(VIA VIDEO-CONFERENCING)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 12.04.2021

% **Pronounced on : 04.06.2021**

\+ CRL.M.C. 231/2021

CENTRAL GOODS AND SERVICE TAX DELHI EAST

..... Petitioner

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advs.

versus

SH. NAVAL KUMAR & ORS.

..... Respondents

Through: Mr. Harsh Sethi , Adv.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By virtue of this petition, the petitioner seeks directions thereby to set aside the order dated 24.11.2020 passed by the Ld. A.S.J., New Delhi, Patiala House Courts, in bail application No. 1795/2020 thereby, granting anticipatory bail to the respondents and consequentially cancel the same.

2. Brief facts of the case are that the petitioner (department) is investigating a case of fictitious firms engaged in generating and passing on fake input tax credit by issuing bogus invoices without

actual supply of goods. It is alleged that M/s Milkfood Limited is at the center of this network and has availed huge ITC from firms that have been proved to be fictitious and non-existent during the investigation carried out by the petitioner. It is alleged that the preliminary investigations have revealed that M/s Milkfood Ltd. has availed fake ITC of Rs. 54.86 crores from M/s Maya Impex, M/s Aditya Sales, M/s Shiv Muskaan Traders and M/s Shri Nidhivan Foods which were being operated by one Sh. Ashish Aggarwal.

3. It is further alleged that M/s Milkfood Limited has also availed ITC of Rs. 30.54 Crores from M/s Devyaani Agro Industries. It is further alleged that M/s Milkfood Limited has availed a total amount of Rs. 85.4 crores of inadmissible fake ITC resulting into huge losses to the public exchequer. It is alleged that Ashish Aggarwal is the master mind and beneficiary of the chain of fake firms involved in GST evasion of Rs. 137.5 crores approx. He was arrested under the provisions of Sections 69(1) of the CGST Act on 29.10.2020 and Sanjay Kumar Garg, proprietor of M/s Devyaani Agro Industries involved in GST evasion of more than Rs. 30 Crores approximately was arrested on 12.11.2020. Vide order dated 14.11.2020 Ashish Aggarwal was granted bail by the Ld. CMM and the said order was challenged by the petitioner before the A.S.J. Patiala House Courts.

4. It is averred in the petition that subsequent to the bail order dated 14.11.2020 passed by the Ld. CMM the respondents filed a petition before the Ld. ASJ seeking anticipatory bail and they placed reliance upon the order dated 14.11.2020. It is further averred that respondent No. 1 is the Vice President (Accounts) in M/s Milkfood Limited, Respondent No. 2 is the CFO, Respondent No. 3 is the Whole Time Director and Respondent No. 4 is the CEO in M/s Milkfood Limited. It is further averred in the petition that despite summons dated 30.08.2020, 04.09.2020 and 07.09.2020 issued to the respondent No. 2, he failed to comply with any of the summons and it was only on 17.09.2020 that his statement could finally be recorded in response to the summons dated 14.09.2020.

5. It is further averred that on 11.11.2020 and 12.11.2020 statement of respondent No. 1 was recorded and during his statement he submitted that he is the authorized signatory of the company and reports to respondent No. 2. Respondent No. 2 stated that he looks after the accounting audit and financial operations of the company. It is further averred that fake ITC could not have been availed by the company without the active participation of respondent No. 1. It is further averred that respondent No. 1 submitted that Sh. Harmesh Mohan Sood is the decision maker and responsible for any fake billing that may have been done by M/s Milkfood Limited and he could not confirm or deny whether the goods have actually been supplied in the

transactions of M/s Milkfood Limited with M/s Maya Impex, M/s Aditya Sales, M/s Shiv Muskaan Traders, M/s Shri Nidhivan Foods, M/s Haryana Sales and M/s Shyam Sales Corporation, as he was only working in the office and has never witnessed any movements of goods. It is further averred that ignoring the statements of the respondents about the vital aspects of the matter, the impugned order dated 24.11.2020 was passed, whereby the respondents were granted benefit of anticipatory bail upon condition of deposit of 10% of the alleged duty evasion amount.

6. The respondents have contested the petition by filing their reply. It is submitted that during October 2020, the respondents were summoned by the department in relation to the investigation pertaining to the firms/companies of two suppliers/distributors of M/s Milkfood Limited namely Ashish Aggarwal and Sanjay Garg who were subsequently arrested. It is submitted that the respondents have joined the investigation pursuant to the summons issued by the department. It is further submitted that Ashish Aggarwal who has been stated to be the master mind and beneficiary was granted regular bail vide order dated 14.11.2020, whereby the then Ld. C.M.M. has noted that despite 14 days of custody no custodial interrogation has been undertaken by the department which demonstrated that no custodial interrogation was required and that arrest was made prior to issuance of show cause notice/ adjudication of alleged evasion.

7. It is further submitted that the petitioner had also moved a petition seeking cancellation of bail granted to Ashish Aggarwal but vide order dated 16.03.2021 the same was dismissed. It is further submitted that apprehending coercive action, the respondents moved anticipatory bail application which was granted vide order dated 24.11.2020 on the following grounds:

> "4.1 Admittedly the alleged amount is yet to be Adjudicated;
>
> 4.2 M/s Milk Food Ltd is a 40 Years Old Company having clean antecedents;
>
> 4.3 Applicants (Respondents herein) are not Habitual Offenders;
>
> 4.4 The Hon'ble Supreme Court in the case of ***C. Pradeep Petitioner(s) Vs. The Commissioner of GST and Central Excise***, ***Selam and Anr.*** SLP (Crl.) No. 6834/2019 vide order dated 06.08.2019 wherein it was held that "Learned Counsel for the petitioner submits that indisputably assessment for the relevant period has not been completed by the Department so far. In which case, invoking Section 132 of the Central Goods and Services Tax Act, 2017 does not arise. He further submits that, even if, the alleged liability of Rs 19 crores as is assumed by the Department is accepted, it is open to the petitioner to file appeal after the assessment order is passed; ***and as per the statutory stipulation, such appeal could be filed upon***

deposit of only 10% of the disputed liability. In that event, the deposit amount may not exceed Rs. 2,00,00,000/- (Rupees two crores), which the petitioner willing to deposit within one week from today without prejudice to his rights and contentions in the assessment proceedings and the appeal to be filed thereafter, if required.

Issue notice on condition that the petitioner shall deposit Rs. 2,00,00,000/- (Rupees two crores) to the credit of C. No. IV/16/27/201HPU on the file of the Commissioner of GST & Central Excise, Salem, Tamil Nadu and produce receipt in that behalf in the Registry of this Court within ten days from today, failing which the special leave petition shall stand dismissed for non-prosecution without further reference to the Court.

Subject to the above, notice returnable within three weeks. Dasti, in addition, is permitted.

For a period of one week, no coercive action be taken against the petitioner in connection with the alleged offence and the interim protection will continue upon production of receipt in the Registry about the deposit made with the Department within one week from today, until the disposal of this Special Leave Petition."

4.5 In the present case, against the alleged evasion of Rs.85.4 Crores, the Respondents were directed to deposit a sum of Rs.10 Cr. as

> a pre-condition for grant of Anticipatory Bail and the said amount stand deposited."

8. It is further submitted that subsequently co-accused Sanjay Garg was also released on regular bail vide order dated 10.12.2020 passed by the Ld. CMM and till date no cancellation has been moved against said Sanjay Garg. It is further submitted that pursuant to the passing of the impugned order, the respondents deposited Rs. 10 Crores and further a sum of Rs. 6.27 Crores was further deposited in order to demonstrate the bonafidies pertaining pending investigation and till date a total amount of Rs. 16.27 Crores has been deposited which is almost 20% of the alleged evasion. It is further submitted that this figure is other than the GST of Rs. 20.59 Crores paid by M/s Milkfood Ltd from the date of commencement of GST, which is not in dispute. It is further submitted that despite deposit of Rs. 16.27 Crores, the present cancellation petition has been moved after two months of the passing of the impugned order dated 24.11.2020.

9. I have heard the Ld. counsel for the parties and perused the records of this case.

10. Ld. Sr. Standing Counsel for the petitioner argued that the impugned order has been passed by the Ld. A.S.J. without appreciating the contentions raised by the petitioner. It is further argued that while passing the impugned order the court below has mainly relied upon the interim order dated 06.08.2020 passed by the Hon'ble Supreme Court

in the case of ***C. Pradeep Vs. The Commissioner of GST and Central Excise Salem*** wherein the petitioner was directed to deposit 10% of the alleged liability consequent upon which, a 'no coercive action' order was passed. It is further argued that the said order dated 06.08.2020 was only an interim order and cannot be said to have laid down any binding proposition of law. It is further argued by relying upon ***P.V. Ramana Reddy Vs. Union of India***, reported as 2019-TIOL-873-HC-Telangana-GST that the economic offences are serious in nature as a huge liability is created for the Government. Reliance has also been placed upon ***UOI Vs. Sapna Jain,*** SLP (Crl.) 4322-4324/2019.

11. It is further argued that in these circumstances, the respondents could not have been granted bail and also the fact that the respondents did not join the investigation. It is further argued that the statements which have been subsequently recorded by the petitioner (department) have revealed that active roles have been played by the respondents in defrauding the Government Exchequer. It is further argued that from the statement of the respondents it is evident that M/s Milkfood Limited had complete control over the sales and purchases of M/s Maya Impex and other firms which were being operated by said Ashish Aggarwal which used to raise fake invoices without actual supply of goods as admitted by Ashish Aggarwal.

12. Ld. Sr. Standing Counsel for the petitioner has placed reliance on ***Sanjay Verma Vs. State*** 1991 (2) Crimes 325, wherein it has been observed that "Economic offences are place at higher pedestal than murder". Reliance has also been placed upon ***State of U.P. Through CBI V. Amarmani Tripathi*** (2005) 8 SCC 21, ***Anil Kumar Yadav Vs. State (NCT of Delhi) and Another*** (2018) 12 SCC 129, ***Ram Narain Popli Vs. CBI*** (AIR 2003 SCC 3257) and ***Neeru Yadav Vs. State of U.P. & Anr.***, (2014) 16 SCC 508.

13. On the other hand, it is argued by the Ld. counsel for the respondents that the respondents have joined the investigation as and when summoned and have co-operated in the investigation. It is further argued that the respondents have joined the investigation, even after passing of the impugned order dated 24.11.2020. It is further argued that the respondents were summoned during December 2020 and their detailed statements were recorded and there are no allegations against the respondents of non-co-operation in the investigation or any allegation of self incrimination.

14. It is further argued that one of the ground taken by the petitioner is that the respondents are very much likely to tamper with the evidence/influence witnesses. However, there are no allegations against the respondents that they ever tried to tamper with the evidence or any of the witnesses of the case had complained about the respondents

influencing them in any manner whatsoever. It is further argued that the cancellation can only be done in cases of supervening circumstances which are totally lacking in the present case. The counsel for the respondents relied upon ***State (Delhi Administration) Vs. Sanjay Gandhi*** 1978 (2) SCC 411.

15. It is further submitted by the counsel for the respondents that the judgments relied upon by the Ld. Sr. Standing counsel for the petitioner in regard to the cancellation of bail are not applicable to the facts of the present case. It is submitted that the Hon'ble Supreme Court in ***Neeru Yadav Vs. State of U.P. & Anr. (supra)*** held that the cancellation of bail can only be granted if there is violation of any condition imposed in the bail order or if the order is illegal or perverse or non consideration of relevant factors. It is further urged that this matter was in relation to the offence committed under sections of IPC, NDPS and Arms Act whereas the matter in hand is CGST Act.

16. It is further submitted that the judgment relied upon by the Ld. Sr. Standing Counsel for the petitioner namely ***Ram Narain Popli Vs. CBI (supra)*** has no bearing to the present facts and circumstances, as the respondents have been co-operating with the petitioners. It is further submitted that the case namely ***State of U.P. Through CBI Vs. Amarmani Tripathi (supra)*** is also not applicable to the facts of the present case as that was a case of murder where the maximum

punishment for the alleged offence is death penalty whereas in the present case the maximum punishment for the offence alleged does not exceed more than 5 years.

17. It is further argued by the Ld. counsel for the respondents that the alleged self incriminatory statements relied upon by the petitioner for cancellation of bail are primafacie not a ground for seeking cancellation of bail because not only the said statements were recorded prior to the passing of the impugned order dated 24.11.2020, rather there is no self-incriminatory averment in the same and the same are required to be proved by the department during trial with independent corroboration. It is further submitted that even after passing of the impugned order dated 24.11.2020, the respondents were summoned in December 2020 and their detailed statements were subsequently recorded, therefore, it cannot be said that there is non-co-operation on the part of the respondents and it is also not understood as to for what purpose their custody is required by the department and what purpose would be served by keeping them in J.C.

18. It is further submitted that the respondents have root in the society and there is no apprehension of their absconding. It is further submitted that there is no likelihood of respondents tampering with the evidence or influencing the witnesses and the respondents satisfy the

triple test for bail and it is further argued that accordingly the Ld. A.S.J. has rightly granted bail to the respondents.

19. In this regard, Three Judges Bench of Hon'ble the Supreme Court in ***State (Delhi Administration) vs. Sanjay Gandhi*** 1978(2) SCC 411 has made the following elemental distinction in defining the nature of exercise while cancelling bail:

> *"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."*

20. Further, the Hon'ble Supreme Court in ***Dolat Ram v. State of Haryana*** (1995) 1 SCC 349 has also laid down guidelines to Courts while deciding the question of **cancellation of bail already granted. Para 4 of judgment reads as follows**:

> *"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere*

with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner... However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted."

21. It is settled that once bail granted should not be cancelled in a mechanical manner without there being any supervening circumstances which are not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same.

22. In the instant case, the respondents have joined the investigation and there are no allegations that they have not co-operated in the said investigation. According to the counsel for the petitioner in view of the

statements made by the respondents, the bail granted to them needs to be cancelled. In any case, this shows that the respondents have joined and co-operated in the investigation. It is also pertinent to mention here that the statements of the respondents have already been recorded in the month of December 2020 which shows that the respondents have been joining the investigation and there are no allegations of non-co-operation. There are no allegations of any tampering or influencing of the witnesses. There are also no allegations that the respondents are flight risk or there is any likelihood of their absconding. The petitioner has not been able to make out a case of supervening circumstances on the basis of which the bail granted to the respondents should be cancelled and nothing has been brought on record to show that the respondents have such a towering personality that their mere presence out on bail would in any manner thwart the further investigation of the case or that they are in any manner threat to the fair trial of this case. So, I see no reason for pre-trial incarceration of the respondents in the present case. Therefore, relying upon the judgments ***State (Delhi Administration) vs. Sanjay Gandhi (supra)*** & ***Dolat Ram v. State of Haryana (supra)*** and also that all the facts and circumstances, required for an order of cancellation of bail to be passed are missing in the present case, the petition is dismissed.

RAJNISH BHATNAGAR, J

JUNE 04, 2021

Sumant