

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.4016 OF 2021

B.Anandan

.. Petitioner

- Vs -

Government of India
rep. By Superintendent of
Central Excise, Namakkal.

.. Respondent

Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in Crime No.1 of 2021 pending investigation on the file of the respondent.

For Petitioner : Mr. N.V.Balaji for Mr. N.Jothi

For Respondent : Mr. Rajnish Pathiyil, SCGSC

ORDER

The petitioner, who was arrested and remanded to judicial custody on 4.2.2021 for the offence punishable u/s 132 (1) (d) of the Central Goods and Service Tax Act, 2017, on the file of the respondent police, seeks bail.

2. The petitioner is an Executive Director of M/s.Saraswathi Udyog India Ltd., which company is engaged in the supply of White Duplex Board. The allegation against the company is that it was making outward supplies without paying the taxes that are due to the Government. It is the case of the prosecution that investigation revealed that supplies were made by the company, which were taxable to the extent of 7.75 Crores for the period from December, 2018 to October, 2019 and the bank statement of the company also showed that the company received payment from its customers to the tune of Rs.93,01,57,694/-, inclusive of taxes, but failed to remit the tax to the Government. In spite of issue of summons, the petitioner did not respond, which resulted in the complaint being registered for an offence as stated above.

3. Learned counsel appearing for the petitioner submits that the company had been submitting periodical returns and in response to the summons, all the accounts were also produced by the company, yet without advertising properly to the same, the complaint has been registered. It is the further submission of the learned counsel for the petitioner that a sum of Rs.5 Crores had been paid by way of input tax, which was not taken into account by the respondent and that the

amount of outward tax due, shown by the respondent is hypothetical. It is the further submission of the learned counsel that the petitioner is ready and willing to appear before the respondent and produce all the accounts for verification.

4. It is the further submission of the learned counsel for the petitioner that the business of the company was taken over by the financial institutions under the SARFAESI Act in the year 2018, due to the huge losses sustained and that the company is taking steps for reviving the company and without following the mandatory procedure, the respondent has arrested the petitioner. Learned counsel appearing for the petitioner also relied upon the various provisions under the Goods and Service Tax Act and submitted that the liability of the petitioner is below the value, which necessitates prosecution and, therefore, the prosecution of the petitioner is wholly unsustainable.

5. Per contra, learned senior central government standing counsel appearing for the respondent submitted that inspite of issuance of summons thrice, the petitioner failed to appear for the enquiry and produce the records. It is further submitted that though a sum of about Rs.93 Crores has been received

which includes tax component, which is due to the Government, yet the petitioner failed to remit the tax. It is further submitted on behalf of the respondent that the enlarging the petitioner on bail may result in him evading the discharge of his tax liability. It is submitted on behalf of the respondent that this Court may direct the petitioner to give suitable security, if this Court intends to enlarge the petitioner on bail, as in the event of the petitioner failing in his claim, the respondent should not be put to loss by not able to recover the tax, due to it, as even according to the petitioner, the properties of the company is under SARFAESI proceedings.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. Vide order dated 8.3.2021, this Court, after hearing the parties to the *lis*, in order to give an opportunity to the petitioner to absolve himself of the tax liability by producing the accounts and tax payment made to the government on the payment received by the petitioner to the tune of Rs.93 Crores, granted

interim bail to the petitioner till 8.4.2021, which was thereafter extended up to 16.6.2021 and last of all, the matter was directed to be listed on 20.7.2021.

8. When the matter is taken up today, after advancing the above arguments, in response to the query made by this Court as to the amount which the petitioner is ready and willing to deposit out of the tax due to the Government, learned counsel for the petitioner, without admitting his tax liability and without prejudice to his rights and contentions, fairly submitted that towards the tax due to the government, the petitioner is willing to give immovable property as security and to that effect, submitted that he would also filed an affidavit.

9. This Court heard the learned Senior Central Government Standing Counsel, who submits that on the basis of the security given by the petitioner, the respondent has no objection in this Court granting bail to the petitioner.

10. An undertaking affidavit has been filed by the petitioner dated 22.07.2021 in which the petitioner has submitted that the security given to the

bank for the loans and LC availed to the tune of about Rs.75 Crores, security of property and machineries of the petitioner to the tune of about Rs.200 crores has been given and the petitioner has undertaken that the properties are put up for sale by the bank and after adjusting the amount that is due and payable to the bank on account of the loans and LCs availed by the petitioner, the surplus proceeds may be utilised for payment of the amount of GST calculated after taking into account the input tax credits or other refund calculation eligibility and based on the advice of the consultants, a charge be created on the subject properties in favour of the Revenue to the extent of the outstanding GST dues, which shall rank in priority after the settlement of debts due to the Bank. Learned Senior Central Government Standing Counsel appearing for the respondent has no serious objection for the same. In view of the fair stand taken by the learned counsel on either side, this Court is inclined to grant bail to the petitioner.

11. Accordingly, this criminal original petition is allowed on the following conditions :-

"i) The petitioner is ordered to be released on the basis of the bail bonds and sureties, which have been

executed by the petitioner and the sureties while being enlarged on interim bail granted vide order dated 8.3.2021;

ii) The petitioner is directed to provide adequate immovable property as security towards the tax liability, due from the petitioner, without prejudice his rights and contentions;

iii) the petitioner shall appear before the respondent and produce the accounts and details of payment of input tax, if not already appeared;

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

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

vi) the petitioner shall not tamper with the evidence or witness or records either during investigation or trial;

vii) 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)**;*

viii) if the accused thereafter absconds, a fresh FIR can be registered u/s 229-A IPC.

ix) The undertaking of the petitioner dated 22.7.2021 shall form part of the records.”

29.07.2021

Index : Yes / No

Internet : Yes / No

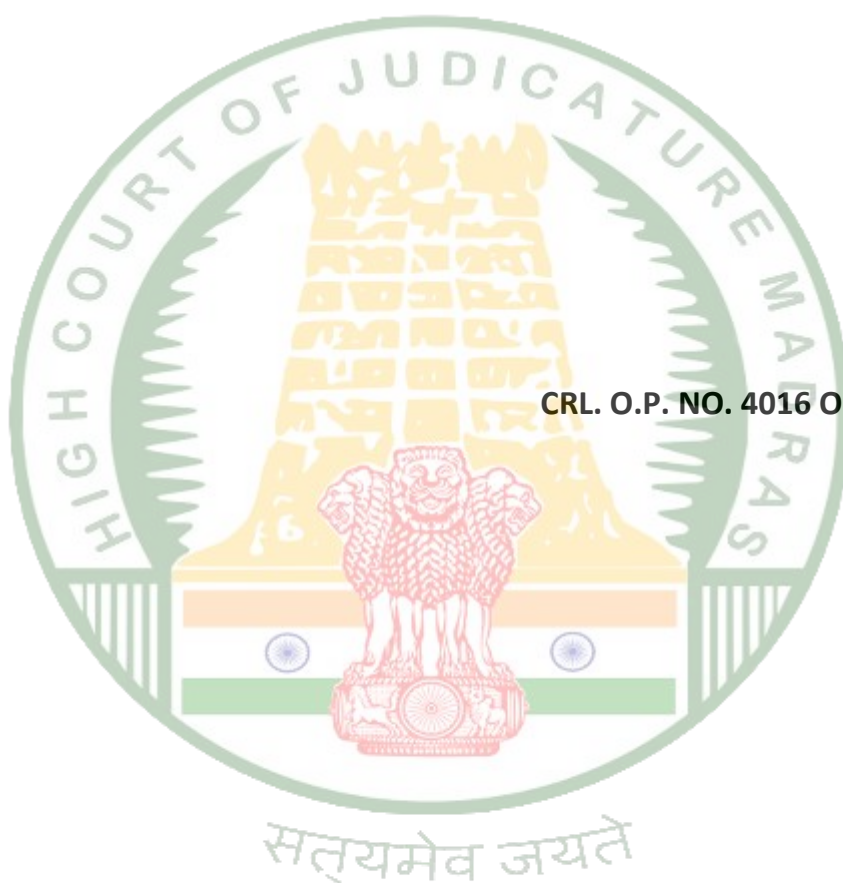
GLN

To

1. The Judicial Magistrate No.V
Salem, Salem District.
2. The Superintendent of Central Excise
Namakkal.
3. The Superintendent of Central Prison
Central Prison, Salem
Salem District.
4. The Senior Central Government
Standing Counsel, High Court
Madras.

M.DHANDAPANI, J.

GLN



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