[3228]

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE DR. JUSTICE G.RADHA RANI

IA No. 2 OF 2023
IN
CRLP NO: 4819 OF 2020

Between:

Murali Barathwaj S/o V. Balasubramanian

...Petitioner/Accused
(Petitioner in CRLP 4819 OF 2020
on the file of High Court)

AND

Directorate General of GST Intelligence, Hyderabad Zonal Unit, Rep. by its Public Prosecutor, High Court for the State of Telangana at Hyderabad

...Respondent/Complainant
(Respondent in-do-)

Petition under Section 439(1)(A) R/w 482 Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to relax the condition imposed in IA. No. 1 of 2023 in CRL.P. No. 4819 of 2020 dt. 28.06.2023 deleting the following clause, "The condition No. (iii) relating to Passport is relaxed and the Court below is directed to release the Passport of the petitioner subject to the condition that the petition shall give further bank guarantee of Rs. 9 crores to the Respondent", Pending disposal of CRLP No. 4819 of 2020, on the file of the High Court.

CRL.P NO: 4819 OF 2020:

Petition under Section 437 & 439 of Cr.P.C. praying that in the circumstances stated in the Criminal Petition, the High Court may be pleased to release the petitioner on bail pending investigation and trial in F.No. DGGI/INTL/380/2020-GR K registered by Directorate General of GST Intelligence, Hyderabad Zonal Unit, in the interest of justice.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court dated 20.10.2020 made in Crl.P., and upon hearing the arguments of Sri K. RAVI MAHENDER, Advocate for the Petitioner and Sri DOMINIC FERNANDES (senior standing counsel for CBIC) for the Respondent, the Court made the following

ORDER

This application is filed by the petitioner-sole accused to relax the condition imposed by this Court on 28.06.2023 in I.A.No.1 of 2023 in Crl.P.No.4819 of 2023 by deleting the clause in condition No.(iii) relating to passport that the court below is directed to release the passport of the petitioner subject to the condition that the petitioner shall give further bank guarantee of Rs.9,00,00,000/- to the respondent.

Heard the learned counsel for the petitioner and the learned Standing Counsel for CBIC.

Learned counsel for the petitioner submitted that the petitioner was alleged to have committed offence punishable under Section 132(1)(i) of Central Goods and Services Act, 2017 (CGST Act, 2017). He was arrested on 23.09.2020. It was alleged in the remand report that M/s. Smartgen Infra Pvt. Ltd. (SGIPL) for which the petitioner was Director was issuing fake GST invoices to various companies without any physical movement of the goods/rendering of services and wrongly availing Input Tax Credit (ITC) on the basis of fake invoices without any receipt/supply of goods/services. The petitioner filed Crl.P.No.4819 of 2020 seeking for bail. This Court *vide* orders dated 20.10.2020 granted bail imposing conditions.

He further submitted that SGIPL, on being forced by the search team, made a payment of Rs.1,00,00,000/- to the credit of its GST account towards its alleged tax dues. Thereafter, a provisional attachment of bank account under Section 83 of CGST Act, 2017 was initiated by the respondent as a result of which the bank accounts of SGIPL were attached and made non-operational. SGIPL then approached this Court and filed W.P.No.16871 of 2020 challenging the Provisional Attachment Order. The Division Bench of this Court by orders dated 09.10.2020 granted interim relief suspending the Provisional Attachment Order. At that time, the Division Bench observed that total claim of the department would be safeguarded if the petitioner, SGIPL was directed to not utilize the amount available in the credit ledger and furnish bank guarantee for the balance amount of

Rs.8,64,70,780/-. SGIPL, in compliance with the orders of this Court in W.P.No.16871 of 2020 submitted the bank guarantee bearing No.0505520BG0002416 dated 14.10.2020 drawn in favour of DGGI, HZU and the same was furnished to the Additional Assistant Director. Thus, the entire perceived claim of the department was safeguarded as early as in October, 2020. Thereafter, taking into consideration of the same, the petitioner was granted bail by this Court vide orders dated 20.10.2020 by imposing the following conditions:

> "7. Accordingly, the present Criminal Petition is allowed granting bail to the Petitioner with the following conditions
>
> i.) The petitioner - Accused shall furnish a personal bond for an amount of Rs. 50,000/- [Rupees Fifty Thousand Only] with two (02) sureties for like sum each to the satisfaction of the Special Judge for Economic Offences, Hyderabad;
>
> ii.) He shall report before the Investigation Officer every day between 10:00 AM and 5:00 PM till completion of investigation and filing final report;
>
> iii.) The petitioner shall deposit his passport with the concerned Court;
>
> iv.) The petitioner shall not leave the country without permission of the Court below; and
>
> v.) He shall co-operate with the Investigating Officer by furnishing the information and by producing all the documents. The petitioner or his subordinates shall not threaten the witnesses and shall not interfere with the investigation directly or indirectly;
>
> vi.) The respondent authorities are at liberty to file an application for cancellation of bail in the event of violation of any of the above said conditions by the petitioner. "

The petitioner diligently attended the office of DGGI daily for more than 2 ½ years. The DGGI after completing its investigation issued show cause notice dated 29.12.2022 against SGIPL wherein they dropped the demand of alleged tax evasion amounting to Rs.14,92,00,000/-. They stated that only an amount of Rs.11,52,000/- was irregular ITC availed and utilized by SGIPL. The Audit Commissionerate of GST Department also initiated proceedings for the same period wherein the audit did not find any evidence of non-receipt of inputs or non-supply of output supplies but interpreted wrong application of tax rate by SGIPL and demanded extra tax on such supplies made by SGIPL. The audit proceedings culminated in issuance of show cause notice dated 14.02.2023 proposing for levy of higher tax rate.

He further submitted that the petitioner filed an application before this Court seeking relaxation of bail conditions since the departmental investigation was concluded. This Court *vide* orders dated 28.06.2023 relaxed condition of daily appearance. For relaxing the condition regarding the passport of the petitioner, this Court directed the petitioner to give a Bank Guarantee of Rs.9,00,00,000/- to the respondent. The respondent had security of over Rs.14,00,00,000/- for the past more than 2 ½ years. As such, prayed to dispense with the condition of depositing additional bank guarantee of Rs.9,00,00,000/- as no GST dues were established during the course of investigation. He further submitted that the petitioner was unable to travel abroad as his passport was deposited with the trial court and prayed to relax the condition of furnishing additional bank guarantee of Rs.9,00,00,000/- over and above the existing security of more than Rs.14,00,00,000/-.

Learned Standing Counsel for CBIC reported no objection for relaxation of above condition of deposit of Rs.9,00,00,000/- and sought to give a direction to the petitioner to submit his itinerary in advance whenever he travels aboard.

Considering the submissions of both the learned counsel, as imposing the condition of directing the petitioner to give a bank guarantee of Rs.9,00,00,000/- to the respondent for relaxing the condition of releasing his passport is onerous, as show cause notice issued after investigation would only show an amount of Rs.11,52,000/- as irregular ITC availed and utilised by SGIPL and the petitioner had already made payment of Rs.1,00,00,000/- to the credit of his GST account towards alleged tax dues, it is considered fit to relax the condition No.(iii) "that the petitioner shall give further bank guarantee of Rs.9,00,00,000/- to the respondent for the release of his passport" and the trial court is directed to release the passport of the petitioner. The petitioner is directed to give his travel itinerary to the respondent 3 days in advance whenever he intends to travel abroad with all the details of his departure, arrival and the duration of the trip.

In the result, the application is allowed relaxing the condition with the above direction.

SD/- N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The Special Judge for Economic Offences at Hyderabad.
2. The Directorate General of GST Intelligence, Hyderabad Zonal Unit.
3. One CC to Sri K. Ravi Mahender, Advocate [OPUC]
4. One CC to Sri Dominic Fernandes, Senior Standing Counsel for CBIC [OPUC]
5. One spare copy

HIGH COURT

DR.GRR,J

DATED:15/02/2023

ORDER

IA NO.2 OF 2023
IN
CRLP.No.4819 of 2020

DIRECTION