

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.8190 of 2021 (O&M)

Decided on: 24.03.2021

Mohit Bathla

....Petitioner

Versus

Central Goods and Service Tax Division Panipat

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Puneet Bali, Sr. Advocate
with Mr. Sachin Jain, Advocate
for the petitioner.

Mr. Saurabh Goel, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') is for grant of regular bail to the petitioner for offence under Section 132(1)(b) and 132(1)(c) punishable under Clause L(i) of Section 132(1) of the Central Goods and Services Tax, 2017 (in short 'the CGST, 2017) in File No.GEXCOM/AE/FU/87/2020-AE-CGST-DIV-PNP-COMMRTE-PANCHKULA.

Learned senior counsel for the petitioner has argued that the accounts of the firms of the petitioner was verified by GST Officers from time to time and as per the statement dated 12.02.2020, on verification of the copies of various Goods & Services Tax Returns (G.S.T.R.), Re-conciliation of Input Tax Credit Claim, nothing was found suspicious. The authorities again, searched the premises of the

petitioner under Section 67 of the CGST, 2017 and the Assistant Commissioner, G.S.T. Division Gandhi Mandi, Panipat vide letter dated 14.10.2020 informed the Assistant Commissioner, Ghaziabad that e-Way bill and transport documents were found to be in order. Later on, again surprise visit was made at the premises of the petitioner which according to the learned senior counsel for the petitioner was in violation of Section 67(10) of the CGST, 2017 as even the procedure under Section 100(4) Cr.P.C., was not followed. The Panches accompanying the searched party were not the local residents. Thereafter, the petitioner was served with the summons to appear before the Superintendent (Preventive), CGST, Panipat. In pursuance to the summons, the petitioner appeared before the authorities and was threatened that he will be involved subsequently in a case. Thereafter, the statement of the petitioner was recorded and he was detained under Section 69 of the Act on 25.10.2020 for the alleged commission of offence punishable under Sections 132(1)(d) and 132(1)(c) of the CGST, 2017. An application for seeking remand of the petitioner was filed before the Chief Judicial Magistrate, Panipat. The petitioner, thereafter, preferred an application for bail which was declined by the Additional Chief Judicial Magistrate, Panipat on 31.12.2020.

Learned senior counsel for the petitioner has prayed for bail on the ground that in order to bring the offence under Clause (i) of Section 132(i) of the CGST, 2017, different amount of ITC were clubbed so as to bring the figure above Rs.500 lacs to attract maximum punishment and therefore, no proper procedure has been followed. Learned senior counsel for the petitioner has next argued that there is

no fake or bogus invoices or no false claim have been set up by the petitioner as he has filed all the documents relating to the transactions from time to time with the respondent – authorities as per the procedure laid down in the Rules of the CGST, 2017.

Learned senior counsel for the petitioner has further argued that the entire case against the petitioner is not proved as no complaint was filed against the petitioner and he has been detained while exercising the powers under Section 132 of the CGST, 2017.

Learned senior counsel for the petitioner has relied upon the order dated 18.01.2021 passed in CWP No.8268 of 2020 where the constitutional authority of Sections 69 and 132 of the CGST, 2017, is under challenge and the accused facing the prosecution under Sections 132(1)(b) and 132(1)(c) of the CGST, 2017, has been granted the concession of bail.

Learned senior counsel for the petitioner has also argued that it has been held by the Hon'ble Supreme Court that while considering a bail application, his innocence till the guilt is proved, should be considered beyond a reasonable doubt and also it should be considered that a person, if denied bail, will be subject to psychological and physical deprivation of his personal life.

Learned senior counsel has further relied upon the order dated 28.10.2020 passed in CRM-M No.27425 of 2020 wherein in similar circumstances, the accused has been granted the concession of regular bail and similar view was taken by this Court, while granting the concession of anticipatory bail in terms of the order passed in CWP No.13995 of 2020 wherein the vires of the Act are under challenge.

Learned counsel appearing for the respondent has, however, opposed the prayer for bail of the petitioner on the ground that a complaint has already been filed against the petitioner after recording the statement of one witness namely Chander Parkash and he has relied upon various documents to submit that on verification, all the documents submitted by the petitioner claiming exemption from the CGST, it was found that the firm of the petitioner has received invoices without actual supply of goods from fake/bogus firms namely M/s.Neelkanth International, M/s. Global Enterprises and M/s. Mahadev Trading Company. It is further stated that M/s. S.B. Chemicals is registered with the GST Department in the name of Smt. Sunita Bathla, mother of Shri Mohit Bathla vide GSTN 06AHKPB7087N1ZZ, M/s. Hans Petroleum Products is registered with the GST Department in the name of Shri Mohit Bathla vide GSTIN 06BMAPB7667P1ZM, M/s. Hind International is registered with the GST Department in the name of Shri Ashok Bathla, father of Shri Mohit Bathla vide GSTIN 06AGMPB7345M2Z2 and M/s. Jey Oil and Bitumen Products India Private Limited is registered with the GST Department vide GSTIN 06AAECJ7827R1ZT.

Counsel for the respondent has further submitted that the petitioner has made a statement on 25.12.2020 acknowledging the aforesaid facts, however, it is specifically stated that in fact, the petitioner is operating the said firms. Similar was the statement made by Amit Kumar, Rajeev Kumar, Supervisor and upon investigation, it is found that the petitioner is having as many as 18 firms/companies which has filed fake ITC worth Rs.18,85,47,218/-. The father and

mother of the petitioner have been granted the concession of anticipatory bail on the basis of the statement made by the petitioner that it is the petitioner, who is wholly responsible for the day-to-day business of all the firms.

Counsel for the respondent has relied upon an order dated 28.01.2021 passed in CRM-M No.1511 of 2021 wherein the prayer for bail was declined after going through the various judgments, relied upon by the petitioner.

A perusal of the said order show that while declining the bail application, the Court has recorded a finding that the accused (petitioner therein) was *prima facie* found violating the penal provisions and therefore, the bail was not granted.

Counsel for the respondent has also placed on record voluminous documents including some judgments to support his arguments, however, for the purpose of deciding the application for bail, the same are not referred to.

In reply, learned senior counsel for the petitioner has reiterated the arguments that on an earlier occasion, when the record of the petitioner was verified on 14.10.2020, a specific note was made by the Assistant Commissioner, CGST, that e-Way bill and transport documents were found to be genuine and therefore, it will be a matter of trial as to how the same documents are now termed as fake documents as it will require evidence to prove the same.

Learned senior counsel for the petitioner has lastly argued that the petitioner is the first offender; he is not involved in any other case of such or similar nature and he is in custody since 26.12.2020 and

as on today, the petitioner has undergone about 03 months of judicial custody and as the complaint has been filed, it will take long time in conclusion of the trial.

After hearing the counsel for the parties and going through the voluminous documents and judgments relied upon by both the parties, it is found that main allegations against the petitioner are regarding availment of fake Input Tax Credit (ITC) Limit of 04 firms and on clubbing of the same, the amount as calculated by the respondent is approximately Rs.18 crores, however, considering the fact that the custody of the petitioner is less than 03 months, I do not deem it appropriate to grant the concession of regular bail to the petitioner, at this stage.

Accordingly, the petition is *dismissed*.

(ARVIND SINGH SANGWAN)
JUDGE

24.03.2021

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No