023

**GURVINDER SINGH GILL, J.**

1. This order shall dispose of the above mentioned two petitions wherein petitioners Jatinder Menro and Mandeep Singh seek grant of anticipatory bail in respect of aforementioned FIR.
2. The FIR came to be lodged pursuant to a complaint made by Assistant Commissioner of Excise, against Sumit Kumar, Sammy Dhiman, Mandeep Dhiman, Sudhir Kumar Verma, Mukesh Gautam, Karan Kumar, Ravi Kaushal and Kushal Kumar alleging therein that the accused, in connivance with each other, had created fake forms and had forged and fabricated fake bills showing inter se transactions of sales and purchases and had uploaded the same on the portal of GST and had further sold the bills to the manufacturing firms at Mandi Gobindgarh and Ludhiana and had earned commission from the said firms and had thus caused loss to the Government to the tune of about Rs.25 crores by way of getting 'Input Tax Credit'.
3. It is further the case of prosecution that accused Sammy Dhiman was arrested on 31.10.2023 and upon being interrogated, he disclosed that Avtarjit Singh, Komal Sharma had masterminded the fraud. He further disclosed that Mandeep Singh (petitioner) had created a false firm at Faridabad under the name and style of Shree Radha Krishan Steels, Faridabad and after obtaining Excise and VAT number had converted the same into GST. It is further alleged that in the same manner Mandeep Singh along with Avtarjit Singh, Komal Sharma, Jatinder Menro had created 4 different firms at Delhi and Faridabad and after obtaining Excise and VAT numbers had shown fake stock of 15000 tonnes of iron/scrap with his bogus



firm Shree Radha Krishan Steel, Faridabad. Pursuant to aforesaid disclosure statement, Avtarjit Singh, Komal Sharma, Jatinder Menro and Mandeep Singh came to be nominated as accused on 2.11.2024.

4. Thus, in nutshell, the allegations are that fraudulent claims of 'Input Tax Credit' (ITC) had been made on the basis of false documents and fictitious transactions by creating dummy firms which were actually not doing any business.
5. Learned counsel representing the petitioners submitted that proceedings pursuant to the FIR are infact an abuse of process of law inasmuch as the petitioners are also being proceeded against in a complaint under Section 132 of Central GST Act 2017, instituted on 30.8.2018, pending before the Court of learned Chief Judicial Magistrate, Ludhiana, and wherein the petitioners had remained behind bars for more than one year and since the police never took any step to arrest the petitioners during the last 5 years in the instant FIR, necessarily indicating that custodial interrogation was not really required, the alleged recording of disclosure statement of co-accused Sammy Dhiman on 31.10.2023 or addition of offences under Sections 465, 467, 468, 471 IPC at this belated stage vide DDR No.9 dated 26.12.2023 is nothing, but a ploy to falsely involve the petitioners in the case at this belated stage so as to throw them behind bars.
6. Learned counsel submitted that in any case given the fact that separate detailed complaints under Section 132 of Central GST Act had also been instituted in the competent Court at Ludhiana on 30.8.2018 against the



petitioners, wherein petitioner-Jatinder Menro remained in custody for 1 year and 8 months and even petitioner-Mandeep Singh remained behind bars for about 1 year, the continuance of proceedings against petitioners in the present FIR could even be hit by principle of *double jeopardy* inasmuch as the allegations in the complaint under CGST Act as well as in the present FIR pertain to the same acts and transactions allegedly committed by the accused.

7. Learned counsel submitted that as a matter of fact both under Central GST Act 2017 as well as Punjab GST Act 2017, there is a specific provision for protection of the accused in this regard under Section 6(2)(b) of Central GST Act and Section 6(2)(b) of Punjab GST Act as per which proceedings against an accused for a specific instance of default/offence can be initiated under one of these two 'Acts' only i.e either under Central GST Act 2017 or under Punjab GST Act 2017 and not parallelly under both the 'Acts'.
8. Learned counsel submitted that the petitioners are now sought to be arrested after almost 5 years apparently under the garb of offences punishable under the IPC which have been added in the month of November, 2023, which is nothing, but a misuse of the said provision particularly when the CGST Act and PGST Act are complete codes in themselves and there are specific provisions with regard to commission of offences by way of falsifying and forging record including bills etc. and in respect of which imprisonment may extend upto 5 years.



9. It has thus, been submitted that when an act of accused constitutes an offence under a special enactment and as well as under IPC, it is the provisions of the special enactment only which will apply and application of provisions of IPC shall stand excluded.
10. Learned counsel in order to *hammer forth* his aforesaid submissions places reliance upon Sharat Babu Digumarti Vs. State of NCT (2017) 2 SCC 18; Jeewan Kumar Raut Vs. CBI (2009) 7 SCC 526; Union of India Vs. Ashok Kumar Sharma (2021) 12 SCC 674; Ram Nath Vs. State of UP SLP (Crl) 1379/2011; State of Gujarat Vs. Choodamani Parmeshwarana Iyer 2023 SCC OnLine SC 1043; Deepak Singhal Vs. Union of India 2024(4) JabLJ 19; Ashwani Kumar Vs. State of Punjab CRM-M-23662-2016; Pritpal Singh Vs. State of Punjab CRM-M-26116-2010; Satya Paul Sharma Vs. State of Haryana 2009 SCC Online P&H 4665; Rakesh Kumar Goyal Vs. Directorate of Revenue Intelligence CRM-M-24124-2015 and Deepak Kumar Vs. State of Punjab CRM-M-38352-2014.
11. The learned State counsel on the other hand submitted that prosecution for offences under IPC would not be barred merely on account of the fact that there is a special enactment under which such acts are also made punishable unless exclusion is either specifically provided for in special enactment or there is some 'over-riding' clause in the same. It has been submitted that having regard to the enormity of the offence and the colossal amount defrauded wherein the accused by means of raising false bills and showing fictitious transactions had availed of 'Input Tax Credit' to the tune of more than Rs.25 crores, no leniency is warranted and since the amount in question



is yet to be recovered, their custodial interrogation would be required. It has further been submitted that since offences punishable under Sections 465, 467, 468, 471 IPC have also been added which provide for a much severe sentence than provided under CGST Act or PGST Act, the mere fact that the petitioners had been granted bail in the complaint filed under Section 132 of CGST Act cannot preclude the investigating agency from arresting of the petitioners in the present FIR.

12. This Court has considered rival submissions addressed before this Court.
13. The allegations are broadly to the effect that the petitioners had availed of 'Input Tax Credit' by raising false bills and showing fictitious transactions effected through dummy firms which were actually not in business. Such allegations, on the face of it would certainly attract offence under IPC for allegedly availing 'Input Tax Credit' fraudulently on the basis of false documents and sham transactions. At the same time, since fraud had allegedly been committed with respect to availing 'Input Tax Credit' under provisions of GST, the penal provisions of GST would also attracted. Section 26 of the General Clauses Act, 1897, which is a specific provision for such an eventuality reads as under :

"Provisions as to offences punishable under two or more enactments -

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."



14. A perusal of the above referred provisions suggests that there is no absolute bar to try an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. This Court has gone through the judgments cited by learned counsel for the petitioners as noted in para No.10. This Court however, finds that the said judgments particularly the Supreme Court's judgments have not directly dealt with the issue where act constitutes offence under two enactments particularly in reference to Section 26 of General Clauses Act. However, Hon'ble the Supreme Court has specifically dealt with the said issue on several occasions in some other cases. Some of the said judgments are being briefly referred herein under.
15. Hon'ble Supreme Court in T.S. Baliah v. T.S. Rengachari – AIR 1969 Supreme Court 701, held that where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence.
16. In State of Rajasthan v. Hat Singh, (2003) 2 SCC 152, Hon'ble Apex Court discussed the doctrine of double jeopardy and section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts.



17. Hon'ble Supreme Court, in State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, while considering the issue as regards prosecution for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences.
18. In State of Maharashtra vs. Sayyed Hassan (2019)18 SCC 145, Hon'ble Apex Court held that Section 55 of Food and Safety Standards Act, 2006 being a specific provision made in the special enactment but still an offence under Section 188 of IPC is made out.
19. There sure is multiplicity of laws. While the IPC (now BNS) would spell out the general offences, there are several special enactments which have come up later to deal with specialisd offences. In some cases even a different procedure for investigating or trying such offences under special Acts is provided. If the legislature desires a particular provision of IPC or Cr.PC to be made inapplicable to a special Act, it could indicate the same by either repealing those offences in their application to special Acts or specifically overriding the provisions of IPC in certain situations. That having not been done, in CGST or in Punjab GST, it may be faulty to hold that merely because GST is attracted, the offence under IPC stands excluded. It will not be out of place to mention that similar offences under GST Act would attract a much milder punishment than under IPC. In certain cases, an accused can be let off with mere penalty. However, since, this Court is presently seized



of a petition for grant of anticipatory bail only, there is no need to delve deeper in the legal issue arising out in Clause 26 of General Clauses Act.

20. Admittedly, the petitioners have also been proceeded in a complaint filed against them under under Section 132 of CGST Act, which is pending at Ludhiana wherein petitioner-Jatinder Menro remained in custody for 1 year and 8 months and petitioner-Mandeep Singh remained behind bars for about 1 year. It is also not in dispute that the petitioners were not on the run and had associated themselves with the authorities concerned. However, the petitioners now apprehend their arrest on account alleged disclosure statement dated 2.11.2013 by Sammy Dhiman and addition of offences punishable under Sections 465, 467, 468, 471 IPC. It is now pursuant to recording of said disclosure statement that the petitioners came to be nominated as accused in the present FIR on 02.11.2023.
21. Having regard to the aforestated position wherein it is *prima facie* found that the allegations as in the complaint under Section 132 of CGST Act and in the FIR are more or less overlapping and also that the allegations pertaining to raising of false bills for showing false transactions would specifically be covered under offences under CGST and also that the petitioners have remained behind bars for a substantial period in respect of a complaint under Section 132 of CGST Act and neither the petitioners are alleged to been on the run during these five years nor the police had chosen to arrest them ever since lodging of the FIR, this Court is of the opinion that it is a fit case for grant of anticipatory bail to the petitioners. Both the petitions, as such, are accepted and in the event of arrest, the petitioners be released on interim bail



subject to their furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

22. A photocopy of this order be placed on the file of other connected case.

14.11.2024
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No