**212**

# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

**CRM-M- 1362-2023**
**Date of Decision: 24.07.2023**

Rajesh Kumar @ Ajay Gupta
..... Petitioner

Versus

Inspector (Prev.), C.G.S.T., Commissionerate, Ludhiana
..... Respondent

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Saurabh Kapoor, Advocate and
Mr. Abhishek Chowdhary, Advocate
for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel, C.B.I.C.
assisted by Mr. Tej Bahadur, Advocate and
Ms. Shivani Sahni, Advocate
for the respondent.

*****

**HARSH BUNGER J.**

1. Petitioner (Rajesh Kumar @ Ajay Gupta) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in Complaint Case No.COMA/1519/2021 dated 04.02.2021, under Section 132 of the Central Goods and Services Tax Act, 2017 (for short, 'the C.G.S.T. Act') and Punjab Goods and Services Tax Act, 2017 (for short, 'the P.G.S.T. Act') read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (for short, 'the I.G.S.T. Act').

2. Upon issuance of notice, reply by way of affidavit dated 18.04.2023 of Mr. Narain Singh Ajnoha, Assistant Commissioner, Central

Goods and Services Tax, Commissionerate, Ludhiana, has been filed on behalf of the respondent, which is already on record.

3. Custody certificate dated 17.05.2023 of the petitioner filed in Court is taken on record, subject to all just exceptions.

4. Briefly, the petitioner herein is an accused in the aforesaid complaint case filed under Section 132 of the C.G.S.T. Act and the P.G.S.T. Act read with Section 20 of the I.G.S.T. Act. Paragraph No.32 of the said complaint relates to the role of petitioner, which reads as under:-

> *"32. - x - x -*
>
> ***(E) Rajesh Kumar alias Ajay Gupta S/o Shri Ram Chander, R/o A-3, Sectro 20, Gautam Buddh Nagar, Noida (Accused No.8)***
>
> *Rajesh Kumar alias Ajay Gupta (accused No.8) one of the partners in M/s Murari Enterprises and M/s La Mode Fashions, in his statements tendered under Section 70 of the C.G.S.T. Act, 2017, has inter alia, stated that he had come in contact with Tarun who was operating a cyber cafe in Sector-12 Noida through one of his friends. As he was in search of a job, Tarun Kumar offered him to open firm in his name on which they will be doing business. For this, Tarun Kumar offered him salary of Rs.10,000/-. Thereafter, Tarun Kumar asked him to provide his PAN Card or any other ID. When Rajesh Kumar replied that no ID was available with him, Tarun Kumar told him that he would create identity for him, to which Rajesh Kumar agreed. Thereafter, a new ID in name of Ajay Gupta was created which was later on used to create partnership entities and open bank accounts in their name. Thus Ajay Gupta alias Rajesh Kumar, with the help of Tarun Kumar, forged his identity to create two partnership firms which were later used to generate not only bogus ITC but also in availing fraudulent refund from the G.S.T. Department. He being one of the partners in two firms, namely M/s La Mode Fashions and M/s Murari Enterprises, has knowingly*

*provided his credentials to Shri Tarun Kumar and to Rakesh Arora for creating firms and also for opening bank accounts in the name of these firms. He has also received monetary benefits from Rakesh Arora in lieu of he being a partner in two firms. He was arrested on 27.12.2020 and was produced before the Hon'ble CJM Court, who granted him judicial custody.*

*- x - x -"*

5. Learned counsel for the petitioner submits that the petitioner is a proprietor running a Cyber Cafe in Noida and he has been falsely implicated in this case at the instance of respondent-Department for allegedly availing I.T.C. in relation to alleged Firms, namely M/s La Mode Fashions, M/s Decent Fashions and M/s Murari Enterprises, however, the petitioner is having no concern with the said businesses and he is also not a beneficiary from the said Firms. Learned counsel for the petitioner submits that during the course of investigation, the petitioner received summons, whereupon he appeared before the respondent-Department and tendered his statement under Section 70 of the C.G.S.T. Act and thereafter, he was arrested on 27.12.2020. It is submitted that since the respondent-Department failed to file the complaint before the competent Court within the statutory period, accordingly the petitioner was granted default bail under Section 167(2) of the Code of Criminal Procedure vide order dated 02.02.2021 (Annexure P-2) passed by the Court of Chief Judicial Magistrate, Ludhiana, however, the same was subject to the condition that the petitioner shall furnish bail bonds/surety bonds to the tune of Rs.1 Crore with two sureties in like amount (atleast one local) and he was also directed to furnish a bank guarantee/F.D.R. for an amount of Rs.50 Lacs. It is next submitted that because of the said stringent conditions imposed upon the petitioner, he filed a criminal revision petition before the Court of Additional Sessions Judge,

Ludhiana, whereupon the conditions were modified vide order dated 19.07.2021 (Annexure P-3) to the effect that the petitioner shall furnish bail bonds in the sum of Rs.30 Lacs with two sureties in like amount and also furnish bank guarantee for an amount of Rs.20 Lacs. It is stated that the petitioner was unable to furnish the bail bonds and the bank guarantee, as directed vide order dated 19.07.2021 (Annexure P-3), and in the meantime, the respondent-Department filed a complaint under Section 132 of the C.G.S.T. Act and P.G.S.T. Act read with Section 20 of the I.G.S.T. Act against the petitioner and other co-accused; accordingly, the petitioner filed an application for grant of regular bail before the Court of Chief Judicial Magistrate, Ludhiana, which was dismissed vide order dated 10.10.2022 (Annexure P-5).

6. Thereafter, the petitioner filed an application for grant of regular bail before the Court of Additional Sessions Judge, Ludhiana, however, the same was dismissed vide order dated 15.11.2022 (Annexure P-1). Accordingly the petitioner has filed the instant petition.

7. Learned counsel for the petitioner contends that the petitioner has no role to play in the alleged offence. It is submitted that the petitioner, along with Ms. Shreya Aggarwal and Mr. Ajay Gupta (all residents of Noida, Uttar Pradesh), have been falsely implicated as partner in the aforementioned three Firms. It is submitted that the basic provisions, i.e. Section 69 as well as Section 132 of the C.G.S.T. Act, have already been impugned before this Court by one of the co-accused, namely Ankur Garg, in **CWP No.7147 of 2021** titled as ***"Ankur Garg Vs. Union of India and others"***, wherein a Division Bench of this Court had stayed the trial in the present Complaint Case No.COMA/1519/2021 dated 04.02.2021, qua the petitioner therein (Ankur Garg), vide order dated 26.03.2021

(Annexure P-7).

8. Learned counsel for the petitioner submits that as per Section 132 of the C.G.S.T. Act, the maximum punishment may extend up to rigorous imprisonment for a period of five years whereas the petitioner has already undergone two years, five months and twenty one days of custody (as on 17.05.2023). It is further submitted that co-accused, namely Shreya Gupta and Tarun Kumar, have already been granted bail by the co-ordinate Bench of this Court in CRM-M-25558-2022 and CRM-M-42142-2021. Learned counsel for the petitioner states that trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. It is further submitted that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned counsel for the respondent-Department has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that from the investigation conducted, it has come out that the petitioner is a partner at M/s La Mode Fashions and M/s Murari Enterprises and he has committed a grave offence by forging his identity through fake identity proofs in the name of Ajay Gupta, which were further used for creating the aforesaid two firms, which indulged in availing and passing of fraudulent I.T.C. and causing loss to the government exchequer by monetizing the same through refunds. It is submitted that the petitioner has been instrumental in creating the aforementioned bogus firms, getting them registered on G.S.T.N. portal and opening of bank accounts with his fake identity and signatures for monetizing of fraudulent I.T.C. While referring to paragraph No.3 of the

reply, learned counsel for the respondent has submitted that the petitioner by way of his acts of omissions and commissions, along with one Dharminder @ Raja Bhaiya, Ms. Shreya Aggarwal and one Rakesh, has *prima facie* caused the following:-

> "*(a) Availment of fake I.T. amounting to Rs.17.11 Crores in both these firms.*
> *(b) Fraudulent monetization of I.T.C. through refund amounting to Rs.2.90 Crores.*
> *(c) And issuing bogus bills amounting to Rs.153.15 Crores and passing of fake I.T.C. amounting to Rs.12.79 Crores.*"

10. Learned counsel for the respondent-Department submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition is made. However, it is not disputed by learned counsel for the respondent-Department that the punishment under Section 132 of the C.G.S.T. Act may extend up to rigorous imprisonment for a period of five years. Further while referring to the custody certificate of petitioner, it is also not disputed that the petitioner has undergone two years, five months and twenty one days of custody (as on 17.05.2023).

11. I have heard learned counsel for the parties and perused the paper book, reply filed by respondent-Department as well as custody certificate of the petitioner.

12. Concededly in the instant case, the maximum sentence specified under Section 132 of the C.G.S.T. Act is up to five years of rigorous imprisonment and the petitioner having already undergone custody for a period of two years, five months and twenty one days (as on 17.05.2023), would be entitled to bail. Furthermore, one of the co-accused in the instant Complaint Case No.COMA/1519/2021 dated 04.02.2021 has already laid

challenge to the provisions of Section 69 and 132 of the C.G.S.T. Act by way of filing a writ petition bearing CWP No.7147 of 2021 titled as ***"Ankur Garg Vs. Union of India and others"***, wherein trial qua the petitioner therein was ordered to be stayed vide order dated 26.03.2021 passed by a Division Bench of this Court. Thus, trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period.

13. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State/ Prosecuting Agency/ State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

14. Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone

number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial and on each such appearance, the petitioner shall submit an affidavit to the concerned Police Station/Station House Officer that he is not involved in any other case.

15. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.5,00,000/- (Rupees Five Lacs Only) and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

16. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

17. The petition is accordingly disposed of.

18. All pending application(s), if any, shall also stand closed.

**24.07.2023** **(HARSH BUNGER)**
*Apurva* **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No