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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. No. 3086/2018 & CRL.M. (BAIL) No. 2003/2018 &
CRL.M.A. No. 50762/2018

RAJESH JINDAL

..... Petitioner

Through Mr. J. K. Mittal, Mrs. Vandana
Mittal, Mr. Sumit Saurav and Mr.
Ravi Rai, Advocates.

versus

THE COMMISSIONER OF CENTRAL TAX GST DELHI (WEST)

..... Respondent

Through Mr. Harpreet Singh, Senior Standing
Counsel with Mr. Suresh Chaudhary
and Ms. Suhani Mathur, Advocates

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **28.12.2018**

BAIL APPL.No. 3086/2018 & CRL.M.(BAIL) No. 2003/2018

Pursuant to the last order dated 24.12.2018, the respondent has presented before the Court counter-affidavit dated 28.12.2018, explaining its stand in relation to the allegations on the basis of which bail granted to the petitioner was cancelled by the Sessions Court by order dated 22.12.2018. The counter affidavit is taken on record.

2. I have heard counsel for both parties at length.

3. The principal contentions advanced on behalf of the petitioner are as follows:

(i) that after his arrest on 01.08.2018, the petitioner was admitted to bail. The first application seeking cancellation of bail was moved by the respondent on 02.08.2018, which application was rejected on 14.08.2018;

(ii) that thereafter, a second application seeking cancellation of bail was moved, which the Sessions Court has allowed vide its order dated 22.12.2018. According to the petitioner however, the ground taken for cancellation of bail in the first application and the second application are discordant; the offence alleged against the petitioner is of tax evasion. The petitioner also says that under Section 132(4) and (5) of the Central Goods and Services Tax Act 2017 mere evasion of tax is a non-cognizable and bailable offence;

(iii) that the sole ground for cancellation of the petitioner's bail is the impression given to the Sessions Court that the quantum of tax evasion involved is not Rs. 4.58 crores but Rs. 85 crores, which is false and baseless. In support of this the petitioner has drawn the attention of the Court to the first bail cancellation application filed by the respondent where in para 5 the numbers '8' and '5' have been inserted in handwriting, which according to the petitioner is an attempt by the respondent to mislead the Court by alleging that the quantum of tax evasion involved is Rs. 85 crores.

(iv) that there is no material to sustain the allegation that the petitioner has been intimidating witnesses;

and for the foregoing reasons, the cancellation of the petitioner's bail is wholly unjustified and illegal.

4. On the other hand, counsel for the respondent says that statements have been recorded *inter alia* of one Sh. Deepak Taneja and Sh. Ravinder

Tyagi, both of whom have stated, giving specifics, that the petitioner has threatened them since they were made dummy directors by the petitioner in certain companies which were used to generate fake tax invoices in order to fraudulently pass on input tax credit, without actually supplying material. In response, learned counsel for the petitioner submits that the names of the firms/companies mentioned by the said Deepak Taneja nowhere appear in the list of companies/firms through which the petitioner is alleged to have indulged in tax evasion/ wrongful availment or passing of input tax credit. Such statements, which are part of the record of the investigation which is still underway, have also been shown to the Court.

5. Upon a closer look at the figures inserted in para 5 referred to above, it appears to the Court that the figure so inserted in handwriting is not '85' but '8.5'. Whether the amount mentioned is Rs. 85 crores or Rs. 8.5 crores is, however, irrelevant since under Section 132(1)(i) in a case where the amount of tax evaded or input tax credit wrongly availed or utilized exceeds Rs.5 crores, the offence is punishable with imprisonment for a term which may extend to 5 years and with fine.

6. In any case, it is evident that the order cancelling the petitioner's bail does not proceed on the basis of the quantum of tax evasion involved but on the basis that the petitioner has attempted to intimidate witnesses whom he had made dummy directors/proprietors in certain companies/firms.

7. In view of the above, this Court is of the opinion that there is no infirmity in order dated 22.12.2018 made by the Sessions Court cancelling the petitioner's bail; and that, the petitioner having misused and abused the liberty granted to him, is not entitled to the benefit of bail, at this stage.

8. Both applications are accordingly dismissed, however with no order

as to costs.

9. It is clarified that nothing in this order be construed as an expression on the merits of the case, including the right of the applicant to apply for bail subsequently.

**ANUP JAIRAM BHAMBHANI
(VACATION JUDGE)**

DECEMBER 28, 2018/*Pallavi*