IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2869-2021.
Date of Decision:-28.09.2021.

Manoj Bansal

……Petitioner

Versus

Director General of GST Intelligence (DGGI)

……Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

****

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Aman Bansal, Advocate for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General with
Mr. Sourabh Goel, Senior Standing Counsel for
the respondent.

(Through Video Conferencing)

****

VIKAS BAHL, J. (Oral)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of regular bail in Complaint Case No.IV(6) DGGI/RRU/INV/22/2018-19 filed under Section 132(1) (b) and (c) of the Central Goods and Service Tax Act, 2017 (for short 'the CGST Act').

Briefly stated, the allegations against the petitioner, relevant for disposal of the present petition are that M/s Nikita Industries Pvt. Ltd., Sonepat is a manufacturer of Pure Lead Ingots and is registered with the GST Department. The petitioner is the Director in-charge of the said manufacturing Company and is thereby responsible for the conduct of the business of the same. M/s Nikita Industries Pvt. Ltd. was alleged of having availed a hefty amount of Input Tax Credit on the basis of invoices issued by their suppliers, without any actual movement of goods. The said suppliers constitute 31 firms, as have been named in the present complaint. Upon investigation, it came to surface that the said supplier firms were not even in existence at their registered premises. It was also uncovered during investigation that some of the transporters through whom goods were shown to have been conveyed, were also found to be non-existent and the transportation receipts of some transporters were recovered from the premises of M/s Nikita Industries Pvt. Ltd. M/s Nikita Industries Pvt. Ltd. is alleged of having availed Input Tax Credit amounting to Rs.15.44 crores on the basis of invoices issued by such non-existent/fake firms without movement of goods, alleged to have been transported by such fake/non-existent transporters, and on the basis of corresponding transport receipts being included in their record for claiming the said benefit. M/s Nikita Industries Pvt. Ltd. was thereby alleged to have committed offences under Section 132 (1)(b) and (c) punishable under Section 132 (1)(I)(i) of the CGST Act.

This matter had come up for hearing on 16.03.2021, when a Co-ordinate Bench of this Court had passed a detailed order *vide* which interim bail was granted to the petitioner. The Co-ordinate Bench had taken note of the arguments raised by the learned Senior counsel for the petitioner including the argument to the effect that no notice under Section 73 or 74 of the CGST Act had been issued to the petitioner-company and to the effect that the prosecution could only be launched after determination of tax liability and the petitioner could be made liable to pay tax with penalty only after the said pre-condition of adjudication of tax liability was fulfilled. The argument to the effect that there is contravention of Section 69 of the CGST Act was also taken into consideration. Learned Senior counsel for the petitioner had also argued that the search of the factory premises had been started on 27.03.2018 and the petitioner had consistently co-operated and subsequently on 07.12.2020, he was arrested and that the complaint had already been filed before the learned Judicial Magistrate Ist Class, Patiala and, thus, the custodial interrogation of the petitioner was not required and even the investigation was complete against the petitioner. The argument that the petitioner did not have any criminal antecedents and had clear credentials was also noticed. The judgments relied upon by the learned Senior counsel for the petitioner were also taken into consideration.

The argument of the Senior Standing counsel for the respondent-Department to the effect that the present petitioner had been creating fake invoices and wrongfully availing input tax credit, had been noticed and even the judgments relied upon by the learned Senior Standing counsel for the respondent-Department were noticed. Taking into consideration the facts and circumstances of the case as well as the arguments advanced by the parties, the Co-rdinate Bench of this Court had granted interim bail to the petitioner herein. The concluding part of the order dated 16.03.2021 is reproduced hereinbelow:-

> *"36. In the meanwhile, keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner in the present case, also the fact that investigation qua the petitioner is complete and complaint against the petitioner has already been filed but notice under*

Section 74 of the CGST Act is yet to be issued and determination of his tax liability is yet to be made and that the case is mainly based on documentary evidence, there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or intimidating witnesses coupled with the fact that trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19, the petitioner is ordered to be released on interim regular bail till the next date of hearing on furnishing of personal and surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

37. However, interim bail is granted to the petitioner subject to the conditions (i) that the petitioner shall furnish bank guarantee for amount of Rs.1 crore to the concerned authority for payment of tax liability as undertaken; (ii) that the petitioner shall not leave the country without permission of the trial Court; and (iii) that the petitioner shall give an undertaking that the petitioner/M/s Nikita Industries Pvt. Ltd. shall not alienate immovable properties owned by him/the Company to anyone in any manner till final disposal of the complaint.

38. A copy of this order be supplied to learned Senior Standing Counsel and Additional Director General, Gurugam Zonal Unit, Gurugram for requisite compliance."

Learned Senior counsel for the petitioner has submitted that in pursuance of the above-said order, the petitioner has furnished a bank guarantee for the amount of Rs.1 crore to the concerned Authority for payment of tax liability and has also complied with the other conditions.

Mr. Satya Pal Jain, learned Additional Solicitor General along with Mr. Sourabh Goel, Senior Standing counsel for the respondent-Department has submitted that as per the above-said order in para 31, there were certain directions given requiring the respondent-Department to file an additional affidavit with respect to the fact as to what action had been taken for registration of FIR in respect of offences punishable under the IPC against the persons who had got the alleged non-existent firms registered with the GST Department, on the aspect as to what steps have been taken for assessment of tax liability and recovery of tax from the present petitioner and other firms, as to what steps are proposed to be taken for preventing evasion of tax by fraudulent claims of input tax credit and finally as to what steps have been taken to prevent the registration of such non-existent firms. It is submitted that in pursuance of the said directions, a detailed affidavit has been filed by Sh. Neeraj Prasad, Additional Director, Directorate General of Goods and Service Tax Intelligence, Rohtak. The said affidavit is taken on record. It is further submitted that as far as registration of FIR is concerned, since the CGST Act is a complete Act in itself, thus, the procedure as mentioned under the CGST Act is being followed and applied even with respect to criminal offences committed. On the aspect of assessment of tax liability and recovery of the determined tax liability from the present petitioner, it has been stated that the notice under Section 74 of the CGST Act has already been issued on 16.04.2021. Even with respect to the other aspects the steps taken have been detailed in the affidavit that has been filed. This Court feels that the detailed affidavit satisfies the requirements issued as per the last order passed by the Co-ordinate Bench of this Court.

On a pointed query raised by this Court, learned Senior counsel for the respondent-Department has submitted that the conditions which had been imposed on the petitioner in the order dated 16.03.2021 have been complied with by the petitioner.

This Court has heard the learned counsel for the parties.

Keeping in view the above-said facts and circumstances, moreso, the fact that the petitioner has complied with the conditions as imposed in the detailed order dated 16.03.2021 *vide* which interim bail was granted to the petitioner and also the fact that the petitioner had been in custody from 07.12.2020 till 16.03.2021 and that the challan has already been filed before the Judicial Magistrate Ist Class and the proceedings under Section 74 of the CGST Act have also been initiated and the case is primarily based on documentary evidence, thus, no purpose would be served in sending the petitioner back into custody.

Accordingly, the present petition is allowed and the order dated 16.03.2021 is made absolute.

However, the petitioner would continue to be bound by the conditions which have been imposed in para 37 of the order dated 16.03.2021.

It is made clear that nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

September 28, 2021.
sandeep

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No