HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No. 20392/2021

Lakshya Agarwal S/o Shri Krishna Kumar Agarwal, Aged About 25 Years, R/o 5- Indra Nagar Bhord Bulandshahar At Present R/o Flat No. 504, Golf City Plot No. 8 Sector 75 Noida U.p (Accused Is In Central Jail, Jaipur)

----Petitioner

Versus

1. Dggi Jaipur Zonal Unit, Jaipur (Union Of India)
2. State Of Rajasthan, Through P.p.

----Respondents

For Petitioner(s)	:	Mr.Sandeep Singh Hora with Mr.Daksh Pareek & Mr.Arjun Singh
For Respondent(s)	:	Mr.Kinshuk Jain

HON'BLE MR. JUSTICE FARJAND ALI

Judgment / Order

08/03/2022

The instant criminal misc. bail application has been submitted on behalf of the accused-petitioner Lakshya Agarwal, who is in custody in connection with case no. DGGI/INV/GST/2371/2021-Gr-B registered at DGGI for the offences under Sections 132 (1)(b), (C)(h), (L) read with Section (5) of CGST Act, 2017.

Briefly stated the facts of the case are that the petitioner has been arrested in the aforesaid matter on 19.11.2021 by Intelligence Officer, Office of the Principal Commissioner, ADG, Directorate General of GST Intelligence, Jaipur Zonal Unit, Jaipur in exercise of powers under Section 69 of the CGST Act, 2017. The petitioner has been sent to judicial custody vide order dated 20.11.2021 under the order passed by the learned Chief Metropolitan Magistrate, (Economic Offences), Jaipur. Since his regular bail application filed under Section 439 CrPC has been dismissed by the learned Addl. Sessions Judge No.9, Jaipur, he preferred this bail application before this court.

Mr.S.S.Hora, learned counsel for the petitioner submits that entity of the accused petitioner is located at Metal Rod Enterprises which is registered under GST Act as per rules and which is working regularly after getting registered in June 2021. It is submitted that no illegal act has ever been committed by the petitioner. It is further submitted that all the goods were purchased by the petitioner with the same entity for which GST number was registered. Goods worth Rs. 22,29,62,924.00 were purchased by the petitioner's entity from the registered entities. The copper goods were purchased as per the rules by paying requisite tax of Rs.4,01,33,326.28 while at the same time, the GST entries were made according to the rules and only thereafter the e-way bill was issued by the GST department for transportation. Thus, he submits that GST has been paid by the petitioner properly.

Arguing further, Mr.Hora submits that only after the payment is made, the GST department issued the e-way bill and then only the goods were transported. The prescribed form G.S.T.R.3B and GSTR-1 were issued by the Tax Department. The forms and tax were submitted to the department as per the prescribed time by filling the GSTR-1 and on the basis of Form No.3B and R1 submitted by the buying entity to the department, the accused entity became entitled to get an input tax credit as per rules. As per him, the petitioner's entity has made purchases from various entities for a total of Rs.22,2962,924/- from June 2021 till date and the petitioner has paid Rs.4,01,33,326.28 on the purchase @ 18% to the supplier as per rules. It is submitted that the department's contention regarding entities being fake is not sustainable as the same has been made in accordance with the rules. It is submitted that the department has distorted the facts based on false and fabricated grounds because all the suppliers are duly registered under GST Act and GST number had been issued by the GST Department after verifying all the KYC and other necessary documents required as per GST Act for registration.

Arguing further, learned counsel submits that the matter pertains to Economic Offences, serious questions regarding the truthfulness/genuineness of the allegations have been raised for which it is alleged that the petitioner has made evasions/defalcation. The maximum punishment which could be inflicted upon the accused if after trial he would be convicted; would be five years of imprisonment with fine. The enquiry/trial of the matter is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars till disposal of the case.

Per contra, learned counsel appearing for the GST Department has vehemently opposed the bail plea made by the counsel for the petitioner by submitting that there are serious allegations in respect of commission of offence under the Penal provisions of GST Act. As per him, fake invoices of Rs.72.0 crores are alleged to be made by the accused, therefore, he should be kept behind the bars. The counsel also supplied some orders of the Coordinate Bench wherein the bail plea of different accused related to the GST matters were rejected in other cases.

Heard learned counsel for the petitioner, learned counsel appearing for the GST Department, perused the order impugned, and other material made available on record.

It is well-nigh settled that the provisions of bail are neither punitive nor preventive in nature. The gravity of the offence and the severity of punishment alone is not a factor to be considered while adjudicating the bail plea. There are several other aspects which are required to be considered simultaneously with the gravity of nature i.e. if there is any apprehension that if the accused will be released on bail, he would hamper the prosecution evidence or would flee from justice or would not be readily available for the trial or otherwise hamper the course of smooth trial. Neither any apprehension has been shown by the counsel for the respondent nor any material has been made available from which an inference can be drawn regarding the aforesaid apprehension. The seriousness of the allegations or the availability of the material in respect thereof are not the only considerations for declining the bail. The case in which the petitioner is seeking bail is exclusively triable by the court of Magistrate. The case pertains to economic offence. The duped amount or tax evasion is fixed and calculated. The same is not directly affecting the individuals of society. The alleged amount can be recovered by initiating suitable proceeding. There is no fetter of law if criminal prosecution and recovery proceeding are allowed to run simultaneously, since criminal proceeding is being launched to punish the culprit suitably and civil proceedings are to levy or recover the loss incurred. As per Section 137 of the Act, the company and every person responsible for the business and conduct of the company are vicariously liable. Company/Firm has not been made accused in this case. Calculated amount with interest are recoverable from the company/firm. Every case has a distinct feature; bail is a matter of discretion, ofcourse the same should be exercised judicially. The bail orders submitted by counsel for the respondent are not applicable on the peculiar facts of this case. It could be presumed that the trial is not likely to be concluded within the reasonable time. If after trial, on the basis of evidence adduced on record, the offence would be found proved and the accused will be convicted still thereafter he will be given an opportunity to be heard on the point of sentence since it is mandatory. While hearing on the point of sentence, the trial judge may take into consideration the other aspects which are not related to the facts of the case such as physical and mental condition of the accused, his social background, economic condition of his family, his ailment, age, dependency of other person upon him and his criminal antecedents besides the other. It is only after considering the submissions on point of sentence, the trial Judge would then pass an order to sentence the accused suitably. The provisions of Section 360 and 361 of the CrPC as well as provisions contained in Secs. 3 & 4 of the Probation of Offenders Act could also be taken resort of by convicting Judge. At this primary stage, it cannot be assumed that the petitioner would surely be convicted and would be sentenced for the maximum period of sentence provided by the law since the same would be pre-mature. It is well settled that the pre-conviction detention is not warranted by law. The petitioner is behind the bars in this matter since 19.11.2021. It is also well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping the person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive; thus this court is of the considered view that since the accused is languishing in judicial custody, his further incarceration would not serve any fruitful purpose. Thus, this court deems it appropriate to enlarge the petitioner on bail.

Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner **Lakshya Agarwal S/o Krishna Kumar Agarwal** shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

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