IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2020

Pronounced on : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.M.P.No.7368 of 2020

in

CRL.O.P.No.27655 of 2019

1.Noor Mohammed

2.Haji Mohammed Basil Ali ... Petitioners

Vs.

Superintendent of GST and Central Excise,
Headquarters Preventive Unit,
O/s. Prl. Commissioner of GST and Central Excise,
Nungambakkam,
Chennai - 600 034. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to modify the condition (b) made in Crl.O.P.No.27655 of 2019 dated 31.10.2019 in F.No.IV/16/70/2019 (HPU, GrpX) on the file of Superintendent of GST & CE office of the Principal Commissioner of GST & Central Excise, Chennai North Commissionerate, Chennai.

For Petitioners : Mr.A.Ganesh

For Respondent : Mr.M.Venkateswaran (Special Public Prosecutor)

O R D E R

This Criminal Miscellaneous Petition has been filed by the accused in F.No.IV/16/70/2019 (HPU, GrpX) on the file of the Principal Commissioner of GST and Central Excise, Chennai North Commissionerate, Chennai, seeking to modify the condition (b) made in Crl.O.P.No.27655 of 2019 dated 31.10.2019 of this court.

2.Crl.O.P.No.27655 of 2019 had also been filed by the present petitioners seeking anticipatory bail under Section 438 of the Criminal Code of Procedure, 1973. In the said petition, the petitioners herein filed two affidavits, one dated 25.10.2019 and an other dated 30.10.2019, both of which had also been attested by two separate advocates who had also given their enrollment numbers.

3.In the affidavit dated 25.10.2019, the petitioners herein had stated in paragraph 3 is as follows:-

“3.We stated that we have filed an anticipatory bail application before this Hon'ble Court, the Respondent herein had filed counter, in his counter in paragraph No.25, he had stated that the petitioners are liable for payment of more than Rs.20 Crores of GST, to show our bonafide we as the petitioners were ready to deposit 50 % of allegation GST amount.”

4.In the affidavit dated 30.10.2019, they had further explained the undertaking extracted above that they would deposit 50% of the due amount by stating as follows:

“4.We state that further the Respondent Investigation Officer had filed an affidavit before this Hon'ble Court on 25.10.2019 in which he has stated in paragraph No.5, as a Table Column the amount of Rs.21,76,15,930/-. Now both the petitioners to show the bonafide were ready to deposit 50% of the amount mentioned by the investigation officer on or before 05.12.2019 by way of Demand Draft or through GST Portal as preferred by the Respondent.”

5.In the affidavit filed by the respondent, it had been stated that the Investigation was at very crucial stage and several documents and also details have to be collected and various persons including the petitioners herein have to be examined to unearth the fraudulent activities of issuing fake invoices which caused heavy loss to the exchequer. The Investigating Officer had finally stated as follows:

“In view of these facts, it is humbly prayed that the anticipatory bail petition filed by the petitioners may please be dismissed. It is further prayed that the Hon'ble Court may be pleased to direct the accused to appear before the department for deposing their statements and co-operate with the investigation in order to help the department to unearth the fraudulent activities of receipt/issuance of fake invoices without receipt/supply of goods which is causing heavy loss to the exchequer. The Hon'ble Court may also be pleased to direct the accused to pay the GST amount on account of availment of ineligible Input Tax Credit on fake invoice without receipt of goods vide GST-DRC-03 available online on GST portal (which is the prescribed form for voluntary payment of GST under GST law) in the name of the above five firms to the extent of amount mentioned against each firm and thereby render justice.” (Underlining as given in the affidavit)

6.After taking into account, the affidavits and the undertakings of the petitioners and also the counter affidavit of the Investigating Officer, this Court had passed orders on 31.10.2019, directing the petitioners to pay one half of the 50% of Rs.21.76 Crores on or before 15.11.2019 and further directing the balance one half to be paid on or before 05.12.2019 and also granted anticipatory bail to the petitioners herein.

7.The petitioners thereafter, filed Crl.M.P.No.18250 of 2019, seeking extension of time for depositing of one half of the 50% of Rs.21.76 Crores and after that they may be permitted to deposit the balance one half of the 50% of Rs.21.76 Crores. This petition kept coming up for hearing on successive hearing dates. Finally on 07.01.2020, the following order was passed:

"2. While this Court granted anticipatory bail to the petitioners, one of the factor that an undertaking was given by the petitioners that they would deposit 50% of the total amount of Rs.21.76 Crores. The petitioners submit that they have cheques worth about Rs.5 Crores and because of their accounts are frozen by the investigating agency, they are not in a position to operate it. Further made a statement that they had filed a separate writ petition to enable them to operate the accounts and the matter is pending.

3. Today, the learned Government Advocate on instruction submitted that the effect of frozen of the account only implies that the money available in the account cannot be withdrawn. But there is no bar to deposit the amount. He has also provided the list of accounts frozen and the learned counsel for the petitioner submitted the following accounts in which the cheques may be deposited and the details of the said accounts are below.

Sl.No	Name of the firm/person holding the bank account	Bank Account no	Name of the Bank
1	M/s. Afra Traders (GSTIN 33ACHPH6288C2ZP)	200000668293	EQUITAS SMALL FINANCE BANK
2	M/s. Afra Traders (GSTIN 33ACHPH6288C2ZP)	10040691868	IDFC FIRST BANK
3	M/s. Ayaan Traders (GSTIN 33ACHPH6288C3ZO)	10041055980	IDFC FIRST BANK
4	M/s. Hajee Traders (GSTIN 33ACHPH6288C1ZQ)	10040467428	IDFC FIRST BANK
5	M/s. A A Traders (GSTIN 33AFEPN6109E1ZT)	52740201000188	UNION BANK OF INDIA

5. This Court now directs the petitioners to deposit the entire cheques which they claim to possess, in any one of the five accounts mentioned above after providing the details there off to the investigating officer. The afore said banks are now directed to receive all the cheques and proceed to have them cleared and retain the cash in the accounts, if the same are honored.

6. So far as withdrawal of the amount is concerned, the accounts will continue to stand frozen. The petitioners are also directed to file a statement the details of the deposit made on or before 22.01.2020."

8.Thereafter, the said condition imposed by the Court was not satisfied and the cheques were not deposited. It was informed on subsequent hearing dates, the cheques have lapsed and have to be validated. Thereafter, a further petition in Crl.M.P.No.1289 of 2020 in Crl.O.P.No.27655 of 2019 was filed to modify the conditional order as stated aforesaid. The said petition also came up on successive hearing dates and finally, it was dismissed and the learned Single Judge had stated as follows:

"Given the fact that the order granting anticipatory bail in Crl.O.P.No.27655 of 2019 was passed as early as 31.10.2019, and given the attitude of the petitioners only to seek extension every time, after the expiry of the time stipulated, this Court finds no bonafide in the conduct of the petitioners. Therefore, the present petition seeking extension of time is dismissed."

9.The bonafide of the petitioners had come under specific scrutiny of the Court and it had been found that they lacked bonafide. Thereafter, the petitioners filed Crl.M.P.No.3772 of 2020, seeking to modify the order in Crl.M.P.No.18250 of 2019 in Crl.O.P.No.27655 of 2019. However, a memo was filed by the petitioners stating that they had not instructed the counsel to file said petition and that the said petition was filed without their knowledge. They therefore, sought permission to withdraw the Criminal Miscellaneous Petition and sought a direction to number the present petition now under consideration. By order dated 23.11.2020, the Crl.M.P.No.3372 of 2020 in Crl.O.P.No.27655 of 2019 was dismissed as withdrawn.

10.Heard Mr.A.Ganesh, learned counsel for the petitioners and Mr.M.Venkateswaran, learned Special Public Prosecutor, appearing for the respondent.

11.Along with the said petition, two typed sets of papers have been filed enclosing the GST Registration Certificates of A.A.Traders and M.A.Traders and also of Afra Traders, Hajee Traders and Ayaan Traders and also certificates of Chartered Accountant and also the GST returns for the years 2018 - 2019. The copy of the Settlement Deed dated 26.08.2016 had also been filed. As an additional typed set Valuation of Certificate and copy of another Settlement Deed dated 02.12.2020 had also been filed.

12.The learned counsel for the petitioners stated that the petitioners are prepared to offer the said two properties as security and stated that this would adequately protect the interest of the Prosecution. The learned counsel stated that the petitioners would abide by any condition of the Court and that they are the law abiding citizens and had not committed any violation. The learned counsel therefore stated that the condition imposed while granting anticipatory bail in Crl.O.P.No.27655 of 2019 may be modified accordingly and the petitioners may be permitted to offer immovable properties as security.

13.Mr.M.Venkateswaran, learned Special Public Prosecutor, on the other hand relied on the counter affidavit already filed when the anticipatory bail petition came up for consideration. He stated that the petitioners have never appeared before the Investigating Officer and that they had also not complied with the conditions stipulated and that they have also not paid the GST amount, though, the GST portal for voluntary payment of GST had been indicated in the counter affidavit. The learned Special Public Prosecutor expressed languish on the attitude of the petitioners.

14.I have carefully considered the arguments advanced and the materials on record.

15.When the anticipatory bail petition came up for consideration on 31.10.2019, the Court had been provided with two affidavits filed by the petitioners. One was dated 25.10.2019 and other was dated 30.10.2019. The relevant portions of the undertaking in the said affidavits have been extracted above. Both the affidavits were attested by two separate advocates, who had also given their enrollment number. This indicates that the affidavits had been properly executed by the deponents and that they had signed with the knowledge of the contents of the affidavits.

16.Thereafter, the petitioners had also given the details of their bank accounts were they alleged cheques which they have received for Rs.5 Crores would be deposited. They have not done so.

17.In the present petition, the 2nd Petitioner who had filed the affidavit has raised an allegation against the previous counsel, which is condemnable. When the petitioners, disown their affidavit, which had been properly presented before the Court, on an earlier occasion, when orders were sought for grant of anticipatory bail, and later disown such affidavits, it is no wonder that they have filed the present petition raising allegations against their counsel.

18.In Arivandandam Vs. T.V.Satyapal and Anr., reported in 1977 4 SCC 467, the Hon'ble Supreme Court had an occasion to comment the role of counsels albeit in an entirely different context. It would be worth while to extract the same as it is obvious that the affidavit of the 2nd petitioner has been drafted by the counsel.

"7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to colloborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the cooperation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. ......”

19.I am deeply depressed by the fact that the present petition has been pressed by the learned counsel for the petitioners. The petitioners have offered sureties two properties when they should have paid 50% of the amount demanded within a particular date and the balance 50% within further date, which were both undertaken by them when the conditions were stipulated and anticipatory bail granted. The reasons advanced putting the entire blame on the counsel cannot be accepted by the Court.

20. It is seen that the petitioners have not appeared before the Investigating Officer. They have no inclination to participate in the investigation. It is seen that the petitioners have not paid any amount on the demands raised. It is seen that the petitioners have not complied with the directions of the Court, I hold that the present petition offering immovable properties is only to 'dupe' the Court. As a matter of fact, in an earlier order my learned Brother had also used the very same word 'dupe' as against the petitioners and I have no hesitation in repeating the same against the petitioners. The petition lacks bonafide. In fact it is malafide in nature.

21.The Criminal Miscellaneous Petition is dismissed.

-sd/-
14/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, EGMORE-2, CHENNAI

2 THE CHIEF METROPOLITAN MAGISTRATE, EGMORE, CHENNAI(FOR INFORMATION)

3 THE SPECIAL PUBLIC PROSECUTOR FOR GST CASES, HIGH COURT, MADRAS.

4 SUPERINTENDENT OF GST AND
CENTRAL EXCISE, HEADQUARTERS PREVENTIVE UNIT,
O/O. PRL COMMISSIONER OF GST AND CENTRAL EXCISE,
NUNGAMBAKKAM, CHENNAI - 600 034.

C.C. to M/S. A.GANESH Advocate on payment of necessary charges

Order

in
CRL MP.7368/2020

in
CRL OP.27655/2019

Date :14/12/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RVR 17/12/2020