IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-937-2021 (O&M)
Date of decision: 09.04.2021

Parth Gupta

...Petitioner

Versus

State Tax Officer Office of Assistant Commissioner State Tax

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Jagmohan Bansal, Advocate for the petitioner.

Mr. H. S. Sitta, AAG Punjab.

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HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

The petitioner has filed this petition under Section 439 of Cr.P.C. for grant of regular bail in a case registered by State Tax Officer, Ludhiana, under Section 132(1)(c) of the Central GST Act, 2017 and Punjab GST Act, 2017.

Copy of custody certificate by way of affidavit dated 09.04.2021 of the Deputy Superintendent, Central Jail, Ludhiana, submitted by the learned State counsel through email, is taken on record.

Learned counsel for the petitioner states that the criminal trial for the offence under Section 132(1)(c) of the Central GST Act, 2017 and

Punjab GST Act, 2017 as also the arrest under Section 69 of CGST, 2017 read with PGST Act, 2017, are without jurisdiction. The GST Officials had arrested the petitioner on the ground that tax was not paid by the suppliers and they had wrongly availed refund of IGST. It is argued that a liability of Rs. 5.45 crores has been fastened upon him. However, the fact remains that the petitioner has already reversed the entry pertaining to Rs.2.15 crores. It is further argued that at best, an amount of Rs.3.30 crores would be the liability of the petitioner, though the petitioner seriously disputes the same.

It is further argued that as on date of filing of the petition, no FIR or complaint had been filed and in the complaint subsequently filed, the petitioner is ready to face the trial. It is also submitted that there is a challenge to the vires of Section 69 and 132 of the Central Goods and Service Tax Act, 2017 in CWP No. 8004 of 2020 titled as Tarun Bassi Vs. State of Punjab and others, wherein notice has been issued to the State of Punjab and in the connected matter, notice has been issued to the Union of India, while further contending that the arrest under Section 69 of the Punjab Goods and Service Tax Act, 2017 is without jurisdiction. It is further argued that in fact, after completion of the investigation, the challan has already been presented and therefore, the petitioner is not required for any further custodial interrogation.

Learned counsel for the petitioner relies upon various orders passed by this Court i.e. in CRM-M No.27425 of 2020 - Ganga Ram Vs. State of Punjab and another, decided on 28.10.2020; CRM-M No.41118 of

2020-Deepak Mittal Vs. Directorate General of Goods and Services Tax Intelligence dated 16.12.2020, wherein regular/interim bail has been granted to the similarly placed persons. Reliance has also been placed on an interim order passed by the Bombay High Court in Writ Petition No.471 of 2021 titled as Daulat Samirmal Mehta Vs. Union of India. In that case too, there was allegedly a wrongful availing of Input Tax Credit amounting to Rs.122.59 crores by Daulat Samirmal Mehta. Moreover, co-accused Arun Gupta, father of the petitioner, and Anurag Aggarwal, have already been granted regular bail by a Coordinate Bench, vide orders dated 15.03.2021 passed in CRM-M-3963-2021 and CRM-M-3957-2021.

Learned counsel appearing for the respondent-State opposes grant of regular bail by relying upon an order passed by the Coordinate Bench in CRM-M No.1511 of 2021 dated 28.01.2021 titled as Rakesh Arora Vs. State of Punjab.

I have heard learned counsel for the parties and have gone through the orders passed by the Division Bench of this Court seized of the matter qua challenge to vires of Section 69 and 132 of the CGST Act as well as the orders passed by this Court, wherein interim/regular bail has been granted to the similarly placed persons. The order relied upon the counsel appearing for the State wherein regular bail has been denied to the petitioner therein was primarily on the ground that the investigation was still incomplete. In the instant case, as noticed above, the investigation is already complete and even the challan has also been presented. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, the instant petition is allowed and the petitioner is directed to be released on regular bail on execution of adequate personal/surety bond amounting to Rs.10 lakhs to the satisfaction of concerned trial Court/Duty Magistrate. The petitioner is directed to surrender his passport before the concerned Court and will not leave India without prior permission of the Court.

However, any observation made herein shall not be construed to be an expression on merits of the case.

(HARNARESH SINGH GILL)
JUDGE

09.04.2021
Mangal Singh

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No