

2023:PHHC:113925
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-19083-2023
Date of Decision: 31st August, 2023

Sanjeev Sharma ... Petitioner
Versus
Commissioner, CGST, Gurugram ... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tushar Gautam, Advocate for the petitioner.
Mr. Sourabh Goel, Advocate for the respondent.

AVNEESH JHINGAN , J.(Oral)

1. This petition under Section 439 Cr.P.C. is filed seeking regular bail in FIR mentioned below :-

Case No.	Date	Police Station	Sections
COMA/86	16.7.2022	Sadar, Gurugram, District Gurugram	132(1)(i) read with Section 132(1)(c)(e)(f) of Central Goods and Service Tax Act, 2017

2. Learned counsel for the petitioner claims parity with co-accused Lalit Dogra who was granted regular bail by this court on 21.3.2023 in CRM-M-5633-2023.

3. On 21.3.2023, the following order was passed :-

“Prayer in this petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case No.COMA/86/16.07.2022, under Sections 132(1)(i) read with Section 132(1)(c)(e)(f) of CGST Act, 2017, registered at Police Station Sadar, Gurugram.

Reply on behalf of Central Goods and Services Tax (CGST) Commissionerate, Gurugram, through Rajesh Shrivastava, Superintendent, Anti Evasion, CGST, Gurugram, has been filed, which is ordered to be taken on record.

A report of officers of Anti Evasion, CGST revealed that some non-existent, bogus and non-operational firms namely M/s Barista Fashion, M/s Alexa Impecs Solutions, M/s Global Solar

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Solution and M/s EL Bella Export were accumulating very high amount of fraudulent Input Tax Credit (hereinafter called 'ITC'), on the basis of bogus purchase invoices from nonexistent and fraudulent firms and further showing sale invoices at lower tax rate and claiming inverted tax refund, by filing and unloading fake documents including CA certificates. It was further found that the same modus operandi was used by cartel of economic offenders in filing bogus applications for refund consisting of various fake firms.

Learned counsel for the petitioner submits that petitioner is neither having any connection with the aforesaid firms, nor his name was found in the aforesaid report of the Department. On the basis of false disclosure statement of the co-accused, the petitioner was called by the above-said Department for further investigation into the matter. The petitioner appeared before the officers of the Department on 23.05.2022 and they took his signatures on the blank papers. The disclosure statement is alleged to have been made by the co-accused before the authorities under duress and fear. Therefore, the same cannot be said to be admissible in evidence. The petitioner did not get any money from CGST.

*As per the case of the prosecution, neither any firm was found running in the name of the petitioner, nor he had ever received any amount of refund of CGST in his bank account. It has further been contended that no recovery of any amount of CGST was made from the petitioner. The name of the petitioner is neither shown in any of the documents planted by the prosecution, nor any forged or fabricated document was prepared by the petitioner in his name. Two main accused CA Sunil Mahlawat and CA Gaurav Dhir have already been granted bail on 10.10.2022 by a Co-ordinate Bench of this Court in **CRM-M-28562-2022** and **CRM-M-29703-2022**.*

*In support of his contentions, learned counsel for the petitioner has placed reliance on **Sanjay Chandra versus CBI** reported as **2011(4) RCR(Criminal) 898, State of Bihar Vs.***

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Amit Kumar @ Bacha Rai reported as **2017(3) RCR (Criminal) 690** and **Satender Kumar Antil versus CBI and others – SLP (Crl) 5191 of 2021** – decided on 11.07.2022.

On the other hand, learned State counsel, while opposing the prayer made by learned counsel for the petitioner, has submitted that the complaint has already been filed against the petitioner. During the course of investigation, it was observed that two Chartered Accountants namely Sunil Mahlawat and Gaurav Dhir were found to be misusing their UDIN credentials and were issuing false/forged CA certificates for the fake firms, to enable them to subsequently claim bogus refunds. It was further contended that the statement recorded under Section 70 of CGST Act, the accused persons disclosed that the petitioner used to give work, and on their instance, he used to file refunds for bogus firms. All these firms were found to be bogus and non-existent. The petitioner also admitted that the bogus firms were created by him to claim fraudulent ITC and refunds without conducting any actual business. He used to look after the documentation and liaison work for these bogus firms. He further admitted that he recruited one Sanjeev Sharma, who opened business concern in the name of Barist Fashion. On the basis of documents provided by co-accused Sanjeev Sharma, he opened a bank account in Indian Overseas Bank, Islampur, Gurugram. He went to Indian Overseas Bank along with Sanjeev Sharma to open a current bank account where Sanjeev Sharma submitted all his KYC documents. An account was opened in which fraudulent ITC and refunds to the tune of Rs. 94,52,138/- were received and the bogus firm also availed ITC, to the tune of Rs. 8.68 crores. Other firms also fraudulently availed ITC of huge amounts. Co-accused Sanjeev Sharma also endorsed the same.

It is further submitted that the investigation from Tempo driver/owner, shown to be used in input raw material and output final goods movement, further revealed that shown E-way bills were bogus and created by someone using their vehicle number. It was further revealed that the petitioner was a habitual offender.

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In other case, on completion of investigation by DRI, the petitioner was served with a Show Cause Notice dated 29.06.2022 by Air Cargo Export, New Delhi, wherein he was accused of manipulating the facts. It was revealed that the petitioner used to appear in the bank on different identity i.e. some other fictitious name. His name was Rahul Sharma in front of the Branch Manager, Laxmi Vilash Bank, Ashok Vihar, New Delhi. The petitioner along with one Gurmeet Singh was active in recruiting persons on monthly payment basis and using recruited person's identity in opening company/firm, with a motive to do Government tax evasion prone activities.

In view of what has been discussed above, it becomes crystal clear that the petitioner was the master-mind behind the entire racket of fraudulently availing Input Tax Credit refund to the tune of Rs. 18.73 crores through non-existent firms made by him.

*Learned State counsel accompanied by learned counsel for the complainant has placed reliance upon **CBI vs. Remendu Chattopadhyay** reported as **2020(1) SC RCR(Criminal) 167**, **Nimmagadda Prasad vs. Central Bureau of Investigation** reported as **2013(3) SCC (Crl.) 575** and **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation** reported as **2013(3) RCR (Crl.) 108** to strengthen the prosecution case.*

Heard submissions made by learned counsel for the parties.

The petitioner is involved in economic offence and is in custody since 26.05.2022.

*In case **Amit Kumar @ Bacha Rai (supra)**, it is held by Hon'ble Apex Court that there is no straight jacket formula for consideration of grant of bail to an accused as it all depends upon the facts and circumstances of each case. The grant of bail was set aside to the kingpin of crime, publicly known as "Bihar Topper Scam", by observing that Investigating Officer was going to file additional charge-sheet. In **Sanjay Chandra (supra)**, it is held that when charge-sheet is already filed before the Court,*

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*the presence of accused in custody may not be necessary for further investigation. It is held therein that the appellants were entitled to grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI. In the case of **Satender Kumar Antil (supra)**, Hon'ble Supreme Court issued guidelines for investigating agencies and the Courts.*

*Insofar as the judgment relied upon by learned counsel for the respondent in case of **Remendu Chattopadhyay (supra)** is concerned, the order of grant of interim bail was set aside as the investigation was going on. In case **Nimmagadda Prasad (supra)**, it was informed to the Court by the CBI that short custody for six months was required to complete the investigation under Section 173(8) Cr.P.C. and bail was not granted. A further direction was issued to complete investigation preferably within four months. In **Y.S. Jagan Mohan Reddy (supra)**, it is held that release of the petitioner may hamper the investigation and CBI was directed to complete the investigation and file charge-sheet within four months.*

In this case, the investigation is already complete. The complaint has already been filed in the concerned Court. The co-accused Sunil Mahlawat and Gaurav Dhir have already been granted bail by the Coordinate Bench of this Court and the case is to be tried by the Magistrate. The further custody of the petitioner would not serve any useful purpose.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/bond amounting to Rs.10 lakhs with two sureties in the like amount, to the satisfaction of trial Court/Duty Magistrate concerned and subject to him being not required in any other case. The petitioner shall also abide by the following conditions :-

- 1. The petitioner shall surrender his passport and shall not leave the country without the prior permission of the Trial Court*
- 2. The petitioner shall give his mobile number to the Trial Court and get the same registered, on which SMS shall be*

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received from the CIS and shall not change his mobile number during pendency of the case.

3. The petitioner shall not change his residence without prior intimation to the complainant Department and the trial Court.

4. The petitioner shall appear before the Trial Court on each and every date of hearing.

The Trial Court is at liberty to impose any other condition that it may deem appropriate. It is further clarified that in case of default of any of the conditions, then the concerned Court is competent to cancel the bail granted to the petitioner.

Nothing stated herein above be construed as a final expression of opinion on the merits of the case and the Trial Court would proceed independently of the observations above, which have only been made for the purpose of adjudication of the present petition for grant of regular bail.

4. Learned counsel for the respondent though opposes the prayer for grant of bail, he is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, keeping in view the custody period, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

6. The petition is allowed.

7. Since the main case has been allowed the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

31st August, 2023
anuradha

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