

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31496-2021 (O&M)

DATE OF DECISION: NOVEMBER 29, 2021

VARINDER SINGH

...PETITIONER

VERSUS

DIRECTORATE GENERAL OF GST
INTELLIGENCE, PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. JAGMOHAN BANSAL, SR.ADVOCATE
WITH MR. MUKUL SINGLA, ADVOCATE
FOR THE PETITIONER.

MR. SOURABH GOEL, ADVOCATE
SR.STANDING COUNSEL, CBIC.

MANOJ BAJAJ, J.(ORAL)

The petitioner is an accused in the alleged commission of offence under Section 132(1)(b) of Central Goods & Services Act, 2017 (for short 'CGST Act, 2017), punishable under sub-clause(i) of Section 132(1) of CGST Act, 2017, who was released on regular bail under Section 167(2) Cr.P.C. vide order dated 24.2.2021 (Annexure P-1), passed by the Chief Judicial Magistrate, Ludhiana, subject to his fulfilling certain conditions including executing bail bonds/surety bonds etc., but continues to be confined in prison, despite modification of the conditions in his favour, by the Addl. Sessions Judge, Ludhiana, vide impugned order dated 15.7.2021 (Annexure P-2) and being aggrieved against the amount of bail bond and surety bond etc., he has

filed this petition under Section 482 Cr.P.C.

The facts in brief leading to the petition are that the petitioner was arrested on 24.12.2021, as he had allegedly caused wrongful loss of ₹15.91 crores to the complainant, i.e. Directorate General of GST Intelligence by allegedly committing an offence punishable under Section 132(1)(b) of Central Goods & Services Act, 2017 (for short 'CGST Act, 2017), punishable under sub-clause(i) of Section 132(1) of CGST Act, 2017. It is the case of the petitioner that the alleged offence carries a punishment upto rigorous imprisonment of 5 years and a period of 60 days is provided for presentation of charge-sheet against the accused. According to the petitioner, within the said stipulated period of 60 days, no charge-sheet/complaint was filed by the complainant, therefore, his application for release under Section 167(2) Cr.P.C. was accepted vide order dated 24.2.2021, but while releasing him on bail, stringent conditions were imposed upon him by the Chief Judicial Magistrate, Ludhiana, who directed him to execute the bond amounting to ₹1.10 crores and two sureties of like amount (at least one local), alongwith various other conditions including furnishing a bank guarantee/FDR of ₹60 lakhs.

Dissatisfied with the said order dated 24.2.2021 (Annexure P-1) as the amount of bonds fixed were on higher side, the petitioner filed CRR-25-2021 before the revisional Court and the same was accepted vide order dated 15.7.2021 (Annexure P-2), passed by the

Addl. Sessions Judge, Ludhiana and the amount of above noticed bonds was reduced to ₹30 lakhs, with two sureties in the like amount, whereas the amount of bank guarantee was reduced to ₹20 lakhs, and the challenge to few other conditions imposed vide order dated 24.2.2021 was given up by the accused.

The petitioner is aggrieved against this order dated 15.7.2021 (Annexure P-2) passed by the revisional Court as well, because the conditions modified are still extremely stringent and beyond the capacity of the petitioner to meet with the said requirement who continues to be in custody, therefore, this petition has been filed by the petitioner to invoke inherent powers of this Court.

Notice of this petition was issued on 6.8.2021 to the respondent and in response, the respondent-complainant has filed its reply through Sanjeev Singh, Assistant Director, Directorate General, GST Intelligence.

Learned Senior counsel appearing for the petitioner has argued that though the petitioner was found entitled to be released on regular bail in view of Section 167(2) Cr.P.C., but the learned Chief Judicial Magistrate, Ludhiana vide order dated 24.2.2021 (Annexure P-1) has erroneously imposed extremely harsh conditions relating to bail/surety bonds and though the said order dated 24.2.2021 was modified by learned Addl. Sessions Judge, Ludhiana vide its decision dated 15.7.2021 (Annexure P-2) and the amount of bail bond and surety

bonds was reduced to ₹30 lakhs each and also the amount of a bank guarantee was reduced to ₹20 lakhs, but even these modified conditions are unjust and are on the higher side, and it has caused miscarriage of justice to the petitioner. According to him, once the Court has directed the accused to furnish his own bail bond alongwith two sureties of the like amount, there was no reason to further direct the petitioner to furnish separate bank guarantee also. Learned Senior counsel prays that the impugned order dated 15.7.2021 (Annexure P-2), passed by the revisional Court warrants interference and in support of his argument, he has relied upon the judgements of Hon'ble Supreme Court in *Saravanan vs. State represented by the Inspector of Plice, (2020) AIR (SC)5010*, *Bikramjit Singh vs. The State of Punjab, 2020(4) RCR (Criminal) 713*, decision of this Court in *CRM-M-29607-2021, titled as Amandeep Singh Bhui vs. Inspector (Preventive) Central Goods and Service Tax, decided on 28.10.2021*, and the judgement passed by the Hon'ble High Court of Gujarat in *Neeraj Ram Kumar Tiwari through His Father Ram Kumar Rameshwar Tiwari vs. State of Gujarat, Special Criminal Application No.5777 of 2020*.

The prayer is vehemently opposed by Mr. Sourabh Goel, learned counsel for respondent-complainant who has argued that the order passed by the revisional Court is justified considering the nature of offence allegedly committed by the petitioner. He submits that the economic offence involving huge amount would be a relevant

consideration while releasing the accused on bail and in the present case, the petitioner has fraudulently availed Input Tax Credit of approximately ₹15.91 crores, therefore, the modified conditions directing him to furnish bail bond for a sum of ₹30 lakhs and two sureties of the like amount cannot be said to be on higher side. He submits that since recovery is also to be effected from the petitioner, therefore, to safeguard the interest of the complainant, imposition of conditions for furnishing a bank guarantee is also justified. In support of his argument, learned counsel has relied upon judgement passed by this Court in **CRM-M-4374-2021, titled as Sahil Jain vs. Joint Commissioner, CGST Ludhiana, decided on 3.3.2021 and CRM-M-16487-2021, titled as Pawan Kumar vs. State of Punjab & Another, decided on 28.5.2021.**

Learned counsel for the parties have been heard and with their assistance the case file has been perused.

Chapter XXXIII, Code of Criminal Procedure contains the provisions relating to bail and bonds and Section 437 and 439 Cr.P.C. deal with the regular bail of undertrial. The concession of regular bail liberates the undertrial from detention in prison during the pendency of the trial subject to fulfilling the conditions including execution of personal bond with or without sureties. Ordinarily, the Court before granting regular bail to the accused considers various factors like nature and gravity of the alleged crime, custodial period of the accused, stage

of the trial, the alleged role/participation of the accused in the alleged offence and other attending circumstances. The concession of regular bail to an accused is a discretionary relief which is exercised on the strength of sound judicial principles, but where the prosecution is unable to conclude the investigation in a stipulated time, an indefeasible right is accrued to the accused to seek regular bail by virtue of Section 167(2) Cr.P.C. contained in Chapter XII, Code of Criminal Procedure. The said concession is extended to the accused because of failure of the investigating agency/prosecuting agency to apprise the accused regarding the charges, behind his/her detention, and in that eventuality, the allegations contained in the FIR or the complaint become insignificant.

Here, it may be noticed that at the time of release, the accused is conditioned to execute bonds and furnish surety and the amount of bond is fixed by the Court/Officer granting bail to the accused and the object of such conditions is to ensure that the accused returns to stand trial. Of course, there cannot be a straitjacket formula to fix the amount of the bond, but it should not be exorbitant to take it beyond the means of the accused, thereby frustrating the relief of bail, as it would amount to giving relief with one hand, but taking away with the other. Perhaps for this reason, Section 440 Cr.P.C. contemplates that the amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be

excessive.

The grievance of the petitioner is that despite the order dated 15.7.2021 (Annexure P-2), whereby the conditions imposed by the Chief Judicial Magistrate, Ludhiana were modified, the petitioner is unable to fulfill the said requirements because of his financial constraints and is still languishing in prison. During the course of hearing, it was not disputed by Mr. Sourabh Goel, learned counsel for the respondent that the petitioner was arrested on 24.12.2020 and he has approximately undergone a period of more than 11 months and till date the charge-sheet/complaint against him has not been filed. Though the reply filed by the complainant has laid emphasis on the accusations against the petitioner to allege that he had taken Input Tax Credit without supplying any material by creating dummy firms and caused wrongful loss of ₹15.91 crores to the complainant, but at the same time, it is also not disputed by Mr. Sourabh Goel, learned counsel that the statutory period for filing the charge-sheet/complaint is over and the needful is yet to be done. It was fairly conceded by Mr. Goel, learned counsel that the right accrued to the petitioner under Section 167(2) Cr.P.C. is not disputed, however, he opposed the prayer of the petitioner on the ground that in order to safeguard the interest of the complainant, heavy surety amount alongwith cash deposit has been rightly ordered by the trial Court.

This Court does not find any merit in the argument

advanced on behalf of the complainant as the petitioner cannot be allowed to remain in jail indefinitely, because it would mean punishment to the accused before charges against him are even explained. The maximum sentence for the alleged offence in the present case is Five years, whereas the petitioner has already undergone a period of more than 11 months. Since the petitioner is yet to execute the bond and furnish the sureties, the condition directing the accused to furnish the bank guarantee/FDR is also not sustainable, as normally, such a condition can be imposed in lieu of executing the bond. Further, the undertaking of the sureties is separate and distinct from the undertaking of the accused and the same can also be independently enforced in case the accused violates the conditions of bail and does not appear during the trial.

No doubt, in the citations relied upon by learned counsel for the respondent, this Court had refused to interfere with the amount of bail bond fixed while granting them the concession of bail under Section 167(2) Cr.P.C. by observing that the petitioner is an accused in an economic offence, but these decisions cannot be treated as binding precedents and may not be applicable in the present case particularly, when other provisions contained in Chapter XXXIII, Code of Criminal Procedure were not considered much less, the hardship faced by the accused. This Court is mindful of the fact that admittedly, in the present case, till date no complaint/charge-sheet has been filed by the

respondent and despite the concession of bail extended to the petitioner on 24.2.2021, he continues to be in prison. At this juncture, it is needless to observe that every accused is presumed to be innocent till the prosecution brings home the guilt of the accused, and further the grant of bail is a general rule, whereas denial is an exception. Thus, in view of the above discussion, this Court is of the opinion that the impugned order dated 15.7.2021 (Annexure P-2), passed by the Addl. Sessions Judge, Ludhiana, calls for further modification.

Resultantly, the petition succeeds and it is ordered that the accused shall be released on bail subject to his executing bond of ₹10 lakhs and two sureties of the like amount, and further the other condition of furnishing a bank guarantee for a sum of ₹20 lakhs is set aside.

November 29, 2021
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No