IN THE COURT OF PARMINDER SINGH GREWAL, JUDGE, SPECIAL COURT (UID NO. PB0438), SAS NAGAR.

CNR No. PBSA0101-0116-2022

CIS No. BA-2798-2022

Date of Institution: 18.10.2022

Date of Decision: 21.10.2022

Pawan Kumar Sharma alias Kala Pandit, aged around 61 years, son of Ram Parkash, R/o H. No. 384, Sector 25-A, Mandi Gobindgarh, Fatehgarh Sahib, Punjab.

......Petitioner

Versus

State of Punjab.

......Respondent.

FIR No. 08 dated 21.08.2020
Under Sections 7, 7-A and 8 of Prevention of Corruption Act, 1988 and Sections 420, 465, 467, 468, 471, 201, 120-B IPC.
P.S. Vigilance Bureau, Flying Squad-1, Punjab at Mohali.

FIRST PETITION UNDER SECTION 439 OF CR.P.C. FOR GRANT OF REGULAR BAIL.

Present: Mr. J.S. Bedi, Advocate for the petitioner.
Mr. Manjit Singh, Additional P.P. for the State assisted by Inspector Madhvi Kalyan.

ORDER

1. This order of this Court shall dispose of the present bail petition filed in case FIR No. 08 dated 21.08.2020 under Sections 7, 7-A and 8 of Prevention of Corruption Act, 1988 and Sections 420, 465, 467, 468, 471, 201, 120-B IPC registered at Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali for releasing the present petitioner on regular bail under Section 439 of Cr.P.C.

2. Learned counsel for the petitioner has submitted that the aforesaid false and frivolous FIR has been registered against some other accused like Vijay Kumar Ghai and some of the GST/Excise officials and the petitioner was not nominated in the present FIR by name ever. He has further submitted that now the petitioner has been arrested in the present FIR case on the basis of the disclosure statement of one of the co-accused. He has further submitted that the present petitioner has not played any role for committing the alleged crime. He has further submitted that the petitioner is not a passer as the Vigilance Bureau is trying to portray as there is no evidence, which proves that the petitioner is involved in giving/offering the bribe to the Excise and Taxation Officials or GST officials and there is not even a single evidence that the petitioner has fabricated /forged any bills of less expensive goods instead of original expensive goods. He has further submitted that prior to his arrest, the petitioner was called for joining the investigation by the Vigilance Bureau at-least 6-7 times and the petitioner, being a law abiding citizen, joined the investigation and during the first round of the investigation, the petitioner was given a clean chit by the investigating agency. He has further submitted that however, when the Investigating Officer was changed, the investigation was again opened and the matter was re-investigated and the petitioner had again joined the investigation for 5-6 times, however, on dated 12.09.2022, when the petitioner went to join the investigation, he was illegally and unlawfully arrested by the

Investigating Officer. He has further submitted that the petitioner is in custody for more than one month in the present FIR case and his further custodial interrogation is not required. He has further submitted that there is no link evidence in the form of any call detail records from which, it can be established that the petitioner contacted any one for committing the crime under the provisions of the Corruption Act by offering bribe or doing anything against the provisions of the Corruption Act. He has further submitted that there is no complaint from whom, the demand has been made or even the version of the acceptance is not made out. He has further submitted that the challan under Section 173 (8) of Cr.P.C. has already been presented, however, the name of the petitioner was not even mentioned in the aforesaid challan. He has further submitted that no trail of money has been recovered by the Investigating Officer in the bank account of the petitioner and no cash has been recovered, which may be part of the bribe amount and thus, the entire process adopted against the petitioner is illegal, malafide and against the provisions of law just to extort money from the petitioner. He has further submitted that the alleged WhatsApp conversations cannot be relied upon during the evidence and even if, the telephonic/WhatsApp conversations are admissible in evidence, then there is nothing in the said conversations that the petitioner is involved in the alleged crime. He has further submitted that the main accused/mastermind of the whole scam namely Vijay Kumar Ghai has been granted the extra-ordinary concession of anticipatory bail by the

Hon'ble High Court of Punjab & Haryana vide order dated 16.12.2021 passed in CRM-M-19015 of 2021 and the other accused have also been granted bail by the Hon'ble High Court of Punjab & Haryana. He has further submitted that while granting the concession of regular bail to the officials of the GST Department, it has been specifically observed by the Hon'ble High Court of Punjab & Haryana that the sanction to prosecute the officials of the GST Department has not been obtained. He has further submitted that the entire case of the prosecution is based on documentary evidence and therefore, further custodial interrogation of the petitioner is not required in the present case. He has further submitted that the nothing is to be recovered from the petitioner. He has, thus, prayed that the present bail petition may kindly be allowed.

3. On the other hand, Learned Additional P.P. for the State assisted by Inspector Madhvi Kalyan has submitted that the name of the petitioner has cropped up during the course of investigation as an accused in this case as there are many groups of “passers” in Punjab including Mandi Gobindgarh, Ludhiana etc. who used to get passed the materials i.e. iron bars made from scrap, pipes made from scrap made in the factories to the traders etc. without bills or bills showing lesser weight and the petitioner is one such “passer” amongst others, who used to facilitate the passing of the aforesaid goods of the factories in Punjab including Mandi Gobindgarh, Ludhiana etc. to the traders without payment of excise duty/tax to the Government by conniving with the

higher officers/officials like DETC/AETC/ETOs/Inspectors etc. of the Excise Department. He has, thus, prayed that the present bail petition may kindly be dismissed.

4. This Court has heard Learned counsel for the petitioner as well as Learned Additional P.P. for the State and has perused the investigation record with their able assistance.

5. This Court is of the considered view that as per the allegations levelled against the present petitioner and his other co-accused in the present FIR case, the secret information was received from reliable sources by Vigilance Bureau to the effect that one Vijay Kumar, who is resident of Khanna, was running the business of transportation in the various cities and he, in connivance with some officers/officials of Excise and Taxation Department, namely Piara Singh ETO Moga, Ravi Nandan ETO Fazilka, Varun Nagpal ETO Mukatsar, Kali Charan ETO (STO), Mobile Wing Chandigarh-1 at Shambhu, Satpal Multani ETO Faridkot, Ved Parkash Jakhar ETO Fazilka, Simran Brar DTC etc., was causing loss to the State Exchequer on account of tax evasion by using different escape routes to transfer goods of the traders in and out of Punjab. It has been further alleged that in order to evade tax, the aforesaid Vijay Kumar had used forged and fabricated bills of less expensive goods instead of original expensive goods. It has been further alleged that mobile numbers 98780-00023, 96982-00099, 98720-31169, 73074-04445, 99888-00858 and 94634-15573 were being used for the abovesaid purpose. It has been

further alleged that mobile phones of the aforesaid Vijay Kumar were tapped by the Vigilance Bureau and technical inputs of call conversations were taken, from which, it is unearthed that on dated 05.03.2020, the aforesaid Vijay Kumar had made a call at mobile phone no. 96982-00099 and the person speaking on the other end told that he had facilitated the bribe amount to reach at Moga, Faridkot and Ferozepur and further as to whether the aforesaid Vijay Kumar would send money to Ravi Nandan (ETO) or that he himself would do so. It has been further pleaded that on call made on 27.07.2020 at mobile number 94634-15573, the aforesaid Vijay Kumar received information about the bribe being paid monthly to the Excise Officials at Mukatsar and the person speaking on other end disclosed that the monthly bribe, which is being paid at Mukatsar, had gone above Rs.2,00,000/-, out of which Rs.25,000/- were being paid to Varun Nagpal, Rs.15,000/- to Gill, Rs.45,000/- to Inspectors, Rs.1,00,000/- to Jakhar and Rs.25,000/- to AETC. It has been further alleged that the aforesaid person also mentioned in his telephonic conversation about the bribe being paid to the officials/officers of Excise Department at Fazilka. It has been further alleged that the aforesaid person has also disclosed that at Moga belt, an amount of Rs.1,30,000/- was being paid as bribe, out of which Rs.50,000/- were being paid to AETC Madam, Rs.25,000/- to Dimple, Rs.25,000/- to Piara Singh and Rs.30,000/- to Inspectors. It has been further alleged that in addition to this, Rs.75,000/- were being paid to Satpal Multani and in Fazilka Mobile

Wing, a sum of Rs.2,00,000/- was being paid. It has been further alleged that on dated 06.08.2020, the aforesaid Vijay Kumar talked on his mobile phone with one passer about Rs.2,00,000/- being paid to the Director/DR, Rs.4,40,000/- to others. It has been further alleged that on dated 07.08.2020, the conversation between the aforesaid Vijay Kumar and one another passer took place, wherein the aforesaid Vijay Kumar asked that person/passer to see on his computer, where the details of Rs.2,00,000/- were written in the name of Kali Charan. It has been further alleged that on dated 17.08.2020, one official of Excise and Taxation Department conversed with the aforesaid Vijay Kumar on telephone about 5/6 goods vehicles, which were allowed to go previous night without paying excise duty, whereupon, the aforesaid Vijay Kumar asked the said official that those 5/6 vehicles pertained to Shinda passer. It has been further alleged that on dated 09.06.2020, another person had a conversation from his mobile phone no. 73074-0445 with the aforesaid Vijay Kumar about paying Rs.50,000/- to Mr. Brar. It has been further alleged that on dated 17.07.2020, the aforesaid Vijay Kumar had a conversation from his mobile phone with another person on his mobile phone no. 9888-00858, wherein the aforesaid Vijay Kumar asked the said person to deliver Rs.1,00,000/- to be paid to Madam, if he was going to Jallandhar and during this conversation, they also talked about Rs.1,00,000/- paid to one officer namely Mr. Arora. It has been further alleged that lateron, it has been also unearthed in the telephonic conversation that from his mobile phone number 98780-00023, the aforesaid Vijay Kumar made 43 calls to Kali Charan ETO at his mobile number 79732-24359 and at his second mobile phone number 97792-00754, 20 calls were made. It has been further alleged that on the basis of technical inputs received from the call conversations between the aforesaid Vijay Kumar, some other persons (passers) and officials of the Excise Department, to whom bribe was being paid by the aforesaid Vijay Kumar and other passers for letting the goods vehicles go to their destination by evading excise duty, this FIR has been registered.

Furthermore, so far as the role of the petitioner in the alleged offences is concerned, it has come on record during the course of investigation that the name of the petitioner has cropped up during the course of investigation as an accused in this case, although the petitioner was not named as accused initially in the FIR. It has further come on record during the course of investigation that there are many groups of "passers" in Punjab including Mandi Gobindgarh, Ludhiana etc., who used to get passed the materials i.e. iron bars made from scrap, pipes made from scrap made in the factories to the traders etc. without bills or bills showing lesser weight and the petitioner Pawan Kumar Sharma is one such "passer" amongst others, who used to facilitate the passing of the aforesaid goods of the factories in Punjab including Mandi Gobindgarh, Ludhiana etc. to the traders without payment of excise duty/tax to the Government by conniving with the higher officers/officials like DETC/AETC/ETOs/Inspectors etc. of the Excise Department. Furthermore, the similar role has been attributed to the petitioner Pawan Kumar Sharma as “passer” as per the disclosure statements of his other co-accused and thus, the petitioner Pawan Kumar Sharma is alleged to have acted as facilitator between the manufacturers and traders on the one hand and the aforesaid higher officers/officials of the Excise Department on the other hand and the petitioner used to facilitate it by getting the hefty bribes paid to the aforesaid higher officers/officials of the Excise Department at the rate of Rs.1 Crore per month by collecting the same from the manufacturers and traders etc. as bribes.

Furthermore, this court is of the considered view that there are serious allegations with regard to causing huge loss to the State Exchequer by the petitioner Pawan Kumar Sharma in collusion with his other co-accused. It has further come on record during the course of investigation that each passer including the present petitioner Pawan Kumar Sharma, who was helping traders to evade tax by fixing officers of Excise Department, used to pay lakhs of rupees to the accused persons as bribe. The perusal of the investigation record reveals that the prosecution has produced on record detail showing transactions/conversation between the accused party and alleged passers including the present petitioner Pawan Kumar Sharma. Furthermore, this Court is of the considered view that the petitioner Pawan Kumar Sharma, who has acted as “the passer”, allegedly become facilitator for tax evasion at the behest of his other co-accused and other persons who evaded the legitimate payment of the taxes to the State Government as per the allegations.

Thus, this Court is of the considered view that the petitioner has played very active role in the alleged occurrence and thus, he is not entitled to be released on regular bail at this preliminary stage of investigation qua him.

Furthermore, the arguments raised by the Learned counsel for the petitioner pertain to disputed question of facts, which can only be ascertained after leading of evidence during trial and thus, the same are not of any help to the petitioner at this preliminary stage of investigation qua the petitioner.

6. In view of the reasons discussed herein before and after keeping in view the gravity and seriousness of the alleged offences, the present bail petition filed by the present petitioner under Section 439 of Cr.P.C, is hereby dismissed.

7. The opinion expressed herein above shall not be construed as an expression of opinion on the respective merits of the case and the same shall be construed as the opinion expressed for deciding this bail petition only. File be tagged with the main case file/remand papers.

Pronounced in open Court.
Dated: 21.10.2022

Tajinder Singh

(Parminder Singh Grewal)
Judge, Special Court,
SAS Nagar (Mohali)
UID No. PB-0438

(Parminder Singh Grewal)
Judge, Special Court,
SAS Nagar **(21.10.2022)**