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

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Date of Decision:22.12.2023

Gopi Chand Chaudhary

...Petitioner

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Aman Pal, Advocate
for the petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 439 Cr. P.C with a prayer to grant regular bail to him in case FIR No.553 dated 30.07.2016, under Sections 406,419,420,465,467,468,471 of IPC (Sections 409,201 and 120-B of IPC added later on) registered at Police Station City, Sirsa, District Sirsa, Haryana.
2. The FIR in the present case was registered on the basis of a complaint filed by Excise and Taxation Officer, Ward No.-2, Sirsa and the same has been reproduced as below:-

To The Superintendent of Police, Sirsa. No. 1116/TI dated 27.05.16 Subject: To Register the complaint regarding the matter of crime committed by the owner of M/s Bharat Trading Co. Sirsa holding TIN 06612918010 for lodging FIR U/s 406, 419,420, 465, 467, 468 and 471 IPC. Memo: Complainant On behalf of Government officer Name- Dr. V.K. Shastri Address Vanijya Bhawan, Sirsa. D.O.B-21.12.1967 Occupation Government Job, (Excise & Taxation Officer) Vanijya Bhawan. Against Criminals Owner of M/s Bharat Trading Co., Sirsa With the order of Hon'ble

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Excise & Taxation Commissioner Haryana, Panchkula letter No. WhatsApp message (annexure) with permission I am registering this complaint. The detail are as follow complains facts. The investigation has been done on below mentioned details. Sr. No. 1 Name of Businessman M/S Bhara Trading Co. Sirsa A/Year2011-12 TIN 06612918010 Name of Investigation Officer Sh. Neeraj Garg post ETO As above mentioned matter during the investigation are came to know that the above mentioned company is committing fraud with the intention of not paying the tax with the support of proper planning by showing the false inter state sales for on bogus documents and causing the loss to tax department by claiming refund which is not permissible to him. Through this systematic crime government has faced much loss in the income of funds. From above mentioned investigation it has come to know that: It is brought to your kind knowledge that enquiry were got conducted by Sh. Neeraj Garg, ETO and further rejection of refund 1991559 by Sh. Mahavir Singh ETO. No such moment of goods from any source was got effected. It was observed that refund were issued on account of ISS of cigarettes and cements. The claim of inter State sales of Cigarette and Cements was disallowed. By manipulating dealer got refund and caused the loss to the State Exchequer in 19,91559/- Hence, the forged and fabricated documents submitted by the dealer attracts penal action u/s 406,419,420,465,467,468 and 471 of IPC. Please be needful in this matter. SD V.K. Shastri Excise and Taxation Officer Sirsa. Endst. No. Dated. A copy is forwarded to worthy Excise & Taxation Commissioner, Haryana, Panchkula for information. SD V.K Shastri, Excise & Taxation Officer, Sirsa.

3. Learned counsel for the petitioner contends that the petitioner is aged about 70 years and is a senior citizen. The petitioner retired as Joint Commissioner Excise and Taxation, Haryana in the year 2014 and during his

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entire service career, there has not been even a single complaint against him, except the abovementioned FIR and 21 similar FIRs. He further submits that the petitioner remained posted as Deputy Excise and Taxation Commissioner, Sirsa from 2009 to 03.07.2012. He further contends that all the refunds which were given to different firms during the tenure of the petitioner as DETC, were approved by Mr. D.P Beniwal, who was working as E.T.O in department at the relevant time. He further submits that in the present case, the provisional assessment is approved by the E.T.O, after making the provisional assessment by him and thereafter, DETC approves the refund. As per the provisions of Haryana VAT,2003, the E.T.O is responsible for doing the physical verification of the firm and to examine the returns as well as to verify the documents of the firm. The D.E.T.C is only required to approve the refund on the recommendations of E.T.O. Thus, the petitioner was wrongly arrested by the police.

4. Learned counsel further contends that even the police has failed to produce any documentary evidence to show that the petitioner was involved in the present case in any manner. He further submits that the FIR in the present case was registered after a delay of about 08 years and the prosecution had utilized the said time in coining a false version. He further submits that in the present case, the challan has already been presented by the police and the custody of the petitioner will not serve any meaningful purpose.

5. On the other learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner has committed a fraud by colluding with his co-accused and will be in a position to influence the witnesses of the prosecution.

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6. I have heard learned counsel for the parties and perused the record.

7. At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Hon'ble the Supreme Court has observed in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted, it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

8. Hon'ble the Supreme Court in **Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429** has held as under:-

“Bail or Jail”- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. According to V.R. Krishna Iyer, J., the principal

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rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.

9. In **Gurbaksh Singh Sibbia etc Vs The State of Punjab, AIR**

1980 SC 1632, Hon'ble the Supreme Court has observed as under:-

*“Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Vs. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in **K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504**, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was*

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*established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in **Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356**, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :*

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

The legal position emerging from the above discussion can be summarised as follows :

“(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially,

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with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1)

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against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with

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prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a

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special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other nonbailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences. (o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

10. Admittedly, the petitioner is a senior citizen and is in custody since 22.08.2023. The challan has already been presented against the petitioner and his co-accused.

11. Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned.

22.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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