



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.328 OF 2021

M.Sampath Kumar

... Petitioner

Vs.

The Superintendent of CGST & Central Excise,
Head Quarter Preventive Unit, Coimbatore,
Office of the Principal Commissioner of CGST
& Central Excise,
No.6/7 ATD Street,
Race Course Road,
Coimbatore - 18.

... Respondent

(Crime No.IV/06/128/2018-HPU)

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in Crl.M.P.No.9458 of 2021, dated 22.03.2021, on the file of the Chief Judicial Magistrate, Coimbatore and direct the learned Chief Judicial Magistrate to grant the Statutory Bail to the petitioner.

For Petitioner : Mr.G.Natarajan

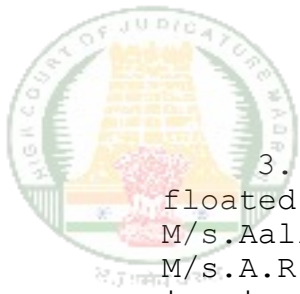
For Respondent : Mr.Rajendran Raghavan
Standing Counsel (For GST)

Mr.N.P.Kumar
Special Public Prosecutor

O R D E R

Heard the learned counsel on either side and perused the materials available on record.

2. This petition has been filed to set aside the order dated 22.03.2021 passed in Crl.M.P.No.9458 of 2021, by the learned Chief Judicial Magistrate, Coimbatore and direct the learned Chief Judicial Magistrate to grant the Statutory Bail to the petitioner.



3. The case of the prosecution is that the petitioner has floated fake company Iron-Scrap dealers which included M/s.Aaliya Enterprises, M/s.Vinayaka Enterprises, M/s.A.R.Enterprises and several other units, and has issued invoices for a value of around Rs.50 Crores, involving GST of 9.70 Crores through five fake companies. The petitioner alleged to have availed input tax credit based on fake invoices and has committed offences under Sections 132 (1)(b) and 132(1)(c) of Central Goods and Services Act, 2017, (In short "CGST Act") punishable under Section 132 (1)(i) of CGST Act, 2017. The petitioner is in judicial custody from 29.10.2020 for alleged offences under Sections 132(1)(b) & 132(1)(c) of the CGST Act, 2017, which is punishable under Section 132 (1) (i) of the CGST Act, 2017.

4. Thereafter, the petitioner moved bail application, before the learned Chief Judicial Magistrate, Coimbatore in C.M.P.No.3818 of 2020, which came to be dismissed by an order dated 21.11.2020. Subsequently, the petitioner moved bail application before the learned Principal District and Sessions Judge, Coimbatore, and the learned Judge granted bail on 14.12.2020 with certain conditions. Since the petitioner could not comply with the conditions imposed by the learned Principal District and Sessions Judge, Coimbatore, dated 14.12.2020, filed Crl.O.P.No.2532 of 2021 before this Court and this Court, by an order dated 22.02.2021, refused to modify the conditions, however, granted a further period of 6 weeks to comply with the conditions. Even though this Court, by an order dated 22.02.2021 granted six week time, the petitioner could not comply with the conditions imposed by the learned Principal District and Sessions Judge, Coimbatore, dated 14.12.2020, and approached the learned Chief Judicial Magistrate, Coimbatore under Section 167 (2) of Cr.P.C., seeking mandatory bail in Crl.M.P.No.9458 of 2021. The learned Chief Judicial Magistrate, Coimbatore, by an order dated 22.03.2021, dismissed the petition. Challenging the said order, the petitioner is before this Court.

5. The main contention of the learned counsel for the petitioner is that the petitioner was remanded into judicial custody on 29.10.2020 and the Investigating Agency did not file charge sheet within the statutory period of 90 days, and therefore, the learned Chief Judicial Magistrate, Coimbatore, ought to have granted bail to the petitioner under Section 167 (2) of Cr.P.C. It is to be noted that admittedly, the learned Principal District and Sessions Judge, Coimbatore, granted bail to the petitioner on 14.12.2020 itself with certain conditions. Since the petitioner could not comply with the conditions imposed by the learned Principal District and Sessions Judge, filed a modification petition before this Court and this Court, by an order dated 22.02.2021, refused to modify the conditions



and however, granted six week times to comply the conditions imposed by the learned Principal District and Sessions Judge, Coimbatore. However, without complying the conditions, the petitioner has taken the next available opportunity of filing a petition under Section 167 (2) of Cr.P.C., seeking mandatory bail, as the charge sheet was not filed within the statutory period of 90 days. The learned Chief Judicial Magistrate, on consideration of facts, held that once a person already granted bail, he cannot file a petition under Section 167 (2) of Cr.P.C. and therefore, the learned Chief Judicial Magistrate, dismissed the petition.

6. Admittedly, in the case on hand, the petitioner was remanded to judicial custody from 29.10.2020 and charge sheet has not been filed so far. Though it is the contention of the learned counsel for the petitioner that the petitioner could not comply with the condition Nos. (i) or (ii) as the petitioner is not financially strong enough to comply with the above conditions, it is to be noted that the petitioner is a registered dealer and he facilitated the recipient of invoices to avail ineligible input tax credit and pay their GST liability through the fraudulently acquired credit, causing loss of revenue to the Government exchequer, that too, to the tune of R.9.7 Crores.

7. However, considering the facts and circumstances of the case and also considering the quantum of alleged tax evasion and also considering the pandemic situation, this Court is inclined to give one more opportunity and grant bail to the petitioner, on the very same conditions imposed by the learned Principal District Sessions Judge, Coimbatore, vide order dated 14.12.2020 in CrI.M.P.No.3365 of 2020, viz.,

(i) The petitioner shall produce security or bank guarantee for a sum of Rs.1.00 Crore (Rupees One Crore only); or

(ii) The petitioner shall produce security by way of title deed or title deeds standing in the name of the petitioner or his relatives and having market value not less than Rs.1.0 Crore.

(iii) The petitioner shall execute a bond for a sum of Rs.1,00,000/- with two sureties for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Coimbatore.

(iv) The petitioner is directed to sign before the respondent-Police daily at 10.00 a.m., until further orders.

(v) The petitioner or his men shall not tamper the evidence.



(vi) The petitioner should not abscond and he should co-operate with the investigating agency as and when required.

(vii) Violation of any of the conditions imposed by this Court will result in cancellation of the bail

(viii) In case of condition No.(i) to (iv) are violated, it is open to the Investigating Officer to file appropriate application before the learned Chief Judicial Magistrate for cancellation of bail granted hereby, as held by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 556].

8. With the above observation, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of CGST & Central Excise,
Head Quarter Preventive Unit, Coimbatore,
Office of the Principal Commissioner of CGST
& Central Excise,
No.6/7 ATD Street, Race Course Road,
Coimbatore - 18.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Public Prosecutor,
Madras High Court, Chennai.
4. The Superintendent,
Central Prison, Coimbatore.

Cr1.R.C.No.328 of 2021

SR-II(CO)
CS/19/07/2021