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

CRM-M-33946-2022 (O&M)
Decided on : 08.05.2023

Shamim Akhtar ...... Petitioner

Versus

Directorate General of GST Intelligence, Gurugram ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. M.L.Saggar, Sr. Advocate with
Mr. Rana Gurtej Singh, Advocate and
Ms. Armaan Saggar, Advocate and
Mr. Nikhil Goyal, Advocate
for the petitioner.

Mr. Saurabh Goel, Advocate
for the complainant.

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Manjari Nehru Kaul, J.(Oral)

CRM-18266-2023

Application is allowed as prayed for and statement of complainant as PW-1 is taken on record subject to all just exceptions.

Main case

1. The petitioner is seeking concession of regular bail in Complaint No.210 of 2021 dated 27.06.2022 under Sections 132(1)(A) & (I) of Central Goods and Services Tax Act, 2017 registered at Directorate General of GST Intelligence, Gurugram, Haryana.

2. Learned Senior counsel *inter alia* contends that the petitioner has been falsely implicated in the case in hand, which is evident from the fact that neither any cash nor any Agriculture Grade Urea was recovered from the petitioner.

Learned Senior counsel submits that the arrest of the petitioner on 26.04.2022 was in contravention of the statutory provisions of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as the adjudication and assessment of tax liability in the instant case is yet to start.

3. Learned Senior counsel further submits that the entire case of the petitioner is based on the statement of Manoj Kumar , who allegedly disclosed that he had supplied Agriculture Grade Urea to M/s Saba Chemicals Wood Products situated at Yamuna Nagar, however, said Manoj Kumar had not even been cited as a witness by the respondent-Department. Hence, the alleged statement made by Manoj Kumar on the basis of which the petitioner had been arrayed as an accused, would not carry much evidentiary value. It has further been stated that subsequent to the statement of Manoj Kumar, the respondent-Department had erroneously assumed and concluded, without there being any material to substantiate that 1 kg of Urea was used in the manufacture of 60.33 kg of Resin and that since 26081 bags of Agricultural Grade Urea had been allegedly supplied to M/s Saba Chemicals Wood Products, the firm would have sold the Resin in cash, without issuing tax invoices resulting in evasion of GST amounting to Rs.22,30,51,232/-. It has also been submitted that the petitioner, who has now been in custody since 26.04.2022 for offences, which are triable by a Magistrate, be extended the concession of bail as even the maximum punishment for the offences as alleged under the CGST Act was five years, which yet again would be dependent on the quantum of evasion of taxes. Learned Senior counsel has submitted that Manoj Kumar has already been extended the concession of bail by this Court vide order dated 22.06.2022.

4. Per contra, learned counsel for the respondent while opposing the prayer and submissions made by learned Senior counsel has contended that the Agricultural Grade Urea was used by the petitioner for producing Resin, which was in turn sold without issuing tax invoices and thus, State Exchequer had suffered loss to the tune of Rs.22,30,51,232/- on account of the evasion of GST. Learned counsel for the respondent has not disputed that the maximum punishment prescribed for offences under the CGST Act is five years.

4. Heard learned counsel for the parties and perused the relevant material on record.

5. The petitioner is accused for the commission of offences under CGST Act, which are triable by the Magistrate and the maximum punishment prescribed for the alleged offences is upto 5 years, which would be dependent on the quantum of tax evasion. The trial is at the stage of pre-charge evidence, hence, there is no likelihood of the trial concluding in the near future. Therefore, further incarceration of the petitioner in the aforesaid facts and circumstances would serve no useful purpose. Accordingly, the present petition is allowed. The petitioner be admitted to bail to the satisfaction to the trial Court/Duty Magistrate concerned.

6. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

08.05.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No