BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 21/05/2021
Pronounced on : 01/06/2021

PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL OP(MD). No.6400 of 2021

Giri Ram.J ... Petitioner/Accused No.1

Vs

The Superintendent of GST
And Central Excise,
Head Quarters Preventive Unit,
Madurai.
(O.R. No .17 and 22 of 2020- 2021). ... Respondent/Complainant

For Petitioner : Mr.T.Lajapathi Roy.
Advocate
For Respondent : Mr.C.Arul Vadivel @ Sekar,

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in O.R. No.17 and 22 of 2020- 2021 on the file of the respondent.

ORDER : The Court made the following order :-

The petitioner is in custody from 15.04.2021 for the offences under Sections 69 r/w Section 132(1)(c) and 132(1)(d) of CGST Act, 2017, in O.R.No.17 and 22 of 2020 - 2021, on the file of the respondent. He seeks bail.

2. The case of the prosecution:-

The petitioner is one of the Directors and as well as person In-charge of the day-to-day operations of two Companies, namely, M/s.PSTS Logistics Private Limited, Tuticorin and M/s.PSTS Heavy Lift and Shift Limited, Tuticorin. The first Company has collected Goods and Service Tax from their customers during the years 2018-19 (October 2018 - March 2019) and 2019-20 about Rs.4.61 Crores and the same was not paid to the Government. Similarly, it has also availed ineligible excess Input Tax Credit worth about Rs.2.54 Crores without proper documents. The second Company has also failed to pay a sum of Rs.4.95 Crores collected towards Goods and Service Tax from their customers during the years 2018-2019, 2019-2020 and 2020-2021 and also fraudulently availed Input Tax Credit worth about Rs.1.78 Crores without proper documents. So, these are the offences punishable under Sections 132(1)(c) and 132(1)(d) of GGST Act, 2017. So, he was arrested on 15.04.2021 and remanded to judicial custody. Seeking bail, this application has been preferred on the following grounds:-

The act of the prosecution in combining both the cases is not proper since the transactions as well as the legal entities are entirely different. Only for the purpose of making the offences non-bailable, the Department has combined the liabilities of the two Companies.

3. On the basis of the summons, the petitioner appeared before the concerned authorities and also completely co-operated with the enquiry.

4. Since the transactions have been clubbed together, the petitioner was not able to get bail even at the time of remand. The reason being that if both the transactions were separated. Then it would have come within permissible limit of Rs.5 Crores, which is bailable in nature as per the provision of the Act. The petitioner is suffering from Obsessive Compulsive Disorder for the past 16 years and the Companies are reputed Companies and without proper application of mind, arrest has been effected and the petitioner was remanded to judicial custody.

5. Heard both sides.

6. It is a case of evasion of non-payment of tax which is allegedly collected in the course of business transaction of the two entities that are mentioned in the petition as well as the complaint. In the course of arguments as well as for the queries raised by this Court, the learned counsel for the petitioner has submitted that the petitioner is ready to pay a sum of Rs.1.5 Crore towards the disputed tax liability. In addition to that, it has also been submitted by him that the petitioner already paid a sum of Rs.30 lakhs towards the tax. When this offer was made by the learned counsel for the petitioner, the same has been strongly objected by the learned Special Public Prosecutor for the respondent stating that the total outstanding tax is Rs.13.88 Crores and the payment of Rs.1.5 Crore will not meet even a small portion of the liability. But, it has also been submitted by the learned Special Public Prosecutor for the respondent that adjudication of proceedings have been initiated and summons have been issued to the petitioner. But, the learned counsel for the petitioner submitted that the summons were not received by the petitioner. But, whatever it may be, adjudication proceedings have been initiated and that process will

go on for sometimes. That offer may be taken into account for the purpose of deciding this petition.

7. The next ground that has been argued by the learned counsel for the petitioner is that two of the Directors of the Companies have already moved Writ Petition before this Court in WP(MD)No.8788 of 2021 seeking a prayer for forbearing the respondents from arresting them. By the order dated 13.04.2021, this Court has granted interim relief, by which, the respondents were restrained, from effecting arrest. So, according to the learned counsel for the petitioner, when two of the Directors are enjoying the benefit of not to arrest order, keeping the petitioner in judicial custody, may not be fair and that too, when adjudication proceedings have been initiated to arrive at the liability.

8. A submission has been made by the learned counsel for the respondent that it is an *ex-parte* order, which has no validity. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **P.V.Ramana Reddy Vs. Union of India and Others (2020) SCC online 472**. When this was pointed out by the learned Special Public Prosecutor for the respondent, the learned counsel for the petitioner would submit that the respondent has not so far challenged the *ex-parte* order, which was passed on 30.03.2021. So, in the absence of any such steps, the respondent cannot make any such grievance that the same is only an *ex-parte* order. But, whatever it may be, it is seen that the two Directors are enjoying the benefit of not to arrest order. So, this can be taken into account for deciding the application.

9. Whether any mistake is committed by the respondent in clubbing two transactions, which are separate in nature connecting with two separate entities can be decided only at the time of trial. So, I am not going into those aspects. These arguments are advanced for the purpose of showing the respondent's *malafide* nature. But, whether there was any *malafideness on* the part of the respondent in clubbing two separate transactions cannot be gone into in this petition. The petitioner has challenged the arrest by filing Writ Petition in WP(MD)No.8788 of 2021. But, later, that was withdrawn, when the matter was taken up for hearing. So, I am not also going into those aspects. An attempt was made on the part of the Special Public Prosecutor for the respondent to show that the petitioner is also habitually indulging in transactions in the said past also. For that purpose, he would submit that on the previous occasion namely, for the period from July 2017 to September 2018, there was non-payment and proceedings were initiated. So, according to the learned counsel for the respondent this is not a first time, which the petitioner is indulging in such activities.

10. The learned counsel for the petitioner would submit that due to the pandemic situation, slow down in the business and so, he was not in a position to pay the tax in time. But, however, in the facts and circumstances of the case, the judicial custody of the

petitioner is not going to serve any purpose, more particularly, when he is ready to pay a sum of Rs.1.5 Crore towards liability as well as two of the Directors are enjoying benefit of not to arrest order.

11. So, this Court is inclined to grant bail to the petitioner with certain conditions.

12. Accordingly, the petitioner is ordered to be released on bail on the following conditions:

i) the petitioner shall execute a bond for a sum of **Rs.1,00,000/- (Rupees One Lakh only)** with two sureties, for a like sum to the satisfaction of the Additional Chief Judicial Magistrate, Madurai, Madurai District; **The sureties may be produced before the Magistrate through Video conference and documents may be sent through E-mail due to lock down;**

ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

iii) The petitioner shall deposit a sum of **Rs.1.5 Crore** (**Rupees One and a Half Crore Only**) to the credit of **O.R.No.17 and 22 of 2020 -2021** within **a month from the date of release from the jail** and shall also **surrender his Passport before the concerned Court;**

iv) The petitioner shall appear before the respondent, **once in 15 days** at **10.30 a.m until further orders;**

v) The petitioner shall not tamper with evidence or witness;

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

vii) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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]**; and

viii) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-
01/06/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSS

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
   MADURAI, MADURAI DISTRICT.

2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
   MADURAI DISTRICT.

3. THE SUPERINTENDENT, CENTRAL JAIL,
   MADURAI, MADURAI DISTRICT.

4. THE SUPERINTENDENT OF GST AND CENTRAL EXCISE,
   HEAD QUARTERS
   PREVENTIVE UNIT,MADURAI.

5. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-3769[I] dated 01/06/2021)

ORDER
IN
CRL OP(MD) No.6400 of 2021
Dated: 01/06/2021

VB VR SAR IV(01/06/2021) 5P / 7c