



Crl.O.P.No.9560 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

Crl.O.P.No.9560 of 2023

The Senior Intelligence Officer
DGGI, Chennai Zonal Unit
No.16, BSNL Building, Tower II,
5th and 8th Floors,
Greens Road, Chennai – 600 006.

...Petitioner / Respondent/complainant

Vs.

1. Shri Dhivi Nellaiyah

...1st Respondent /Petitioner/Accused

2. Principal Commissioner
CGST,
BSNL Building, Tower II
VII Floor, Greens Road,
Chennai – 600 006.

... 2nd Respondent/2nd Respondent/Complainant

PRAYER:Criminal Original Petition is filed under Section 439(2) of Cr.P.C. praying to cancel the bail order in Crl.M.P.No. 6109 of 2023 on



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the file of the learned Principal Sessions Judge, Chennai, vide order dated 21.03.2023 to the respondent/accused.

For Petitioner : Mr. B.Arvind Srevatsa

For Respondent : Mr.A. Ramesh
Senior Counsel
for Mr.J.Suresh

ORDER

This petition has been filed by the complainant/ Senior Intelligence Officer, DGGI, Chennai Zonal Unit, under Section 439(2) of Cr.P.C., seeking cancellation of the bail granted to the respondent/accused, Shri Dhivi Nellaiyah.

2. It must be stated that the petitioner had registered R.R.No. 6 of 2023 on the premise that the respondent was alleged to have indulged in acts of suppression of value of taxable supplies and non issuance of invoices with intention to evade payment of GST and to violate the provisions of GST Act, 2017. It is further stated that a search was



conducted under the provisions of Section 67(2) of the Central Goods and Services Act, 2017 (CGST Act) on 21.02.2023. There was also seizure of cash during the course of search. Thereafter, the respondent was served with an arrest memo on 23.02.2023. After arrest, he had been remanded to judicial custody.

3. An application for bail had been originally filed before the Additional Chief Metropolitan Magistrate [E.O.I] in Crl.M.P.No. 25 of 2023 and by an order dated 08.03.2023, the application was dismissed.

4. The respondent then filed Crl.M.P.No. 6109 of 2023 before the learned Principal Sessions Judge, Chennai and by an order dated 21.03.2023, bail was granted. Aggrieved by the grant of bail, the complainant has filed the present Petition seeking cancellation of that order.

5. The factors that will have to be considered by this Court, are whether the reasons for the grant of bail by the Principal Sessions Judge



are justifiable or violates any specific provisions of the CGST Act or is contrary to any of the provisions of the CGST Act and whether the reasons given that the bail could be granted are in conformity with the provisions under the CGST Act. The learned Principal Sessions Judge had examined the provisions of Section 69(2) of the CGST Act.

6. The learned Principal Sessions Judge had also observed during the course of the order that to a large extent, the provision is para materia to Section 19 of Prevention of Money Laundering Act [PMLA]. The only distinction would be that in Section 69(2) of CGST Act, the Commissioner should have reasons to believe that the accused will be punishable under the provisions for which he is charged whereas under Section 19 of PMLA, the Officer taking a decision to arrest should have reasons to believe that the accused will be guilty of the offences. It is a slight difference in the terminology but the object is the same.

7. The object is that before taking a decision to arrest, the Commissioner or the authorised Officer should record in writing the



reasons to substantiate his belief that the accused is required to be arrested and placed under detention nor to facilitate further investigation and that those reasons to believe that the accused would be punished / or is guilty of the offences alleged.

8. Thereafter, at the time of arrest, the further procedures enunciated under the Code of Criminal Procedure should be followed, namely, informing the accused about the grounds of arrest.

9. The arrest memo under Section 69 of the CGST Act has been filed as a document in these proceedings and my attention had been drawn to it. It is a standard format. But however, reasons to believe necessity to arrest would differ case to case and can never be fitted in a particular format or in a predetermined form. Those reasons should differ case to case, otherwise there would be an allegation of there not being any application of mind to the facts of that particular case by the Commissioner or the Officer taking the decision to arrest the accused. The reasons should not only be orally stated but must be in writing so



that it would be clear in black and white as to what actually the reasons are and also prevent the reasons from being added and multiplied or even subtracted or divided at a later point of time. They must be written down in writing. Those reasons must lead to a reasonable belief that the accused would be punished of the offences alleged and that therefore arrest is required.

10. After recording those reasons, a decision has to be taken to arrest the accused and that decision is conveyed to the Officer, who actually carries out the arrest. Such officer has to convey the grounds of arrest which would in-turn also contain the reasons for the belief that arrest is required. Both these aspects go in hand in hand and cannot be diversified from one another.

11. The learned Sessions Judge in the course of the order had stated that the reasons to believe had not been produced atleast for the Court to examine them. This Court wanted to know from the learned Standing Counsel whether independent of the arrest memo, the



Commissioner had recorded his reasons to believe that the accused would be punishable for the offences. It had been stated that the records has to be examined on that aspect.

12. When the arrest memo does not contain the reasons why the individual has to be arrested which would also be the grounds for the arrest then, at this stage, it may not be appropriate on the part of this Court to go on a hunting spree trying to cull out the reasons for arrest. They may be available in the file and it is always be to the respondent to examine them but as observed by the learned Principal Sessions Judge, the accused was not furnished with a copy of any reason to believe that it is imperative that he must be arrested.

13. It is pointed out on behalf of the petitioner herein that in the remand report the reasons to believe that the person should be taken into custody have been stated. A remand report is for the subjective satisfaction of the Magistrate, who actually remands the accused to judicial custody. It is not intended for the accused. It is presented before



the Magistrate before whom the accused is produced and contains grounds substantiating that it is required that the accused should be remanded to judicial custody and not be let out on bond or to hold that there is no necessity to be remand. Therefore, the reasons given in the remand report would not take the petitioner anywhere so far as this case is concerned.

14. On the side of the petitioner, a grievance is expressed that the learned Sessions Judge had given findings which might play upon the mind of trial Judge during the course of recording of evidence and while deciding the finality of the case. I am confident that any Judgment passed would be on the basis of the records available / materials produced and those materials would primarily be the complaint, the oral and documentary evidence, produced during the course of trial. An order granting or denying bail can never be looked upon as sufficient material for passing a Judgment of either conviction or acquittal. At any rate, let me make it clear that the learned Additional Chief Metropolitan Magistrate [E.O.I] may overlook any observations made by the learned



Principal Sessions Judge during the course of the order granting bail with respect to the merits of the case and should independently assess the evidence and materials produced during the course of trial.

15. With those observations, this Criminal Original Petition stands dismissed.

Vsg

12.12.2023

(3/3)

To

1. Principal Sessions Court, Chennai.
2. Additional Chief Metropolitan Magistrate [E.O.I]
Egmore, Chennai.
3. The Senior Intelligence Officer
DGGI, Chennai Zonal Unit
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