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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 13.12.2021
Order delivered on 21.12.2021

MCRC No.6331 of 2021

- Rohan Tanna, aged about 27 years, S/o Vipin Tanna, R/o House No.25, Tanna House, Vallabh Nagar Colony, Ward No.50, Raipur, District Raipur (CG)

---- Applicant (In Jail)

Versus

- Union of India, through Senior Intelligence Officer, Director General of GST Intelligence, Zonal Unit, Raipur District Raipur (CG)

....Non-applicant

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MCRC No.6692 of 2021

- Abhishek Pandey, S/o Late Akhilesh Pandey, aged about 24 years, R/o Priyadarshini Nagar, Raipur, PS- New Rajendra Nagar, Raipur (CG)

---- Applicant (In Jail)

Versus

- Government of India, through Senior Intelligent Officer, Director General of GST Intelligent, Zonal Unit, Raipur (CG)

....Non-applicant

M.Cr.C. No.6331/2021

For Applicant : Mr. Harshwardhan Parganhia, Advocate
For Non-applicant : Mr. Maneesh Sharma, Advocate

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M.Cr.C. No.6692/2021

For Applicant : Mr. Dheerendra Pandey, Advocate
For Non-applicant : Mr. Maneesh Sharma, Advocate

Per Parth Prateem Sahu, J;

CAV Order

1. As above two applications for grant of regular bail arise out of same crime number, they were heard together and disposed of by this common order.

2. Applicants in above applications are in custody since 20.7.2021 in connection with Crime No.133/2020-21 registered in the office of Senior Intelligence Officer, Director General of GST Intelligence Zonal Unit, Raipur, District Raipur (CG) for commission of offence punishable under Sections 16 & 132 (1) (b) & (c) of the Central Goods and Services Tax Act, 2017

(henceforth 'the GST Act').

3. Case of prosecution, in brief, is that during search and investigation at the premises of M/s J.R. Traders, Proprietor of which is Shri Vipin Tanna, non-applicant found that said firm is being managed and controlled by applicant Rohan Tanna as authorized signatory. Similarly, another firm is created by applicant Rohan Tanna in the name of M/s Abhishek Marketing, 399, Golden Trade Centre, New Rajendra Nagar, Raipur in which applicant Rohan Tanna is partner of 80%, whereas applicant Abhishek Pandey is also active and working partner of 20%. It also revealed that both applicants through fake input tax credit invoices, without actual supply of goods, facilitated recipients with fraudulent and irregular input tax credit affecting collection of Goods and Services Tax (for short 'GST'). During search it also revealed that other firms, which are recipients of benefits based on fraudulent and irregular input tax credits, are M/s Mishra Trading Company, M/s Sun Imperia, M/s Bhupen Traders, M/s Shree Ji Traders, M/s Ishant Trading, M/s Aarsh Global. Names and identities of Proprietors of aforementioned firms and their credentials have been used and further controlled said firms by getting them registered with GST Department. Fake input tax credit availed by M/s Abhishek Marketing is Rs.6,43,32,735/-; M/s Shree Ji Traders is Rs.39,25,160/-; M/s Ishant Traders is Rs.77,96,885/-, totalling to Rs.7,60,54,780/-. After satisfying with material collected, both applicants were arrested on 20.7.2021. Bail applications filed by applicants before the concerned Sessions Judge came

to be rejected vide order dated 30.7.2021 and 5.8.2021 respectively.

4. Mr. Harshwardhan Parganiha, learned counsel for applicant Rohan Tanna in M.Cr.C. No.6331/2021 would submit that proceedings initiated by non-applicant Department are not in accordance with law because without making assessment of amount of any fraudulent transaction of input tax credit, non-applicant entered into premises and office of M/s JR Traders, Raipur, Proprietor of which is father of applicant. It is also pointed out that as per case of non-applicant itself, applicant is not the Proprietor of M/s JR Traders, he has nothing to do with business of his father. Applicant is engaged in doing professional course, he is also doing part time accountancy work from which he is having some source of earning and it is that amount which is deposited in bank account of applicant. There is no transfer/deposit of any amount in his bank account through any alleged commercial dealing. Applicant is falsely implicated in aforementioned case. Allegation of creating false input tax credit invoices is absolutely false and baseless. Applicant produced necessary bills to substantiate purchases made on behalf of firm. There is no material/evidence collected by non-applicant in support of allegation that no goods is purchased by applicant against invoices issued. During course of search, at the business premises all necessary and relevant documents/ data regarding business and trade of firm were supplied to the GST authorities but same were arbitrarily not considered. Applicant has not committed any offence as

alleged. There is delay in proceeding of case. It is also pointed out that offence alleged against applicant under Section 132 (1) (b) (c) of the GST Act is compoundable under Section 138 of the GST Act. Applicant is in jail since 20.7.2021, charge sheet has already been filed after due investigation, no further custodial interrogation of applicant is required, hence applicant may be enlarged on regular bail. In support of his contention, learned counsel relied upon decision of Hon'ble Supreme Court in Make My Trip (India) Pvt. Ltd. vs. Union of India 2016 SCC Online Del 4951; UOI vs. Make My Trip (India) Pvt. Ltd. reported in (2019) 11 SCC 765; order dated 15.11.2019 passed by High Court of Punjab & Haryana in CWP No.24195/2019 (O&M) and order dated 17-9-2020 & 3.11.2020 passed by Co-ordinate Benches of this Court in M.Cr.C. No.1578/2020 and 7060/2020 respectively.

5. Mr. Dheerendra Pandey, learned counsel for applicant Abhishek Pandey in M.Cr.C. No.6692/2021 would submit that applicant in no manner connected with business dealings of M/s Abhishek Marketing. Applicant is only a friend of co-accused Rohan Tanna. It is co-accused Rohan Tanna who incorporated M/s Abhishek Marketing and is having 80% share of M/s Abhishek Marketing. Entire business dealings and management of affairs of M/s Abhishek Marketing was managed by co-accused Rohan Tanna. Though on papers it is shown that applicant is having 20% share in business of M/s Abhishek Marketing but entire investment is made by co-accused Rohan Tanna. It is also argued that even if it is

presumed that offence under Section 132 (1) (b) of the GST Act is allegedly committed, then also maximum punishment imposable is of three years with fine because amount of input tax credit stated to have been availed is less than Rupees Five Hundred Lakhs. Applicant is in jail since 20.7.2021, hence he may be enlarged on regular bail.

6. On the other hand, Mr. Maneesh Sharma, learned counsel for non-applicant Department opposes the submissions of learned counsel for respective applicants and submits that based on intelligence report, search was conducted at the premises of M/s JR Traders. During search, non-applicant collected materials indicating involvement of applicants in issuance of invoices/bills without supply of goods or services in violation of provisions of the GST Act leading to wrongful availment or utilization of input tax credit. Based on material collected during course of search i.e. documents, hard & soft copies and other details, summons under Section 70 of the GST Act was issued to persons and witnesses for recording of their evidence and collecting other relevant documents. Statement of persons were recorded including bank employees and others. Statements of applicants, officials and other persons were recorded including statement of Shri Vipin Tanna (father of applicant Rohan Tanna), Proprietor of M/s JR Traders. In statement of Shri Vipin Tanna it has come that it is Rohan Tanna who is managing affairs of entire business of M/s JR Trader being authorized signatory. Details of transactions through banks were collected. Therefore, submission of

learned counsel for applicant Rohan Tanna that he is not involved in business activities of M/s JR Traders, hence, he cannot be charged for commission of offence under Section 132 of the GST Act is not correct, more so, when Shri Vipin Tanna is father of applicant Rohan Tanna. Material collected based on summons issued under Section 70 of the GST Act *prima facie* show that transactions are with co-accused Abhishek Pandey, JR Traders and accused Rohan Tanna. Applicants are not manufacturers, they have generated fake invoices and e-way bills. Looking to act of preparing fake invoices and e-way bills for availing input tax credit illegally, and giving same to several persons, as appearing from statement recorded; complaint has been filed in hurry only to meet limitation period. Investigation is in process with respect of creating other firms. Applicants have stated in their statement about wrongful availment /utilization of input tax credit through fake invoices without supply of goods. Prima facie material is collected and available showing involvement of applicants in commission of offence under Section 132 of the GST Act. Hence, considering gravity of offence and severity of punishment, offence committed is entirely different than that of punishment under any other law. Applicants have not deposited any amount towards their liability, hence submission of learned counsel for applicants that offences are compoundable could not be considered. Applicants are not entitled to be enlarged on regular bail.

Learned counsel places his reliance on decision of

Hon'ble Supreme Court in K.I. Pavunny vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin reported in (1997) 3 SCC 721; Arvind Kumar Munka vs. UOI (2020) SCC Online Cal 531; order dated 05.02.2020 in (Crl) No.1803/2020, parties being Sandeep Goyal s. UOI SLP; order dated 27.7.2020 & 8.6.2021 passed by High Court of Orissa at Cuttack in BLAPL No.2217/2020 & 958/2021 respectively; order dated 18.4.2019 passed by High Court for the State of Telangana in WP No.4764/2019 and other connected matters.

7. I have heard learned counsel for the parties and perused documents placed on record.

8. To appreciate submission of Mr. Harshwardhan Parganiha, learned counsel for applicant in M.Cr.C. No.6331/2021 that procedure adopted by non-applicant Department is defective as without assessment of amount involved, search and seizure conducted is contrary to provisions of the GST Act. Section 67 of the GST Act provides for power of inspection, search and seizure. For search and seizure, if Proper Officer only after recording reason to believe that a taxable person has suppressed any transaction relating to supply of goods or services or both or stock of goods or claimed input tax credit in excess of his entitlement to evade tax under the GST Act; or goods of a person engaged in business of transporting or operator of a warehouse have escaped payment of tax may authorize any other officer to inspect any place of business of taxable person. Except recording reason to believe, there is

no other bar for the Proper Officer for inspection, search and seizure. It is not the case of applicant nor any argument to the effect has been advanced that no reason has been recorded. Hence, submission that prior assessment has not been made before invoking powers under Section 67 of the GST Act, does not stand and it is hereby repelled.

9. Applicants are arrested for commission of offences punishable under Sections 16 & 132 (1) (b) & (c) of the GST Act. Section 138 of the GST Act deals with compounding of offences. Offence registered against applicants under Section 132 (1) of the GST Act is made compoundable by the Commissioner on making payment to the Central Government or State Government either before or after institution of prosecution. In case at hand, case is instituted against applicants and they were arrested. Though allegation against applicants is of committing economic offence, but considering provisions of the GST Act, particularly Section 138 of the GST Act and quantum of input tax credit stated to have been wrongly availed/utilized, and period of detention of applicants i.e. from 20.7.2021, charge sheet after due investigation is filed, keeping in mind dictum of Hon'ble Supreme Court in cases of **Shri Gurbaksh Singh Sibbia & ors vs. State of Punjab** reported in **(1980) 2 SCC 565**; **Sanjay Chandra vs. CBI** reported in **(2012) 1 SCC 40**; **P. Chidambaram vs. Directorate of Enforcement** reported in **(2019) 9 SCC 24,** without commenting anything on merits of case, I am inclined to enlarge applicants on regular bail. Accordingly, both applications are allowed and it

is directed that applicants shall be released on regular bail on their furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one surety in the like sum to satisfaction of trial Court concerned on the conditions that;

a) they shall appear before the trial Court concerned regularly on each & every date unless exempted from appearance.

b) they shall not, in any manner, tamper with prosecution witnesses.

c) If applicants are found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-