

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.04.2021	30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 7672 OF 2021

Bajan Lal Bishoni @ Rohan ... Petitioner

- Vs -

The Superintendent of GST & Central Excise
Hqrs Preventive Unit
GST Chennai South Commissionerate
692, MHU Complex, Nandanam
Chennai 600 035. ... Respondent

Prayer: Criminal Original Petition filed u/s 439 Cr.P.C.
praying this Court to enlarge the petitioner on bail in
connection with the R.R.No.10 of 2021, on the file of the
Respondent Police.

For Petitioner : Mrs. Hema Sampath, SC, for
Mr. S.Raveekumar

For Respondent : Mr. M.Venkateswaran,
Spl. PP for GST Cases

ORDER

The present petition has been filed by the petitioner
praying this Court to enlarge the petitioner on bail.

2. It is the case of the respondent that the
petitioner acted as middleman by procuring GST registration
pertaining to defunct companies and passed over the same to
one Rakesh, who utilised the same for the purpose of
raising GST invoices and in turn, the said invoices were
given to the petitioner, who, thereafter, filed the
statutory returns. It is the further case of the
respondent that the petitioner was receiving commission for
selling the details of GST registration of defunct
companies and that he was also aware that raising of

invoices in the names of the defunct companies is illegal and, thereby, caused loss of GST to the tune of several Crores of rupees to the exchequer. It is the further stand of the respondent that the offence u/s 132 (5) of the CGST Act is a cognizable and non-bailable offence and the petitioner having committed the said offence, no bail can be granted to him. It is the further case of the respondent that since investigation is on, allowing the petitioner to go out on bail will very much hamper the investigation.

3. Before the Courts below, it was the case of the petitioner that he was detained illegally from 16.3.2021 and only pursuant to the complaint dated 18.3.21, the petitioner was arrested on 19.3.21. It is the further case of the petitioner that he was merely a middleman in procuring the credentials of the defunct companies and passing on the same to other persons for commission and the petitioner is in no way involved in the claiming of exemptions by utilising the said credentials and the petitioner had not filed any statutory returns and is not a beneficiary of the said tax evasion. It is the further stand of the petitioner that arrest u/s 132 (5) of the CGST Act is to be made only after assessment is made and in the case on hand, no assessment has been made by the respondent relating to tax evasion.

4. Learned senior counsel appearing for the petitioner while reiterating the stand of the petitioner in the affidavit further submits that merely because the petitioner had procured the credentials of the defunct companies and given them to other individuals would not in any way attract the offence u/s 132 (5) of the CGST Act, more so when the respondent has not established that the petitioner has been a beneficiary through the said transactions. It is the submission of the learned senior counsel for the petitioner that unless an assessment is made quantifying the loss caused to the exchequer and the culpability of the petitioner is made out by materials available on record, implicating the petitioner of the offence u/s 132 (5) of the CGST Act would not survive. Merely to deny the petitioner of his constitutional safeguards, viz., bail, the petitioner has been roped in as accused with the aid of Section 132 (5) of the CGST Act. Further, it is the submission of the learned senior counsel for the petitioner that the arrest of the petitioner itself is illegal, as he was detained for more than three days illegally before making the arrest, which is pursuant to the complaint lodged and in that backdrop as well, the act of the respondent reveals the mala fide intent to implicate the petitioner and, therefore, the petitioner ought to have been released on bail. Accordingly, she prays for grant of bail to the petitioner.

5. The said stand of the petitioner is vehemently opposed by the learned Special Public Prosecutor appearing for the respondent by submitting that the petitioner, knowingly, had indulged in the said act of providing the credentials of the defunct companies for monetary value which was utilised in getting tax remission by the said individuals without there being any supply of goods. It is the further submission of the learned Special Public Prosecutor that the petitioner had not only received illegal gains from several persons, but has also utilised his mobile number for communication for opening various bank accounts and also filed returns by engaging auditors. The entire transactions have been vouched for by the petitioner and, therefore, it is not open to the petitioner to turn around and claim that he had not filed any returns and that no assessment has been made to claim that he is ignorant of the same. Therefore, he strongly objected for grant of bail to the petitioner.

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

7. The fact that the petitioner was acting as middleman is not disputed. Equally it is not disputed that the petitioner had indulged in procuring the credentials of the defunct companies at a price and passing them over to other individuals, who are also accused in the present case, for higher amounts, being termed as commission.

8. It is the stand of the petitioner that he being only a middleman and having not filed any returns relating to the fake/fraudulent transactions and having been under incarceration for quite a long time, should be considered for grant of bail, as his prolonged incarceration is against the well accepted saying "Bail is the norm, while Jail is exception".

9. There is no second view that bail is the norm and jail is exception. But the said exception is always subject to just exceptions. In the case on hand, it is accepted by the petitioner himself that he had procured the credentials and given it to other persons for being utilised for creating fake/fraudulent transactions. From the above, it is implicitly evident that the petitioner would have been well aware that the said credentials would be used for fake/fraudulent transactions. The petitioner cannot feign ignorance on this aspect. Once the petitioner, on clear and proper thinking, has obtained the credentials of defunct firms and handed over the same to the other persons for being misused for cheating the exchequer, the

petitioner cannot absolve himself from the said offence by holding a lifeline that he is only a middleman.

10. Further, it is to be pointed out that where the magnitude of the economic offence is of enormous proportion, the Hon'ble Supreme Court has cautioned that the High Courts should be very circumspect in granting bail and if at all bail is to be granted, the same should be clothed by well considered and well founded reasons. Shorn of reasons, the bail granted would not be infallible. In the case on hand, it is the stand of the respondent that statutory returns have been filed by the petitioner involving several crores of rupees to the detriment of the exchequer.

11. It is the stand of the respondent in their counter that the petitioner has accepted his involvement with the other accused and his act of selling the credentials of the defunct firm to the other accused for monetary consideration and the petitioner has also further accepted that the copies of invoices forwarded to him by the other accused, viz., Rakesh and Praveen for the purpose of filing statutory returns. The petitioner is also aware of the fact that the companies for which invoices are forwarded to him by the other accused for filing statutory returns are only paper companies and there exists no business transaction insofar as the said entities are concerned. It is further evident from the counter of the respondent that the petitioner has stated that he used to get Whatsapp call and chats with the other accused were on Whatsapp pertaining to filing of GST returns relating to the fake/fraudulent transactions. Such being the undisputed position, the petitioner cannot come before this Court and claim that he was not aware of the acts of the other accused for the purpose of grant of bail.

12. In Sandeep Goyal - Vs - Union of India (IA No.36347/2020 - dated 17.4.2020), the Hon'ble Supreme Court has cautioned the High Courts against grant of bail, where probe is yet to be completed, more so in cases involving GST. In fact, to put it pointedly, the facts of the case are identical to the case on hand and for better appreciation, the order of the Hon'ble Supreme Court is extracted hereunder :-

"The allegation against the petitioner is that he has created about 555 fake firms and has committed fraud to the tune of Rs.74,00,00,000/- (Rupees seventy four crore only).

Mr. K.M. Natraj, learned additional solicitor general, submits that the investigation is still pending and more number of fake firms created by the petitioner are being detected.

It is not in dispute that the maximum punishment to be imposed on the petitioner, if convicted, is five years. It is also not in dispute that the petitioner has already undergone one year and eight months imprisonment. It is brought to our notice that some of the accused are released on bail."

13. In the case on hand, it is the insistent stand of the respondent that the value of fraud is to the tune of around Rs.55 Crores. It is to be pointed out that the case quoted supra, is identical in all aspects to the case before this Court, where fake firms were created for the purpose of the individuals enriching themselves at the cost of the society. Without deprecating the said act, if bail, as sought for by the petitioner is granted, it would not only send wrong signals to the other persons to come out with such ingenuous ideas, but such acts would erode the economy of the country and would push the country still backwards.

14. A perusal of record shows that there are serious allegations against the present petitioner, who is the one of the main accused, that he along with co-accused, by perpetrating fraud and through paper transactions have claimed the relief to the tune of more than Rs.55 Crores. The case is at preliminary stage and enlarging the petitioner at this point of time on bail would have a detrimental effect on the investigation. Further, it is to be pointed out that without his role as middleman, the whole crime could not have been perpetrated. The nexus of very many persons within the administrative framework could not be ruled out and a proper and full-fledged investigation is necessary to unearth the larger conspiracy involved behind the above. It is not as if the petitioner has been under incarceration for a long length of time. In such a backdrop, this Court is of the considered view that the prayer for grant of bail by the petitioner cannot be acceded to.

15. For the reasons aforesaid, this Court is not inclined to entertain this petition and grant bail to the petitioner. Accordingly, this petition is dismissed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

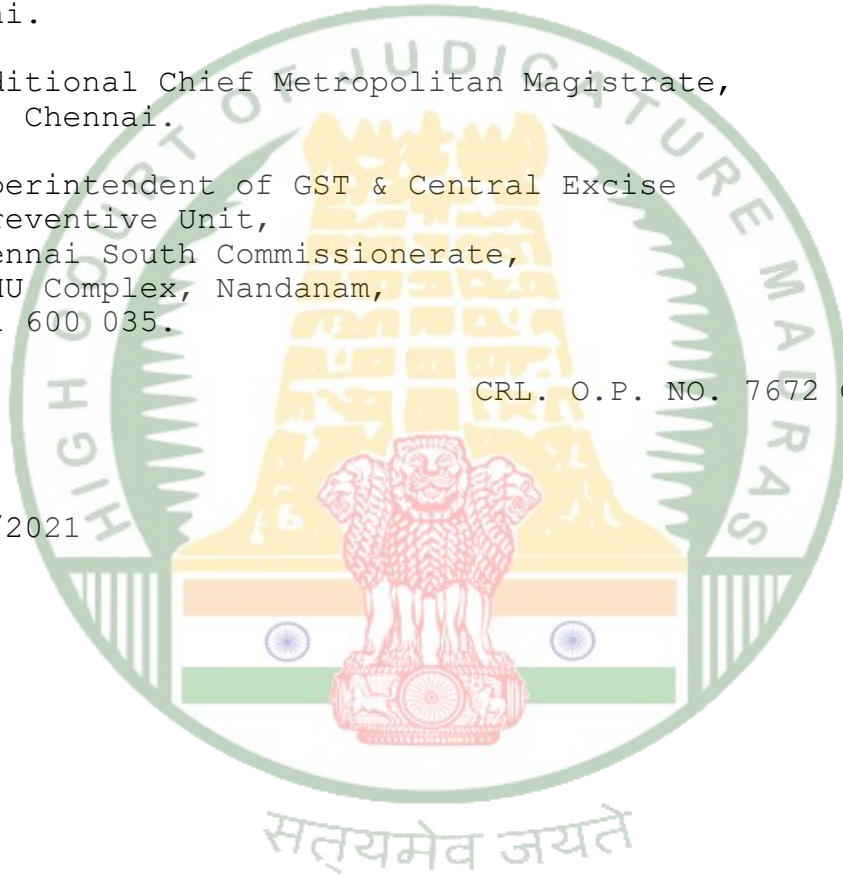
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To

1. The Principal Sessions Judge,
City Civil Court,
Chennai.
2. The Special Public Prosecutor,
GST Cases, High Court,
Chennai.
3. The Additional Chief Metropolitan Magistrate,
E.O.II, Chennai.
- 4 .The Superintendent of GST & Central Excise
Hqrs Preventive Unit,
GST Chennai South Commissionerate,
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Chennai 600 035.

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