12.04.2021

CRM 3100 of 2021

Pawan Kumar Bansal
-Versus-
Union of India

For the petitioner: Mr. Milon Mukherjee, Sr. Adv.,
Mr. Sandipan Ganguly, Sr. Adv.,
Mr. J.P Khaitan, Sr. Adv.,
Mr. Sabyasachi Banerjee, Adv.,
Mr. P. Jhunjhunwala, Adv.,
Mr. A. Choudhury, Adv.,
Ms. Puja Tripathi, Adv.,
Ms. M. Palana, Adv.

For the opposite party:
Mr. K. K. Maiti, Adv.

This is an application under section 439 of the Code of Criminal Procedure filed by the petitioner praying for bail.

The petitioner is one of the directors under the name and style of M/s M.L.U Metaliks Pvt. Ltd. He is also the proprietor of M/s M.L Udyog. Both the said company and the proprietorship concern are engaged in dealing with supply of Pig Iron.

Allegation against the petitioner is that he supplied goods and services or both without issue of any invoice, in violation of the provisions of CGST Act, 2017 or the rules made thereunder, with the intention to evade tax.

Secondly, he issued all invoices and bills without supply of goods or services or both in violation of the provision of the Act or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.

Abovementioned offences are punishable under Section 132 (1) (a)(b) of the CGST Act.

It is submitted by Mr. Milon Mukherjee, learned Senior Counsel that highest punishment for an offence under the abovementioned provisions is imprisonment for a term of five years.

Therefore, the petitioner ought to have been served a notice under Section 41A of the Code of Criminal Procedure following the decision of the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar**. In the instant case the petitioner was served with summons to witness during Covid period he could not attend. On the date when he attended the office of the prosecuting authority he was arrested. It is also submitted on behalf of the petitioner that he already paid Rs.40 lakhs towards GST.

Mr. Khaitan, learned Senior Counsel submits that section 74 of the Act speaks of determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of fact. Sub-section 5 of Section 74 states:

> "The percent chargeable with tax may before service of notice under Sub-section 1, paid amount of tax along with interest payable under Section 50 and a penalty equivalent to 15 percent, of such tax on the basis of own assessment of such tax or the tax ascertained by the proper officer and inform the proper officer in writing of such payment. Sub-section (9) provides that the proper officer shall determine the amount of tax, interest and penalty due from such person. Section 70 of the said Act deals with the power to

> summon persons to give evidence and produce document when the petitioner was served with summons to give evidence the appropriate officer had no intention to arrest the petitioner. In the present case, determination of GST payable by the accused was not made. On the other hand he was arrested under Section 132(1)(a)(b) of the Act."

Mr. Sabyasachi Banerjee, learned Advocate for the petitioner has placed a decision of the Hon'ble Supreme Court in **C. Pradeep vs. Commissioner of GST and Central Excise, Salem & Anr.** reported in **2019 SCC Online SC 1942**. In the above mentioned report the Hon'ble Supreme Court passed an order in favour of the petitioner on his depositing 10 percent of disputed liabilities.

Learned P.P In-Charge, on the other hand has raised vehement objection against the prayer for bail.

At the time of hearing this court proposes to make an assessment of the dues payable by the petitioner towards GST.

Learned P.P-in-Charge has filed a statement wherefrom it is ascertained that 9.10 crores is lying due towards GST Payment.

Relying on the decision of the Hon'ble Supreme Court in C.Pradeep (supra) and in view of the fact that final assessment has not been made under Section 74 of the said Act, the petitioner is entitled to be released on bail of Rs.5 lakhs with 5 sureties of Rs.1 lakh each with further condition that within 15 days from the date of his release on bail, the petitioner shall deposit a sum of Rs.91 lakhs with the appropriate officer.

The petitioner shall cooperate with the investigation of the case. Both the prosecution and the petitioner are directed to sit across the table and beside the amount payable by him towards GST.

Parties are directed to act upon the server copy of the order.

(Bibek Chaudhuri, J.)