

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

Sr. No. 273

CRM-M-29703-2022 (O&M)

Date of decision : 10.10.2022

Gaurav Dhir

.....Petitioner(s)

VERSUS

Central Goods and Services Tax

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Sanjay Kaushal, Sr. Advocate with
Mr.Prem Kandpal and Ms. Ojaswini, Advocates
for the petitioner

Mr.Sourabh Goel, Senior Standing Counsel for CBIC

AMAN CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in a case registered under Section 132(1)(i) read with Section 132(1)(b)(c)(e)(f) of the Central Goods and Services Tax Act, 2017.

Learned Senior counsel submits that the petitioner is a Chartered Accountant by qualification, who was initially registered but had subsequently given it up. In the present case, he had been paid professional fee for uploading of the refund of Input Tax Credit. The petitioner and his co-accused Sunil Mahalawat were colleagues, as such the UDIN was borrowed by the petitioner from him for uploading and issuance of the CA certificate. He, however, further submits that otherwise as per Rule 89(m) of CGST Rules, CA certificate is not required for the aforesaid purpose. He further submits that pursuant to the notice by which, the petitioner was summoned, he appeared to join the investigation on 17.5.2022 but was arrested there and then. Thereafter, he was sent to the judicial remand but no request for police remand had been sought by the respondent-Department. The recovery of laptop and other relevant documents have already been effected from the petitioner. He further submits that the entire

investigation has been completed, challan stands presented and no recovery is to be effected from the petitioner. He is in custody since the date of his arrest i.e. 17.5.2022 and in all there are a total of 21 prosecution witnesses, all of whom are officials of the Department, as is reflected from the challan. He further submits that from the challan it is apparent that before the disbursal of the amount, the Range Officer had submitted the report after conducting physical verification marked on the system and recommended that refund may be sanctioned. He further refers to the statement of co-accused-Lalit Dogra, who in response to question No.6 had stated that he had engaged the petitioner to render professional service against payment of fee. It is stated that the maximum sentence for the alleged offence is 5 years and it is a Magisterial trial, which is likely to take a considerable time. It is his further submission that there is no allegation against him that he in any way was the beneficiary of the excess Input Tax Credit, allegedly received by the companies. He is also not involved in any other case.

Per contra, learned counsel for the respondent-Department opposes the prayer of the petitioner on the ground that huge loss has been caused to the department, though, certain bank accounts have already been freezed and certain companies have voluntarily refunded the amount due towards them. Department is still trying to figure out as to who all are involved in the case and proceedings against certain officials have also been initiated. He however, is unable to controvert the fact that the petitioner is in custody since 17.5.2022; the laptop and other relevant documents have already been recovered from the petitioner; the challan has since been presented; there are 21 PWs in all and the trial is yet to commence. As regards the non-requirement of CA certificate is concerned, he disputes the same.

In support of his submissions, he places reliance on the judgments of Hon'ble the Supreme Court of India in **Central Bureau of Investigation vs. Ramendu Chattopadhyay** 2020(1) RCR (CrI.) 167; **The State of Bihar and another vs. Amit Kumar @ Bacha Rai** 2017(3) RCR (CrI.) 690, SLP (CrI.) Nos. 4322 and 4324 of 2019 in case of **Union of India vs. Sapna Jain; Nimmagadda Prasad vs. Central Bureau of**

Investigation 2013(3) RCR (CrI.) 175 (paras 27 and 29); **Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation 2013(3) RCR (CrI.) 108** (paras 14 to 17) and **P.V. Ramana Reddy vs. Union of India 2019(25) G.S.T.L.185**, (para 39 to 46) (Telangana),

Heard the learned counsel for the parties.

For considering the present petition, it is apposite to refer to the judgment of Hon'ble the Supreme Court of India in the case of **Sanjay Chandra v. CBI 2011(4) RCR (CrI.) 898**, wherein it was held as under:-

28) We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI. ”

Hon'ble the Supreme Court of India in the case of **P.Chidambaram vs. Directorate of Enforcement (2020) 13 SCC 791**, has held as under:

“21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of

sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

In the case of **Satender Kumar Antil Vs CBI and others**, SLP (Crl) 5191 of 2021, decided on 11.07.2022, Hon'ble the Supreme Court of India, in order to issue guidelines meant for investigating agencies and Courts, has also relied upon the aforesaid judgments. It has also been observed in **Amit Kumar @ Bacha Rai (supra)**, that there is no straight jacket formula for consideration of grant of bail to an accused and it all depends upon the facts and circumstances of each case. Para relevant in this regard, reads thus:

12. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.

In so far as the judgments as relied upon by the learned counsel for the respondent-Department are concerned, they do not lend support to

its case, which are being referred to hereunder:-

Hon'ble the Supreme Court of India in the case of **Ramendu Chattopadhyay** (supra), wherein impugned order granting interim bail was set aside, as investigation was going on.

In the case of **Amit Kumar @ Bacha Rai** (supra), wherein the order granting bail, on the basis parity, to the kingpin in a publicly known as Bihar Topper Scam, was set aside, by observing that the investigating agency was going to file additional charge-sheet, therefore, the respondent's presence in custody may be necessary for further investigation.

In the case of **P.V. Ramana Reddy** (supra) registered under CGST Act, against which SLP (Crl) no. 4430/2019 was dismissed by Hon'ble the Supreme Court of India on 27.05.2019, the High Court of Telangana was considering the issue whether Article 226 can be used as a substitute to section 438, Cr.P.C and relief against arrest of the petitioner was not granted. Hon'ble the Supreme Court of India in the case of **Sapna Jain** (supra) had observed that the accused-respondents had been granted the privilege of pre-arrest bail by the High Court by the impugned orders and it was made clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP (Crl.) No.4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

In re: **Nimmagadda Prasad's** case (supra), wherein the learned Senior counsel for CBI had submitted that in view of the status report dated 30.4.2013 filed by the Deputy Inspector General of Police, CBI, Hyderabad, further period of 4-6 months was required to complete the investigation under Section 173(8) Cr.P.C., it would not be proper to release the appellant on bail at that juncture and Hon'ble the Supreme Court held the appellants not entitled to be released on bail and direction was issued to complete investigation preferably in four months.

Hon'ble the Supreme Court in the case of **Y.S. Jagan Mohan**

Reddy (supra), held that release of the appellants may hamper the investigation and the CBI was directed to complete investigation and file charge sheet within four months and the appellants would be free to renew the prayer for bail before the trial Court as observed in the earlier order dated 5.10.2012, which the trial Court would be free to consider the prayer for bail independently on its own merit.

In the present case the investigation has been completed and the challan stands presented; he is not involved in any other case; he is in custody since 17.5.2022; nothing is to be recovered from him; there are a total of 21 PWs; it is a Magisterial trial, which is yet to commence; thus, further incarceration of the petitioner behind bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

Keeping in view the the facts of present case and the judgments referred to above, particularly in the cases of **Sanjay Chandra** and **P.Chidambaram** (supra), the instant petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds amounting to Rs.10 lakhs to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner shall surrender his passport and will not leave the country without the permission of the Trial Court.
3. The petitioner will not change his residence without prior intimation to the Department and the trial Court.
4. The petitioner will not pressurise/intimidate the prosecution witnesses.
5. The petitioner will furnishing an undertaking by way of his affidavit before the trial Court that he will appear on each and every date fixed, unless his presence is exempted by a specific order of the Court.
6. The petitioner shall not commit an offence similar to the one involved in this, which he is accused of, or for commission of which he is suspected of.
7. The petitioner shall not directly or indirectly coerce, inducement, threaten or promise to any

- person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- 8. The petitioner shall not in any manner misuse his liberty.
 - 9. Any infraction shall entail in withdrawal of the benefit granted by this Court.

The Trial Court is at liberty to impose any other condition that it may deem appropriate.

It is further clarified that if the petitioner does not abide by the aforesaid conditions or violate the same, the respondent-Department would be at liberty to seek cancellation of his bail.

Nothing stated hereinabove be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations above, which have only been made for the purpose of adjudication of the present petition for grant of regular bail.

10.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No