IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)

CRM-M-4374-2021
Decided on : 03.03.2021

Sahil Jain ...... Petitioner

Versus

Joint Commissioner, CGST, Ludhiana ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. I.S.Ratta, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Sourabh Goel, Advocate
for respondent No.2.

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Manjari Nehru Kaul, J.

This petition has been filed by accused under Section 482 Cr.PC to challenge the order dated 11.01.2021 (Annexure P-7) passed by Chief Judicial Magistrate, Ludhiana under Section 167(2) Cr.PC, admitting the petitioner to bail in a complaint bearing CNR No.PBLD03-001073-2021 registered under Section 132(1) (b) & (c) punishable under Section 132(1) (i) of CGST Act, only to the limited extent of the imposition of conditions on ground of same being unreasonable.

2. The petitioner, who is facing prosecution in the aforementioned complaint case, applied for his release on bail under Section 167(2) Cr.PC, wherein the Court vide its order dated 11.01.2021 accepted the prayer and admitted him to bail by imposing the following conditions:

> *1. Accused shall furnish a bank guarantee/FDR for an amount of Rs.50 lakhs to be forfeited to the State in case of violation of any of the terms and conditions imposed vide this order.*

2. Accused shall come present on each and every date of hearing for appearance in the Court and for trial of the case.

3. Accused shall not leave the jurisdiction of this Country without permission of the Court. He shall surrender his passport in the Court if he possesses the same and in case he do not hold any passport his undertaking in form of an affidavit that he will not get any passport issued in his name without permission of the Court.

4. Accused shall not commit any offence of like nature or any other offence punishable under law.

5. Accused shall not try to influence the witnesses of the prosecution or tamper with the evidence.

6. Accused shall not change his appearance during the course of trial.

3. At the very outset, learned counsel for the petitioner submits that he would not press qua the condition imposed with respect to the petitioner not changing his appearance during the trial and would restrict his submissions qua the imposition of condition to furnish a bank guarantee/ FDR for amount of Rs.50 lakhs only as it was contrary to the mandate of the Supreme Court in ***Saravanan vs. State represented by the Inspector of Police, (2020) AIR (SC) 5010*** wherein the Supreme Court set aside the condition imposed by the High Court directing the petitioner to deposit an amount of Rs.8 lakhs while being released on default bail. It has also been contended that the condition of deposit of a hefty amount for being released on default bail too was erroneous and against the mandate of law. In support of his submissions, learned counsel has placed reliance on ***M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, (2020) AIR (SC) 5245, Uday Mohanlal Acharya vs. State of***

Maharashtra, (2001) AIR (SC) 1910, G.A.Senthilkumar vs. State represented by The Inspector of Police, City Crime Branch, Trichy (Crl. O.P.(MD) No.12307 of 2017) decided on 20.09.2017 and Jangpao Haokip vs. State of Manipur and another (Crl. Petn. No.28 of 2020) decided on 21.12.2020.

4. Per contra, learned State counsel and counsel appearing on behalf of respondent No.2 have vehemently opposed the prayer and submissions of learned counsel for the petitioner. Learned counsel for respondent No.2 submitted that petitioner Sahil Jain was involved in bogus transactions of approximately Rs.252 crores involving Input Tax Credit of more than Rs.17 crores in fourteen firms without there being any actual movement of goods, which resulted in a huge loss to the government exchequer. He also contended that during investigation it had come to light that besides the involvement of the initial fourteen firms in the alleged fraud, 11 more firms were created and operated by the petitioner to carry out bogus transactions. Learned counsel submitted that investigation was still underway to unearth the entire scam running into hundreds of crores of rupees. Still further it was contended that the imposition of Rs.50 lakhs in the form of FDR while granting default bail could not be said to be an onerous condition looking to the allegations levelled and antecedents of the petitioner of being involved in a scam of almost Rs.252 crores; coupled with the fact that under Section 441 Cr.PC, the discretion vested with the Court concerned to impose any condition, as it would deem fit.

5. I have heard learned counsel for the parties at length and gone through the impugned order as well as all material available on record.

6. Economic offences constitute a class apart as compared to the

other offences. Coming to the instant case in the wake of the allegations levelled against the petitioner, it need not be over-emphasized that the parameters in such like cases would definitely warrant a different and stricter application of the conditions of bail. Hence, the imposition of Rs.50 lakhs as a pre-requisite condition cannot by any stretch of imagination be said to be onerous much less being against the mandate of the Supreme Court in *Saravanan's case(supra).*

7. It would be apposite to refer to the observations made by the Supreme Court in Saravanan's *case(supra)*, which are as follows:

> *"Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/- while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167*

(2), Cr.P.C is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the ***alleged amount involved*** *can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C, namely, investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60 th or 90th day and the accused applies for default bail and is prepared to furnish bail.*

9.1 As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs.8,00,000/- taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs.7,00,000/-. That cannot be a ground to impose the condition to deposit the ***amount involved****, while granting default bail/statutory bail.*

8. The case in hand is clearly distinguishable from *Saravanan's case(supra)* as in that case the Magistrate while extending the concession of default bail had imposed the condition to deposit an amount of Rs.8 lakhs as

security out of the alleged crime money of Rs.15,67,338/-. Appellant in that case was granted bail under Section 437 Cr.PC subject to deposit of Rs.7 lakhs out of the total alleged amount of Rs.15,67,338/- and balance was to be deposited on or before 06.04.2020 as per undertaking given by the appellant's wife. On being aggrieved, instead of applying for modification of the order, the appellant in that case decided to avail relief of default bail under Section 167 (2) Cr.PC. While granting the statutory bail under Section 167(2) Cr.PC, High Court took note of the above-mentioned undertaking given by wife of the appellant and imposed condition to deposit a sum of Rs.8 lakhs, which was part of the total amount involved in the crime in the case before learned Magistrate. However, in the case in hand, on the other hand, the Magistrate has only exercised his discretion of imposing such terms and conditions as it would deem fit in the facts and circumstances of the case.

9. A perusal of the impugned order reveals that the trial Court has carefully examined the facts, circumstances and background of the case while imposing the impugned condition and the same is founded on sound judicial principles.

10. Resultantly, this Court does not find any ground to exercise its inherent powers under Section 482 Cr.PC. Accordingly, the present petition being devoid of merit stands dismissed.

03.03.2021 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable : Yes