IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211 CRM-M-51963-2024
DATE OF DECISION: 28.10.2024

ANUPAM SINGLA ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.G.S. Sidhu, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 439 Cr.P.C. for grant of concession of regular bail to the petitioner in case F.I.R. No. 10 dated 05.01.2019 (Annexure P-1), registered under sections 420, 467, 468, 471 of I.P.C & 132 (1) B & C of HGST Act, 2017, Police Station-Model Town, Rewari, District Rewari.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

> '*To, The SHO, Model Town, Rewari No. Spl. 1/DTI / dated 05.01.2019 Subject: Lodging of FIR against M/s Praveen Industries, Proprietor Naveen Kumar and Anupam Singla, Praveen Kumar Yadav and Charan Singh for committing fraud with the State Centre Exchequer. On the basis of information received from Head Office, Panchkula through e-mail ID hoaetctax@gamil.com regarding involvement of M/s Praveen Industries GSTIN 06BOCPK0035A1ZU with legal name Naveen Kumar, in issuing fake invoices for the purpose of hoodwinking the Government through Bogus Input Tax Credit without actual receipt and supply*

of goods by the said dealer. On the basis of above said information I, Pradeep Yadav, Excise Taxation Officer being Proper Officer prefer to verify the facts. Rajiv Yadav, Taxation Inspector was sent to the given address of M/s Praveen Industries i.e. Opposite Din Dayal Palace, Garhi Bolni Road, Rewari to physically verify the facts. Panchnama was prepared in the presence of Sh. Sandeep Yadav S/o Sh. Kartar Singh and Sh. Arun Kumar S/o Sh. Sh. Surjan Singh and it was found that no Sign Board of M/s Praveen Industries was affixed at the place as the same was removed on 26.12.2018. as per the statement of above two "Panchs" the firm often remain closed and they have never seen any sale purchase being done or delivery and supply of goods. From this verification it is clear that the firm is only involved in paper transaction only meaning thereby the firm is involved in raising fake invoices and taking Input Tax Credit benefit on the basis of such bills. In the course of investigation and as per information available on GST portal, it is found that Sh. Naveen Kumar S/o Sh. Rattan Singh R/o village Akabarpur, P.O Bithwana, Rewari having Mobile No. 9671117162, Aadhar No. 884205091613 and PAN No. BOCPK0035A, is proprietor of M/s Praveen Industries, Opposite-Dindayal Palace, Garhi Bolni Road, Near KLP College, Rewari. The dealer commenced its business under GST Lac as on 03.08.2018. The dealer engaged in the business of sale and purchase "Cotton". In this way, it is established that the dealer M/s Praveen Industries, GSTIN 06BOCPK0035A1ZU district Rewari is non-existent and no-functional at the given address and the said dealer is engaged in issuing fake tax invoices without supply of goods leading to wrongful availment and utilization of Input Tax Credit (ITC) and has paid no tax to the State as well as Central Exchequer. Further, as per information available on GST portal, the dealer M/s Praveen Industries has filed return in form GST R1 (outward supplies) for the month of October, 2018 and November, 2018 2018. Hence, has committed an offence under section132(1) (b) (c) as he has issued invoices or bills without supply of goods or services in violation of the provisions of HGST Act, or the rules made thereunder leading to wrongful availment or utilization of

Input Tax Credit and availed Input Tax Credit using such invoices or bills. He also handed over the photocopy of "Cheque No. 000305" of Canara Bank, Rewari on which Account No.2878201000263 is written and is being provided by the Bank in printed form to the proprietor of Parveen Industries and Sh. Naveen Kumar has signed the same cheque as proprietor. Further the details of the above said account of M/s Parveen Industries was obtained by Canara Bank, Rewari where in it has been clearly mentioned that Sh. Naveen Kumar is only authorized signatory of the firm. Perusal of the Bank Statement of the above said firm reveals that there are heavy amount money transfers to M/s Vishal Industries to the tune of Rs.57 lacs on 27.11.2018 and Rs.46.50 lacs on 29.11.2018 which is also a fake firm of Haryana. Apart from this Sh. Naveen Kumar has withdrawn heavy amounts from this account. He further states that the mobile No.8685868546 used in M/s Priya Industries, Meham, Rohtak GSTIN 06DEUPD3349C1ZJ and M/s Poonam Industries, Kanina, Mohindergarh GSTN 06E1MPP0231G1ZE belongs to and being used by his brother Praveen Kumar S/o Sh. Rattan Singh R/o Village-Akbarpur, Po.-Bithwana, Rewari. His statement was recorded in presence of independent persons "Panch's" namely Sh. Radhey Shyam Mittal and Sh. Naresh Kumar. Photocopies of Sh. Naveen Kumar alongwith the above said independent witnesses was taken after taking his statement. Mobile No.8685868546 used by the above two firms belong to Parveen Kumar who is brother of Sh. Naveen Kumar proprietor of Parveen Industries. Ho he was also called and his statement was also recorded u/s 70 of the HGST Act, 2017. Wherein he stated that he alongwith Charan Singh, R/o Village Raliawas, Rewari got registered two firms from CA Sh. Amit Yadav namely Priya Industries and M/s Poonam Industries and all the relevant documents related to these two firms were got procured by the then provided the same to CA Amit Yadav. He further stated that Parveen Industries whose proprietor is his brother Sh. Naveen Kumar is being operated by Sh. Anupam Singla of Sirsa whose mobile No. is 8813000008. He further stated that all the above named industries are used to raise invoices and *to take benefit of Input Tax Credit only. No goods are being supplied by these firms. Then, the name which appeared in the statement of Sh. Parveen Kumar i.e. Sh. Charan Singh was called by him and his statement was also recorded u/s 70 of HGST Act, 2017 wherein categorically stated that he alongwith Parveen Kumar got registered many fake firms like Priya Industries and Poonam Industries from Sh. Amit Kumar, CA. These firms are used to issue fake invoices without making supply of goods and their ITC is being used and hence tax evasion is done. All these firms were registered on the directions of Anupam Singla whose mobile No. is 8813000008. Initially this person used to call them at Shop No.25, Sirsa Mandi but later he stated meeting them near Flyover, Sirsa. This person was introduced to us by Sh. Ravi R/o village Ahir Basna, Kotkasim, Rajasthan. This person used to pay us Rs.7000/- (seven thousand) in his Bank Account of Bank of Baroda near Airport, Delhi. He has met Anupam Singla eight to ten times. He further stated that Parveen Kumar, manages all the money transactions which come through these firms. He also stated that he can take the officers to Anupam Singla and identify him.CA Amit Kumar is the person who got registered all the above stated firms. His statement was also taken u/s 70 of HGST Act, 2017. He provided documents related to above said firms which were for registration of these firms. He only got the firms registered as per directions and documents provided by Charan Singh and Parveen Kumar. He showing GTO of Rs.49472580/- and Rs.253860165/- respectively. The total turnover during these two months is Rs.303332745/- (30.33 Crore). It is found that the dealer M/s Praveen Industries has shown outward supplies to the non existing and non- functional dealers in the state of Haryana and also made purchases from firms namely M/s Priya Industries GSTIN 06DEUPD3349C1ZJ Rohtak and M/s Poonam Industries GSTIN06EIMPP0231GIZE Narnaul which are non-existing and non-functional dealer of Haryana. To further verify the facts of the above said firm proprietor Sh. Naveen Kumar was called in the office to take his statement u/s 70 of HGST Act, 2017. Wherein he has disclosed that he is proprietor of Parveen Industries whose* *legal name is Naveen Kumar and he has utilized the ITC of HGST of Rs.7105075/- and CGST of Rs.7105075 and IGST of Rs.191754/- for the month of October 2018 and November never filed any returns related to these firms. During the course of investigation, it is well established that the said firm M/s Praveen Industries bearing GSTN 06BOCPK0035A1ZU has fraudulently obtained the GSTN registration solely for the purpose of creating a fraud with the Govt. revenues by utilizing the accumulated bogus input tax credit by way of paper/bogus transactions but not actually supplying goods on ground. Hence, the said firm has acted in contravention of provisions of section 132 (1) (b) (c) of HGST Act, 2017 read with relevant section of the CGST Act, 2017 and IGST Act, 2017.Thus creating a loss of revenue to the state as well as Central Govt. exchequer: IGST Rs.191754.00 SGST -Rs.7105075.00,CGST- Rs.7105075.00, 14401904.00 On the basis of above stated facts and circumstances I, undersigned have reasons to conclude that the main accused behind this fraud is Sh. Anupam Singla, R/o Shop No. 25, Sirsa Mandi, Sirsa (Haryana) who has conspired this fraud alongwith Sh. Charan Singh S/o Sh. Lal Singh, R/o Vill- Raliawas, District Rewari, Sh. Praveen Kumar Yadav S/o Sh. Rattan Singh, R/o Vill- Akbarpur, Rewari and Sh. Naveen Kumar S/o Sh. Rattan Singh, R/o Vill- Akbarpur, Rewari Thus you are hereby requested to lodge FIR as per the direction of worthy Excise Taxation Commissioner, Haryana, Panchkula communicated vide memo No. Spl-2/AETC (ENF), dated 05.01.2019.sd (Pradeep Yadav) Excise Taxation Officer-cum-Proper Officer, o/o Dy. Excise Taxation Commissioner(ST) Rewari. Today at the Police Station. At this time, the complainant came present at the police station and presented an application, according to the contents of the application offence under section 420/467/468/471 I.P.C. 132 (1) (B) (C) HGST Act 2017, is made out and F.I.R No. 10, Dt. 05.01.2019, U/s 420/467/468/471 I.P.C, 132 (1) (b) (c) HGST ACT 2017, P.S MT. RWR has been registered and the copies of the F.I.R. are being sent to the illaqa Magistrate and senior officers through Dak. The case file is kept with me and* *further investigation. Note: The duty officer in this case is Ajeet Singh.'*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as the petitioner was already in jail in another FIR. He submits that co-accused Parveen Kumar, Sheetal Garg, Suresh Garg and Charan Singh, in whose name the alleged offence under GST Act is stated to have been commissioned, have already been granted concession of regular bail by the Trial Court. He further submits that the petitioner was not beneficiary in any manner directly or indirectly in the instant FIR wherein out of 40 PWs, only 8 PWs have been examined since framing of charges on 24.05.2022, therefore, conclusion of trial would take long time.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 3 years, 2 months and 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that stating that the petitioner is involved in other FIRs also, meaning thereby he is a habitual offender but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 28.01.2022 and charges stands framed on 24.05.2022.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 years, 2 months and 16 days, similarly situated co-accused have already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 28.01.2022 and charges stands framed on 24.05.2022, out of 40 witnesses, 8 PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in "***Dataram versus State of Uttar Pradesh and another", 2018(2) R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

> *"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been*

lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There *are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658*

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

Therefore, to elucidate further, this Court is conscious of the fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in "***Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna", (1980) 1 SCC 98.*** Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as "***Baljinder Singh alias Rock vs. State of Punjab***" decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

28.10.2024
anuradha

Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*