

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.909 of 2021

Vishal Surana

... Petitioner

Vs.

Union of India,
rep. By Superintendent/Senior
Intelligence Officer,
Chennai North, 26/1, M.G.Road,
Chennai-34.
(R.R. No.30 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in R.R.No.30 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr. K.P.Anantha Krishna

For Respondent : Mr.M. Venkateswaran,
Special Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner was arrested and remanded to judicial custody on 10.12.2020 for the offence punishable under Section 132(1)(b)(c) of Central Goods and Services Act in R.R. No.30 of 2020 on the file of respondent, and now, he has filed this petition seeking for bail.

2. The case of the prosecution is that, M/s.Arihant retail Private Limited, wrongly availed ineligible input and output tax credit invoices without actual transactions/transmission of goods and the company availed 6.25 crore at input tax credit, they also claimed fake credit for sales in output tax credit and claimed to the tune of Rs.2.87 crores. Totally, the company caused loss to the tune of 9.13 crores. Hence, the complaint.

3. The learned Counsel appearing for petitioner would submit that the petitioner was arrested on 10.12.2020, now 60 days period was expired so far, the respondent has not filed any complaint before the concerned Court. Hence, the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C. and accordingly, he prays to grant bail to the petitioner.

4. The learned Additional Public Prosecutor would oppose the petition on the ground that even though the statutory period of 60 days is over and so far they have not filed any complaint before the court and further submit that the petitioner may be directed to approach the concerned trial court and file a necessary application for the same, and it is for the trial court to consider the said application. The learned Special Public Prosecutor would submit that apart from this petitioner, two other accused involved in this case and out of two accused, one accused was granted and released on bail. The learned Special Public Prosecutor for the respondent would further submit that the petitioner may be directed to deposit reasonable amount for grant of statutory bail.

5. I have heard and considered the rival submissions made by the learned senior counsel for the petitioner and the learned Special Public Prosecutor for the respondent.

6. Admittedly, the petitioner was arrested and remanded to judicial custody on 10.02.2021, and 60 days period was over on 08.02.2021 and so far, the respondent did not file the complaint.

7. The Hon'ble Supreme Court, in number of its pronouncements, has clearly held that the Proviso to Sub-Section (2) of Section 167 is a beneficial provision for curing the mischief of prolonging the investigation indefinitely, which ultimately affects the liberty of a citizen. Right for bail under Section 167(2) is an indefeasible right and it cannot be frustrated by the prosecution. The Court cannot extend the period within which the investigation must be completed on any reason, in the absence of any provision empowering the Court to extend the period. After expiry of the statutory period prescribed under Section 167(2) of the Code of Criminal Procedure, the accused cannot be detained in custody.

8. The Hon'ble Supreme Court, in another judgment in Rakesh Kumar Paul versus State of Assam reported in (2017)15 SCC 67, has held that if the charge sheet is not filed within the prescribed time, the right of the accused for 'default bail' has ripened into the status of indefeasible right and it cannot be frustrated. The relevant paragraph reads as follows:

"38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

9. Recently, the Hon'ble Supreme Court in CRIMINAL APPEAL No.452 OF 2020 (ARISING OUT OF SLP (CRL.) NO.2433/2020) [S.KASI VERSUS STATE THROUGH THE INSPECTOR OF POLICE, SAMAYNALLUR POLICE STATION, MADURAI DISTRICT], decided on 19.06.2020, after considering the various other judgments, has held that an accused cannot be detained by the police beyond the maximum period prescribed under Section 167 of the Code of Criminal Procedure. It is relevant to extract the relevant paragraph of the said judgment, which reads thus:

"14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty."

10. Following the above principles laid down by the Hon'ble Supreme Court, this Court is of the considered view that in the case at hand, the petitioner was arrested on 10.12.2020 and 60 days period was expired on 08.02.2021 itself and that the respondent did not file a complaint before the concerned Court, and moved the Court seeking bail and hence, the petitioner is entitled to be released on bail. Insofar the contention of the learned Special Public Prosecutor seeking the petitioner to deposit some amount for enlarging him on bail, the Hon'ble Supreme Court, has held in the case of SARAVANAN V. STATE REP. BY INSPECTOR OF POLICE (reported in (2020) 9 SCC 101, while granting the statutory bail imposing condition to deposit the amount is unsustainable. On the aforesaid circumstances, the request made by the learned Special Public Prosecutor cannot be accepted.

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional Chief Metropolitan Magistrate (EO-I), Chennai and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner, on his release from prison, shall report before the respondent police, daily at 10.30 a.m. for the period of four weeks and thereafter as and when required for interrogation;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

11. With the above directions, this Criminal Original Petition is ordered.

-sd/-
09/02/2021

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 (EO-I),
CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

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

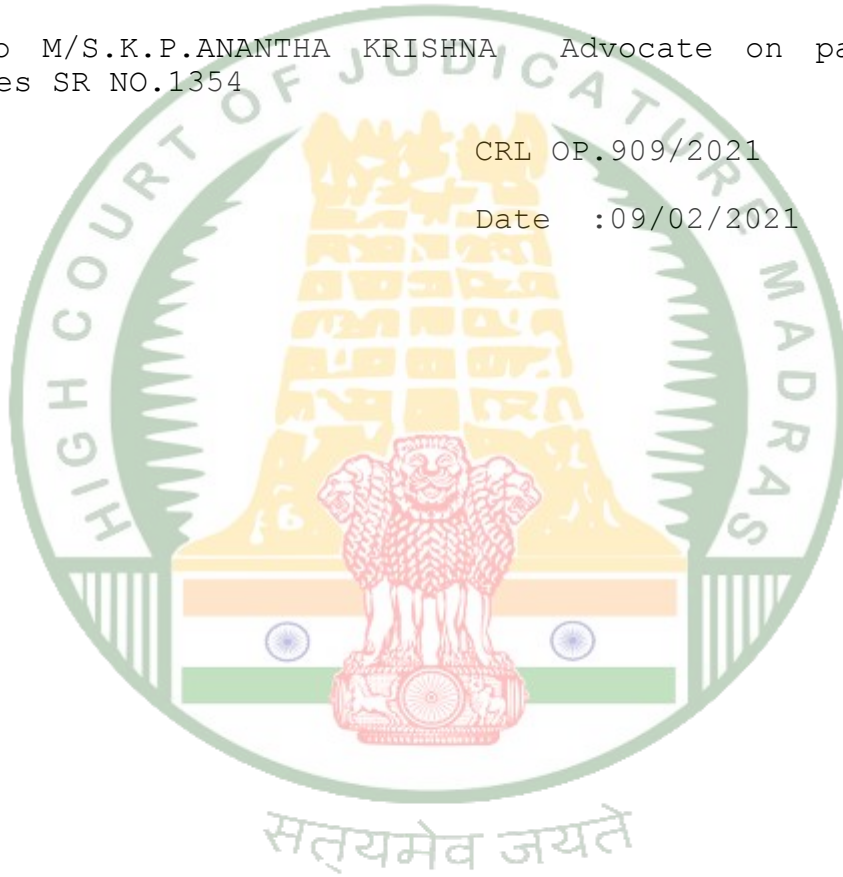
5 UNION OF INDIA REP BY
SUPERINTENDENT/SENIOR INTELLIGENCE OFFICER,
PRINCIPAL COMMISSIONER OF GST,
CHENNAI NORTH,
26/1, M.G.ROAD, CHENNAI-34

+1CC to M/S.K.P.ANANTHA KRISHNA Advocate on payment of
necessary charges SR NO.1354

CRL OP.909/2021

Date :09/02/2021

MK:10/02/2021



WEB COPY