IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Ninth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. VELMURUGAN

CRIMINAL ORIGINAL PETITION No.6129 of 2021

M.MURTAZA MUSTAN ANJARWALA [PETITIONER / ACCUSED]

VS

THE SUPERINTENDENT OF GST AND
CENTRAL EXCISE ENFORCEMENT OF COMPANIES
MANAGEMENT SECTION CHENNAI OUTER GST AND
CENTRAL EXCISE COMMISSIONERATE,
NEWRY TOWERS NO.2054-I, II-ANNEX,
ANNA NAGAR, CHENNAI - 600 040. [RESPONDENT]

For Petitioner : M/S.M.N.S.MOHAMED HABEEB RAJA Advocate

For Respondent : M/S N.P.KUMAR, SPECIAL PUBLIC PROSECUTOR FOR GST

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who were arrested on 13.02.2021 for the offences punishable under Section 132(1)(b) and (c) of the CGST Act 2017 in R.R.No.8 of 2021 on the file of the respondent seeks bail.

2. The respondent police issued summons to the petitioner on 12.02.2021 under Section 70 of the CGST Act, 2017 calling him for an enquiry scheduled to be held on the same day at 05:30 p.m and subsequently after the enquiry he was shown as A6 in R.R.No. 8 of 2021 on the file of the Principal Sessions Judge, Chennai and he was also arrested and remanded to the Judicial custody on 13.02.2021.

3. The learned counsel for the petitioner would submit that the summons was issued under Section 70 of the GST Act, 2017 and without giving an opportunity an enquiry was conducted on the same date at 5:30 p.m and he was implicated as one of the accused in the said case. As per Section 70 of the GST Act as enquiry was conducted as contemplated in the same manner in respect of the cases before Civil Court, under the provisions of code of Civil procedure and the

respondent has also no jurisdiction to arrest the petitioner, unless got the authorization they cannot prosecute the case. Further he would submit that he is only a school drop out and he does not know anything about the G.S.T and he does not involve in any offences and he was falsely arrested and detained on 13.12.2021 at 18:20 hours by the respondent by way of memorandum of arrest dated 13.02.2020 is illegal and does not have the requisite sanction or authority of law, nor in accordance with the procedure established by law and therefore violated the constitution of India.

4. Further he would submit that the respondent has not followed the procedures under Sections, 69, 70 and 132 of the G.S.T. Act, by way of arresting the petitioner through a seperate memorandum of arrest dated 13.02.2021, which is nothing but a gross abuse of power, by producing him, before the Learned Additional Chief Metropolitan Magistrate (EO-I) Court, Egmore , Chennai-600 008 is illegal and does not have the requisite sanction or authority of law and the entire case of the respondent rests solely on the confession statement alleged to have been given by the petitioner during his prolong illegal custody from 12.02.2021 at 5:30 p.m till 13.02.2021 rests in a hasty and haphazard manner in violation of the mandatory procedures under GST ACT, 2017. He would further submit that his mother is suffering from various disorders and there is no one to look after his mother and he has to take care of his mother and he is in custody for more than 40 days and therefore he is liable to be released on bail.

5. The learned additional public prosecutor would submit that the authorities has got the valid authorization to conduct the enquiry and also sent the summons under due process of law after enquiry recorded statements of the petitioner and also other witness and he has been arrayed as one of the accused/A6, even before the Trial Court the copy of the authorization letter was produced and the learned Trial Judge after considering the entire facts of the case dismissed both the petitions vide common order dated 12.03.2021 in c.M.P.Nos 3677 and 3678 of 2021.

6. The respondent police also after following due process of law as per Section 70 of the G.S.T Act, 2017 had issued summons to the petitioner and after enquiry and after getting statements from the witnesses arrested the accused. These materials reveals that the petitioner has involved in the offence and the arrest memo was issued by authorised officer and the due process of law has been duly complied with and there is no violation of mandatory procedures. In this case the petitioner in order to escape from the clutches of law he is pleading innocence. Hence he prays to dismiss this bail application.

7. I have heard the submissions and perused the records.

8. Admittedly summons were issued to the petitioner under Section 70 of the G.S.T Act, 2017 on 12.02.2021 and enquiry was conducted and after that at 18:10. hours on the same day he was arrested by issuing a arrest memo and he was remanded to Judicial custody on 13.02.2021. Now, the investigation is pending. Though the learned counsel for the petitioner vehemently contend that these Civil Procedures have not been followed and no opportunity has been given to the petitioner and on the very same day of issuing summons enquiry was conducted and the petitioner was arrested. It is with regard to time, is not the matter, the sufficient opportunity has to be given and this petitioner was given opportunity by the respondent and during enquiry he made a statement voluntarily and based on the statement there is ingredient material against the petitioner and also to the other accused. Therefore, after completing the enquiry he was arrested by issuing a memo on 13.02.2021.

9. Therefore, there is no violation of law or civil procedure code and further regarding the authorization of arrest and enquiry is concerned, the learned special public prosecutor would submit that the copy of the authorization letter is submitted and the respondent police have also followed the mandatory procedures. Therefore, the contention raised by the learned counsel for the petitioner is not accepted and the learned counsel himself admitted that the case has been registered only based on the confession statement. Therefore, when he admits that the summons were issued and enquiry was conducted there is incriminating materials to register the case and the admissibility and validity of the statement and whether the petitioner has involved in the case or not will be decided only after the investigation. The respondent should submit the final report before the Concerned Magistrate or file a complaint otherwise police report and at the bail stage it cannot be decided and the bail Court has to see whether there is any prima facie material against him or not and there is any specific overtact against the petitioner.

10. Therefore under those circumstances this Court is not inclined to grant bail to the petitioner and the same is dismissed.

-sd/-
29/03/2021

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 SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

2 THE SPECIAL PUBLIC PROSECUTOR
FOR GST, HIGH COURT, MADRAS.

3 THE SUPERINTENDENT OF GST AND
CENTRAL EXCISE ENFORCEMENT OF
COMPANIES MANAGEMENT SECTION CHENNAI
OUTER GST AND CENTRAL EXCISE COMMISSIONERATE,
NEWRY TOWERS NO.2054-I, II-ANNEX,
ANNA NAGAR, CHENNAI - 600 040.

+2 CC to M/S.M.N.S.MOHAMED HABEEB RAJA Advocate on payment of necessary charges SR.NO.4281

CRL OP.6129/2021

Date :29/03/2021

rvr 08/04/2021