

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

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CRM-M-1511-2021

Reserved on: 25th January, 2021

Pronounced on: 28th January, 2021

Rakesh Arora

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Priyadarshi Manish, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Senior Deputy Advocate
General, Punjab.

Mr. Sourabh Goel, Senior Panel Counsel for Union of India.

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Avneesh Jhingan, J.

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] The petitioner is before this Court under Section 439 of Cr.P.C. for grant of bail, having been arrested under Section 132 of the Central Goods and Services Tax Act, 2017 [for brevity 'the Act'].

[3] In the petition, only State of Punjab was arrayed as the respondent, however on 18th January, 2021, Mr. Sourabh Goel, Advocate appeared and submitted that Union of India is a necessary party. He sought time to file a reply, same was filed and taken on record on 22nd January, 2021.

[4] The facts emanating are that Business Intelligence and Fraud Analytics ['BIFA'] was used for taking data from GSTIN. The Goods and Services Tax Department had information that three firms by the name of M/s La Mode Fashions, M/s Decent Fashions and M/s Murari Enterprises [hereinafter referred to as 'firms'] were engaged in availing and passing bogus Input Tax Credits ['ITC']. The firms had issued bills worth ₹ 158 crores involving ₹ 13.39 crores of tax. Firms had availed fake ITC of ₹ 21.60 crores and claimed refund of ₹ 5.02 crores.

[5] The mechanism adopted by these firms was of procuring bills from Delhi based firms who had no purchases and further billing was done to export units for utilizing the ITC. These Firms had common partners i.e. Rakesh Kumar, Ms. Shreya Aggarwal and Mr. Ajay Gupta, all residents of Noida. A Chartered Accountant Ankur Garg and Vikas Gupta, GST Practitioner (not having requisite qualification) were arrested. They were also instrumental in getting the firms registered under the GST. As per their statements, Dharminder Arora @ Raja Bhaiya use to give them directions and they used to meet him at Hotel Park Plaza, Ludhiana. From the evidence collected from the Hotel, it was revealed that petitioner (Rakesh Arora) was actually Dharminder Arora @ Raja Bhaiya. During investigation, Vikas Gupta, Chartered Accountant, Gurmeet Singh @ Neela and Sukhwinder Sindhi @ Happy, partners of M/s Mahavir Property Advisors, Ludhiana confirmed from the documents collected by the department, that Rakesh Arora was Dharminder Arora @ Raja Bhaiya. On 5th December, 2020, raid was conducted at the residence and business

premises of petitioner at Noida. His mobile phone and various documents were seized. The petitioner initially denied that he knew Ankur Garg and Vikas Gupta. Further, there was denial of any relationship with firms. However, in his mobile, an e-mail I.D. i.e. bhagwati_rk@yahoo.co.in was found logged in. From this I.D. lease deed of M/s La Mode Fashions was sent to an e-mail I.D. i.e. t.tarun2003@gmail.com, which was the alternative e-mail I.D. provided in the GSTIN portal of the above said firms. As the investigation proceeded, one Tarun came into picture who was running a Cyber Cafe and had confessed of creating fake identities for partners of the firms such as Aadhaar Card, PAN, Bank accounts etc. He provided two of his employees for being partner in firms. Identity of one employee was changed from Rajesh to Ajay Gupta. In his statement, he stated that petitioner was making monthly payments to him and his employees for their assistance being lend to the petitioner. The case set up is that the petitioner was actively involved in creating three bogus firms and for availing fraudulent ITC. The statement of various persons including Ms. Shreya Aggarwal (partner) and land lady of premises taken on rent for firms, were recorded. All of these pointed towards the fact that petitioner was Dharminder Arora @ Raja Bhaiya who either himself or through someone had contacted them in furtherance of creation or registration of the firms.

[6] Mr. Ashok Aggarwal, learned senior counsel appearing for the petitioner contended that petitioner is in custody since 5th December, 2020 and till date no complaint is filed. The matter is of Magistrate trial and is punishable maximum for five years. The plea is

that there is nothing to suggest that before being put in custody, the petitioner had tried to flee.

[7] Reply filed by respondent is read to submit that no offence is made out against the petitioner under clauses (a) to (d) of Section 132 (1) of the Act. Further contention is that only offences under clauses (a) to (d) of Section 132 (1) of the Act, are non-bailable offences. The argument is that petitioner has not issued any bill or invoice for availing ITC, moreover the assessment is not complete. Delhi High Court's order in **Anil Jain Versus Directorate of Revenue Intelligence (2007) 207 ELT 215 (Del.)**, is relied to state that bail was granted in similar circumstances.

[8] The grievance is that arrest of the petitioner is in contravention of law laid down by the Division Bench of this Court in **Akhil Krishan Maggu Versus Deputy Director of GST Intelligence (2020) 32 GSTL 516**. It is submitted that case of the petitioner does not fall within the categories specified in judgment for arrest.

[9] Learned senior counsel submit that powers under Section 69 of the Act should be used sparingly and reasons must be recorded for arresting. He relies upon judgment dated 20th October, 2020 of Gujarat High Court in **Vimal Yashwantgiri Goswami Versus State of Gujarat (R/Special Civil Application No. 13679/2019)**.

[10] Further reliance is placed upon order dated 16th June, 2020 passed in CWP-8131-2020 (**Manoj Cables Limited Versus Union of India**) and order dated 12th June, 2020 passed in CWP-8004-2020

(Tarun Bassi Versus State of Punjab) to submit that the vires of Section 132 and 69 of the Act are under challenge and this Court has granted interim bail in those cases.

[11] Orders dated 7th August, 2020 in CRM-M-17019-2020 **(Rajinder Bassi Versus State of Punjab)** and dated 28th October, 2020 passed in CRM-M-27425-2020 **(Ganga Ram Versus State of Punjab and another)** are cited where bail was granted by this Court in cases registered under Section 132 of the Act.

[12] Mr. Sourabh Goel, learned senior panel counsel appearing for Union of India contended that scam of more than ₹ 150 crores came to light as result of information collected by BIFA software. He refuted the contention that if bail is granted, the petitioner is not likely to flee. It is submitted that the petitioner had changed his identity. It was only during investigation when certain documents were found that he could be identified and arrested. It is argued that the petitioner if granted bail would tamper with the evidence and shall be in a position to influence the witness. The contention is fortified by relying upon the statement of Tarun to the effect that petitioner took him forcibly in his Car to a farm house in Ludhiana and was detained there till Rs. 68 lakhs were transferred from the account of Saroj Bala to M/s Decent Fashions.

[13] He relied upon contents of various statements recorded to show that the petitioner impersonated as Dharminder Arora @ Raja Bhaiya for establishing bogus firms for claiming fake ITC. He vehemently argues that a letter written by Rakesh Kumar (partner) stating that they were working for petitioner and it would be his

responsibility if anything goes wrong, was recovered from e-mail of the petitioner.

[14] Decision of Telangana High Court in **P.V. Ramana Reddy Vs. Union of India, (2019) 25 GSTL 185 (Telangana)**, was cited to submit that offences under Section 132 (1) of the Act have no correlation with the assessment proceedings.

[15] Prayer for grant of bail is opposed as the matter is still under investigation. It is pointed out that after rejection of bail, record was received from State Bank of India, Amroha with regard to transfer of ₹ 68 lakhs in the account of Saroj Bala (mother of Tarun). The background was that Tarun along with Rakesh Kumar were able to deceitfully get ₹ 68 lakhs transferred from M/s Decent Fashions to account of Saroj Bala. Later, there was a compromise which is on record of the bank. The amount was transferred back to the account of M/s Decent Fashions and petitioner signed the compromise, as a witness. It is further submitted that all the payments of ITC refund etc., received in the bank account of the firms were withdrawn in cash.

[16] He defended the action taken under Section 132 and 69 by stating that reasons were duly recorded for arresting the petitioner and circumstances necessitated his arrest.

[17] Contention is that the investigation is continuing as new information is still being unveiled. The name of one Mr. Khanna from Dubai has surfaced in the statement of the petitioner. He was the person who directed the petitioner to meet Ankur Garg. He fortifies

opposition to bail by submitting that recently one Satish Sharma, Accountant of one Narinder Chugh was arrested. As per statement of Tarun, Narinder Chugh was also an active participant for creation of firms.

[18] Heard counsel for the parties at length.

[19] For deciding the petition for bail, the Court generally desists from considering the merits of the matter in detail. However, as learned senior counsel for the petitioner has raised various issues, the same are being dealt with only for the purpose of deciding the bail application.

[20] The contention that petitioner is in custody since 5th December, 2020 and that no interrogation is done, does not enhance the case of the petitioner. The matter is under investigation, there are missing links of the chain which are yet to be joined. The period for filing challan has not expired.

[21] The veil created for establishing firms needs to be pierced. The fact that petitioner remained behind the smoked screen by withholding his identity as well as true identities of partners of the firms cannot be ignored. It emerged from the material collected during investigation that petitioner is Dharminder Arora @ Raja Bhaiya. To state that such a person if granted bail will not flee or abscond is a risky proposition to be accepted.

[22] The compliance, registration etc., under the Act and most of the evidence is either through electronic medium or online and IDs were created for the said purpose. If petitioner gets opportunity, he would be

in a position to tamper with the evidence. It cannot be lost sight of that it was petitioner who engaged persons and assigned them respective roles and he would be in a position to influence the witness.

[23] The petitioner pressed into service the order of Delhi Court in **Anil Jain's case (supra)**. The Court there came to the conclusion that no custodial interrogation was required and petitioner will not flee if bail is granted. Whereas in the present case, the investigation is going on and fresh information is pouring in. Petitioner would be in a position to not only tamper with the evidence but to influence the witnesses also.

[24] The contention of learned senior counsel that allegations on the petitioner are not sufficient to make out offences under clauses (a) to (d) of sub-section (1) of Section 132 of the Act, is not dilated in detail. Suffice to say at this stage that clauses (a) to (d) are not restricted to person actually physically issuing the invoices for wrongfully availing or utilizing the ITC or refund.

[25] The Division Bench of this Court in **Akhil Krishan Maggu's case (supra)** has held as under:-

“Taking cue from judgment of Delhi High Court in the case of Make My Trip (Supra) followed by Madras High Court in the case of Jayachandran Alloys (P) Ltd (Supra), law laid down by Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre (supra) as well keeping in mind Section 69 and 132 of CGST Act which empower Proper Officer to arrest a person who has committed any offence involving evasion of tax more than Rs.5 Crore and prescribed maximum sentence of 5 years which falls within

purview of Section 41A of Cr. P.C., we are of the opinion that power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, which illustratively may be:

(i) a person is involved in evasion of huge amount of tax and is having no permanent place of business,

(ii) a person is not appearing inspite of repeated summons and is involved in huge amount of evasion of tax

(iii) a person is a habitual offender and he has been prosecuted or convicted on earlier occasion,

(iv) a person is likely to flee from country,

(v) a person is originator of fake invoices i.e. invoices without payment of tax,

(vi) when direct documentary or otherwise concrete evidence is available on file/record of active involvement of a person in tax evasion.”

[26] It was held that power to arrest under Sections 69 and 132 of the Act should not be exercised for terrorizing or creating atmosphere of fear. Illustrative circumstances where arrest be made were mentioned. It is rightly stated by learned counsel for Union of India that case of the petitioner is covered under example (vi).

[27] The judgment of Gujarat High Court in **Vimal Yashwantgiri Goswami's** case (supra) is of no avail to the petitioner. It was held that

power of arrest under Section 69 read with Section 132 of the Act can be invoked before completion of adjudication of process. The pre-requisite being that Commissioner has reasons to believe that person had committed offence under clauses (a) to (d) of sub clause (1) of Section 132 of the Act. In case in hand reasons were recorded for arresting the petitioner.

[28] The bail cannot be granted solely on the ground that *vires* of Section 132 and 69 of the Act are under challenge. There is always presumption of validity of the provision. The operation of the provisions has not been stayed.

[29] In case of **Manoj Cables Limited** (*supra*), only an interim bail was granted due to COVID-19 situation. In **Tarun Bassi's case** (*supra*), the allegations were only for availing ITC without supplying the goods. In **Rajinder Bassi's case** (*supra*) and **Ganga Ram's case** (*supra*), the Court granted bail considering the custody period of 9 and 4 months respectively whereas allegations here are serious and matter is still being investigated.

[30] It was argued that the Court below wrongly recorded that ₹ 68 lakhs were transferred in the account of mother of the petitioner and thereby rejected the bail.

[31] It appears that Court below wrongly recorded this fact. The amount was actually transferred to the account of mother of Tarun. As mentioned earlier, the matter was compromised to which the petitioner

was a signatory. The amount was re-deposited in account of M/s Decent Fashions.

[32] It would be necessary to have a glance at working of GST which was introduced with the object of 'One Nation, One Tax'. There is chain of sellers and purchasers who are inter-connected, as the purchaser gets the credit of the tax paid or suffered by the seller. The chain can be within the State or PAN-India. One ingenuine or bogus link in the chain has an impact on all.

[33] In the case in hand, bills were being procured from the firms based at Delhi who had no purchases. The tax which was not deposited for these transaction was utilized by the firms for not only availing ITCs but for getting the refunds by showing the sales to export units. In other words, the refund was received for the tax which was actually never received by the Revenue.

[34] In ***State of Gujarat Versus Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364***, the Supreme Court held as under:-

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of

criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

[35] In **Y.S. Jagan Mohan Reddy Versus CBI (2013) 7 SCC 439**, the Supreme Court held as under:-

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

[36] The factual error pointed out in impugned order cannot in itself be a reason for allowing the prayer. The Court below had given other reasons also for denying the bail. While deciding the present petition, the facts have been re-considered and this court has reached the same conclusion that the prayer of petitioner for grant of bail is liable to be rejected.

[37] For the reasons mentioned above, no case is made for grant of bail.

[38] The petition is dismissed.

**(AVNEESH JHINGAN)
JUDGE**

28th January, 2021
pankaj baweja

Whether speaking/reasoned: Yes

Whether reportable: Yes



सत्यमेव जयते

