

Punjab-Haryana High Court
Rajan Arora vs State Of Punjab And Anr on 14 November, 2022

CRM-M-22778-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22778-2022

Date of decision : 14.11.2022

Rajan Arora Petitioner

versus

State of Punjab and another Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. H.S. Brar, Sr. Advocate with
Mr. J.S. Bedi, Advocate and
Mr. Sumeetpal Singh Sidhu, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing Criminal Complaint No.CMA-867 of 2022 dated 07.05.2022 titled as "State of Punjab through Sh. Arvind Sharma, State Tax Officer Vs. Rajan Arora"

registered for the offence punishable under Section 132(1)(a)(b)(c) of Punjab Goods and Service Tax Act (hereinafter referred to as 'PGST Act').

2. As per the allegations levelled, the petitioner is accused of having contravened the provision of PGST Act, 2017 and evaded tax. It has been alleged that the petitioner created a network of around 16 firms.

The said firms were either dealing with scrap of iron and steel or were trading in supply of manufactured items. The modus operandi of the complainant was that in order to contravene the provision of the Act with 1 of 19 an intent to evade tax, there were multiple transactions inter se between the said firms controlled and owned by a single person i.e. the petitioner-

accused. It has been further alleged that the aforesaid fact of cyclic transactions was tracked in Business Analytics and Fraud Analysis module BIFA.

3. In a detailed complaint, it was further alleged that owing to these cyclic transactions, the firms

were involved in evasion of tax running into crores. The allegations qua the petitioner further got corroborated by the Commodity-wise Harmonised System of Nomenclature Code (HSN) analysis of the inward and outward supplies made by the aforesaid firms. The gravamen of the complaint is:-

"The cases where the amount of inward supplies is higher than the outward supplies, it suggests that the remaining goods are in stock. But as per the registration details, no godowns or additional place of business was being maintained by any of the firms in question.

Where the amount of outward exceeded the inward supplies, the tax on the value addition should have been deposited. However, the data available in the GST return database shows that a total of Rs. 98,323/-, only, in cash has been paid till 30.06.2021 by all these firms. There may be a second possibility that the firms purchased the goods from the open market without an invoice and then generated an invoice and e-way bill to cover the goods for their subsequent movement.

In the case of M/S Delhi Enterprises, the e-Way bill data further highlights that there is a significant difference in the turnover as per the returns and e-way 2 of 19 bill issued. This clearly makes it evident that the e-way bills were generated without reflecting the supplies in the returns filed for the corresponding period.

The Harmonised system of Nomenclature code (HSN) analysis has further been undertaken in the case of each individual firm operated by Rajan Arora based on the e-way bill data till 30.06.2021. From the analysis, an attempt has been made to ascertain the quantum of taxes evaded under section 132(1)(a) of the PGST/CGST Act, 2017, i.e. supply of goods without issuing an invoice, when Rajan Arora as per the document has shown to have supplied iron scrap to his firms registered in Mandi Gobindgarh but actually these were supplied to the manufacturing furnaces without invoices. Secondly, the analysis helped to quantify the value of supplies of finished goods made by Rajan Arora's firms registered in Mandi Gobindgarh to related firms in Amritsar and New Delhi, again in papers, while the goods were actually supplied to other unrelated firms. By doing so, Rajan Arora not only succeeded in nullifying the liability to pay tax on the purchase of scrap by his firms but also supplied and unloaded the finished goods to purchasers without issuing invoices in their respective accounts."

4. Learned senior counsel appearing for the petitioner submits that the petitioner is in custody since 09.03.2022. The investigation already stands concluded. Challan stands presented on 07.05.2022. He further submits that as per the bare provision of law before accusing the petitioner guilty of having evaded the tax, the authorities were required to determine the evasion in terms of Section 74 of the GST Act. He submits 3 of 19 that till such adjudication is effected upon, the authorities cannot be said to be certain w.r.t. the evasion of the tax at the hands of the petitioner.

He further relies upon 'Manoranjana Singh @ Gupta vs. Central Bureau of Investigation' 2017(2) SCC (Cri) 520 to submit that the detention in custody of an undertrial person cannot be extended to an indefinite period as that would be in the teeth of Article 21 of the Constitution of India. He further reads Manorajana Singh's case (supra) to hammer forth his contention that though seriousness of the charge is one of the relevant considerations while examining the application of bail, but it cannot be the solitary test. Further reliance is placed upon judgment passed by Coordinate Bench of this Court in CRM-M-24033-

2021 titled as 'Maninder Sharma vs. State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab' decided on 31.08.2022.

5. He further submits that there is a peculiar circumstance to the present case. Even after passing of almost 06 months, the prosecution has not been able to lead any pre-charge evidence against the complainant and the same is evident from the order dated 11.11.2022 passed by the trial Court which reads as under:-

"Accused has been produced by the jail authorities through VC. Heard. Pending investigation, accused is remanded to judicial custody and is ordered to be produced on 24.11.2022.

Witness Satwinder Singh is bound down for the next date of hearing. No other pre-charge evidence of complainant is present. Remaining pre-charge evidence of the complainant be also produced on the date fixed above."

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6. Mr. Gupta has opposed the prayer of bail made by the petitioner contending that there are serious allegations against the petitioner who has abused the process of law with an intent to evade tax.

The guilt of the petitioner is written large on the records of the case. An umbrella of 16 fake firms has been created with an intent to evade tax by utilizing them for cyclic transactions. However, Mr. Gupta does not dispute the fact that the challan already stands presented, investigation stands concluded and whole of the evidence against the petitioner is in the form of documents which are in the possession of the agency and thus at this stage raising apprehension qua tampering thereof will be a far cry.

7. I have heard counsel for the parties and have gone through the records of the case.

8. The parameters to be considered while deciding the prayer for bail are well laid down by Apex Court in the case of 'State through CBI vs. Amaramani Tripathi, reported as 2005(8) SCC 21', holding that:-

"XX XX XX It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice 5 of 19 being thwarted by grant of bail (see Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

9. Coordinate Bench in Maninder Sharma's case (supra) laid down the following tripod test while dealing with economic offences:-

"XX XX XX Further, while considering the grant of bail, the triple/tripod test would also be a relevant consideration. The three factors as set out in the said test are:- (i) Whether the accused is a flight risk; (ii) Whether the accused will tamper with the evidence, if granted bail & (iii) whether the accused could influence the witnesses, if granted bail.

8. Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant."

10. There is no denial to the fact that the economic offences constitute a separate class of their own, but trite it is that presumption of 6 of 19 innocence is one of the bedrocks on which the criminal jurisprudence rests. Time and again, Apex Court has reiterated the need to integrate the right of investigating agencies to have effective interrogation of the accused with the right of liberty of the accused. While dealing extensively with the rights of the accused in the economic offences, Apex Court in the case of Satender Kumar Antil vs. Central Bureau of Investigation and another, reported as 2022 AIR (Supreme Court) 3386 held as under:-

"XX XX XX

66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v.

Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic

offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:- Precedents P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the 7 of 19 Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration 8 of 19 will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

Sanjay Chandra v. CBI (2012) 1 SCC 40:

"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same

time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the 9 of 19 accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI."

ROLE OF THE COURT

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, 10 of 19 protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427, has observed that: "67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one--and a significant--end of the spectrum. The other end of

the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable 11 of 19 safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post- Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid 12 of 19 to it. Equally it is the duty of courts across the spectrum--the district judiciary, the High Courts and the Supreme Court--to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum--the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting." (emphasis supplied)

11. Similarly, in the case of Suresh Kalmadi vs. CBI , reported as 2012(5) RCR (Cri.) 556 the Apex Court held:-

"XX XX XX However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in Sanjay Chandra (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice.

12. In Anil Kumar versus State of Punjab 2013(3) RCR (Criminal) 854 it was held:-

"XX XX XX

9. The latest judgment cited by the learned counsel for the petitioners is of the Hon'ble Supreme Court in Dipak Shubhashchandra Mehta (supra) wherein the entire law has been discussed. The

Hon'ble Supreme 13 of 19 Court in para No.18 in Dipak Shubhashchandra Mehta's case (supra) has held as under: -

" 18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and;

c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held 14 of 19 that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

Further, the Hon'ble Supreme Court in the case of Sanjay Chandra (supra) has held as under:-

" 15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by 15 of 19 balancing

valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan-* (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of nonbailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

10. In Sanjay Chandra's case (supra) also the Hon'ble Supreme Court has considered the entire law on the subject.

11. I am conscious of the fact that serious allegations of connivance and causing financial loss of 16 of 19 to the State exchequer have been levelled against the petitioners. There are also allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.

12. Second argument is regarding tampering with the evidence. I have considered this contention also. The entire case is based on the documentary evidence i.e. forged vouchers, bills and thereafter the payment to various contractors and others in connivance with the Government officials. This is not a case based on the oral testimony of individuals. No doubt the allegations against the petitioners are serious in terms of the alleged huge loss caused to the State exchequer, that by itself should not deter this Court from enlarging the accused on bail specially when they are already behind bars for about seven or more months. I do not see any good reason to continue the judicial custody of the petitioners that too after completion of investigation and submission of chargesheets/supplementary charge-sheets. The 17 of 19 conclusion of the trial will take long time and their presence in custody may not be necessary for further investigation.

