IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty First day of January Two Thousand Twenty Two

PRESENT

The Hon`ble Mrs Justice T.V. THAMILSELVI

CRIMINAL ORIGINAL PETITION No.987 of 2022

MANSOOR ALI [PETITIONER]

Vs

THE SUPERINTENDENT OF GST AND CENTRAL EXCISE, [RESPONDENT]
HQR. PREVENTIVE UNIT,
GST CHENNAI SOUTH COMMISSIONERATE
692, M.H.U. COMPLEX, NANDANAM,
CHENNAI 600 035.

For Petitioner : M/S. S.D.RAMALINGAM Advocate

For Respondent : N.P.KUMAR, Special Public Prosecutor for GST Cases

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences under Sections 132(1) (b), 132(1) (c), 132(1) (I) (i) of the GST Act, 2017, in R.R.No.42 of 2021, on the file of the respondent police, seeks anticipatory bail.

2. The petitioner/accused is a law abiding citizen and he was unnecessarily made as an accused in R.R.No.42 of 2021, dated 07.12.2021 by the respondent for alleged offences under Sections 132 (1) (b), 132 (1)(c), 132(1) (I) (i) of the CGST act, 2017. He has not committed any crime as stated in the R.R nor there was any complaint of non cooperation or evasion of any summons. There was no conclusive evidence against the accused or his company with respect to the committal of any offence as stated by the respondent authority. He has been wrongly implicated as accused and remanded on 07.12.2021. He had been very regular in paying all the taxes, invoices have been raised on paying the GST and also adjustments have been claimed only

as per law every document has been uploaded and it is very much available on the GST site and there is no question of any forgery or there is no question of any further tampering the witness. He was summoned to the respondent office for enquiry on several occasion, inspite of the petitioners fullest cooperation the respondent had raided the office and allowed him to do his usual routine, still they were not able to recover any document to correlate to the offence stated herein. Further, the petitioner is a law abiding citizen also and refused to accept what are all stated herein. Further, the petitioner, who is a law abiding citizen also refused to accept to all their demands and refused to accept the respondent's version and in view of the frustration the respondent had physically abused the petitioner and seized his mobile phone without assigning any reason known to the respondent. Petitioner is the only earning member in the family. He had not done any evasion and it was also not possible in the GST era. Every document is very much available on the GST portal including the invoices, so no question of suppression or tampering the witness arise. The petitioner was suffering from various medical complications including loss of kidney and chronic diabetes and blood pressure and had been recently recovered second time from the deadly COVID-19 attack. This is the third bail application and the first one was withdrawn and the second one was dismissed on 20.12.2021. He is innocent and he is no way connected with the commission of the said offence and he is ready and willing to abide to any condition and prays for bail.

3. Mr.N.P.Kumar, learned Special Public Prosecutor, GST Cases, submits that the allegations in para 8 of the petition of the accused are wrong and factually incorrect. The department communicated huge discrepancies in the mandatory GST returns filed by M/s.Folium Trading Provate Limited, and explanation for the same were requested from them vide this office letter dated 08.05.2019. However, M/s.Folium Trading Private Limited, did not submit the said explanations till date despite issuance of reminder letter dated 17.06.2019. Considering non-cooperation and non-submission of relevant documents, searches were conducted in the premises connected to M/s.Folium Trading private limited, and documents relevant the investigation were recovered. The said searches were conducted under proper 'Authorisation for search-INS01'' under Section 67(2) of the CGST Act, 2017 and by following due process of law. It is most respectfully submitted that during recording of statement under Section 70 of the copies of their purchase invoice (Question No.6 of the statement), to which the accused informed that the number of purchase invoices is huge and also informed that some of the purchase invoices were available in his whatsapp chat and in order to show the sample purchase invoice the accused voluntarily handed over his phone. However, it was noticed that apart from purchase invoices, certain documents relevant to the investigation were present in the said phone and the petitioner/accused was requested to email such documents. That no mobile phone was seized by the officers. Hence, deny the

allegation in para 8 of the petition. He further submits that after the remand was made, further investigations were carried out to detect evasion of GST by the petitioner/accused. It is submitted that on scrutiny of the GSTR-1M Returns, search was conducted at various premises of M/s.Leaf Impex Pvt Limited Under the provisions of Section 67 of the CGST Act, 2017 and it was revealed that they did not have any godown/warehouse to store any goods shown to be purchased by them. It was also noticed that they did not had any stock of goods at their principal place of business and the godowns/warehouses which were shown to be purchased by them. It was also revealed that the petitioner/accused was also linked to the operations of M/s.Leaf Impex Private Ltd, and further investigation in the matter is under progress. It is also submitted that the respondent/complainant is in the process of filing a petition for conducting enquiry from the petitioner/accused in prison so as to confront the material evidence uncovered during the investigation and for recording a statement under Section 70 of the CGST Act, 2017.

4. Considering the submissions made on either side, this Court finds that from the year 2019 onwards, the department has been sending letter to this petitioner requesting him to submit explanation but he has not co-operated for the investigation as per the submission made by the prosecution. Therefore, on 16.12.2021, he was remanded to judicial custody following due process of law. As per the submission made by the prosecution he issued fake documents and bank challans. As on date, investigation is pending and if the petitioner is released on bail, the investigation agency would not able to conduct the further investigation. Hence, this Court is not inclined to grant anticipatory bail to the petitioner.

Accordingly, this Criminal Original Petition is dismissed.

-sd/-
21/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE OFFICER INCHARGE,
SUB JAIL, SAIDAPET, CHENNAI.

2 THE SUPERINTENDENT OF GST
AND CENTRAL EXCISE, HQR. PREVENTIVE UNIT,
GST CHENNAI SOUTH COMMISSIONERATE
692, M.H.U.COMPLEX, NANDANAM,
CHENNAI 600 035.

3 THE SPECIAL PUBLIC PROSECUTOR
FOR GST CASES, HIGH COURT, MADRAS.

+1 CC to M/S. S.D.RAMALINGAM Advocate on payment of necessary charges SR.NO.1038

CRL OP.987/2022

Date :21/01/2022

RW 04/02/2022