

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-27425-2020(O&M)

Date of decision: 28.10.2020

Ganga Ram

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. H.S. Brar, Advocate for the petitioner.

Mr. H. S. Sitta, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

The petitioner has filed this petition under Section 439 of Cr.P.C. for grant of regular bail in criminal complaint No. A.C. No. 22 of 2020 dated 18.08.2020, registered under Sections 132(1)(b)(c) of the Punjab Goods and Service Tax Act, pending before the learned Judicial Magistrate 1st Class, Amloh.

Learned counsel for the petitioner states that the petitioner is a businessman and has falsely been implicated in the present case along with 5 other persons. He further states that the matter is of civil in nature. The liability is debatable. The maximum sentence under Section 132(1)(b)(c) of the Punjab Goods and Service Tax Act is with imprisonment which may be extended upto 5 years.

Learned counsel for the petitioner relies upon the order dated 12.06.2020 passed in CWP No. 8004 of 2020 in which the notice of motion has been issued regarding offences under Section 132 of the Punjab Goods and Service Tax Act, 2017, as the arrest under Section 69 is considered to be without jurisdiction.

He further relies upon the orders dated 23.01.2020 passed in CRM-M-2140-2020; dated 16.06.2020 passed in CRM-M-42451-2019; by Coordinate Benches of this Court and order dated 10.01.2020 passed in CRM-M-48661-2019 passed by this Court.

Learned counsel for the petitioner further relies upon the order dated 15.11.2019 passed in CWP-24195-2019 titled as Akhil Krishan Maggu and another Vs. Deputy Director, Directorate General of GST Intelligence and others.

Learned counsel for the petitioner files the copy of communication dated 21.05.2020 issued by the department to the petitioner, indicating tax liability and penalty 'zero' towards him.

Copy of custody certificate by way of affidavit dated 27.10.2020 of the Officiating Deputy Superintendent, New District Jail, Nabha, submitted by the learned State counsel through email, is taken on record. He submits that the custody period of the petitioner is only of 4 months and 14 days and as per the complaint, the liability of the petitioner stood at Rs. 8.2 crore and figure may cross.

I have heard the learned counsel for the parties.

The criminal trial for the offences under Section 132 of the PGST Act, 2017 as also the arrest under Section 69 are without jurisdiction, having no backing of the constitutional provisions.

The petitioner has been in custody for a period of 4 months and 14 day. The trial will take time to conclude, especially due to prevailing situation of Covid-19.

In view of the above, moot question of law regarding the stage of initiation of prosecution under the Finance Act is involved; complaint is triable by a Magistrate; the petitioner is not required for further custodial investigation. Thus, the petition is allowed and the petitioner is ordered to be released on regular bail to the satisfaction of the learned trial Court/Duty Magistrate, subject to him furnishing bail/surety bonds.

The petitioner will surrender his passport before the concerned Court and will not leave India without prior permission of the Court.

(HARNARESH SINGH GILL)
JUDGE

28.10.2020

Mangal Singh

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No