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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 26th July, 2018

+ CRL.M.C. 1059/2016 and Crl. M.A. 4548/2016

DIRECTORATE GENERAL OF CENTRAL EXCISE
INTELLIGENCE

..... Petitioner

Through: Mr. Satish Agarwala, Advocate

versus

VINOD KUMAR GUPTA

..... Respondent

Through: Mr. Pradeep Jain and Mr.
Shubhankar Jha, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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26.07.2018

1. On the basis of some information followed by certain searches carried out by the officials of the petitioner in October 2015, a case of suspected violation of the Central Excise Act, 1944 was taken up for investigation. In the course of the said probe, certain persons connected with the companies involvement of which was suspected were called for inquiries. It is the case of the petitioner that material came to light that certain bogus firms were operating wherein certain accounts were being used in the name of dummy parties for fraudulent transactions leading to false claims of CENVAT credit being

claimed, such facts indicating violation of the provisions of Central Excise Act, 1944, meriting, *inter alia*, criminal action, the offences concededly being cognizable and non-bailable. The role of the respondent also came under scrutiny in the said matter and he was called for inquiry.

2. Against this backdrop, the respondent moved an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (Cr. P.C), it being bail application no.5495/2015. The Additional Sessions Judge, after calling for the response of the petitioner and hearing both sides, passed a detailed order on 07.01.2016 directing that in the event of he being arrested, the respondent shall stand released on bail subject to certain conditions which were specified, they inclusive of the respondent being obliged to cooperate with the inquiry and to join it as and when called upon to do so and at the same time he not leaving India without prior permission of the trial court and towards that end he to surrender his passport.

3. The present petition was filed in March 2016 questioning the legality and propriety of the said order of anticipatory bail. It has been pending for the last almost two and half years.

4. When the counsel for the petitioner was called upon to make his submissions, his only argument was that there was no move initiated to put the respondent under arrest and, therefore, the exercise of jurisdiction by the Sessions court under Section 438 Cr. PC was bad in law. The counsel was asked by the court

as to what is the status of the investigation of the case in question. He was also asked to ascertain as to what evidence against the respondent as to his involvement or complicity had come up in the investigation that has been undertaken thus far. He was clueless and submitted that he has not been updated. On his request, he was called upon to ascertain the facts and the present status of the investigation. He returned at 4.00 p.m. to inform the court that the investigation was still incomplete. He would not clarify if any incriminating evidence had been gathered during the probe conducted so far showing the complicity of the respondent in the crimes under such probe, particularly such evidence as may have escaped the notice of the Sessions court. His only insistence is that the crime is serious and the respondent is a suspect.

5. In the considered view of this court, such non-serious pursuit of the matter cannot take the petitioner anywhere. The impugned order was passed by the court of Sessions after taking into account the available material. The petition cannot continue to hang like a democle's sword over the head of the respondent indefinitely. The petitioner would have the liberty to oppose the grant of regular bail to the respondent in the event of a case being presented upon conclusion of the investigation for cognizance thereupon to be taken up by the competent court it leading to issuance of the process against the respondents.

6. With these observations, the petition and the application filed therewith are dismissed.

R.K.GAUBA, J

JULY 26, 2018

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