Neutral Citation No. - 2023:AHC:97949

Court No. - 92

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14622 of 2023

Applicant :- Amit Gupta
Opposite Party :- Directorate General Of Gst Intelligence
Counsel for Applicant :- Ashutosh Tiwari,Sandeep Kumar Srivastava
Counsel for Opposite Party :- Parv Agarwal

Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Rejoinder affidavit filed today is taken on record.

2. Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Ashutosh Tiwari and Sri Sandeep Kumar Srivastava, learned counsel for the applicant and Sri Parv Agarwal and Sri Lakshya Kumar Singh, learned counsel for the opposite party as well as learned A.G.A.

3. The instant bail application has been filed on behalf of the applicant with a prayer to admit him on bail in Case Crime No. 2415 of 2021 under Section 132(1)(c), 132(1) (2) and Section 132(1)(i) of the CGST Act, 2017 read with Section 69 of CGST Act, Department DGGI, Meerut, during the pendency of trial.

4. Succinctly, prosecution case is that an intelligence input was received by the officers of DGGI, Meerut Zonal Unit that M/s Progressive Alloys (India) Private Limited and M/s Brilliant Metals Private Limited located at Delhi, which are said to be engaged in trading of non-ferrous metals are availing fake credit fraudulently, on the basis of bogus invoices without supply of goods or services. It is also alleged that the firms issuing bogus invoices are either found to be non-existent or having issued bogus invoices to M/s Progressive Alloys (India) Private Limited and M/s Brilliant Metal Private Limited. During the course of investigation, it came to notice of the department that DGGI Headquarter and DQGI, Meerut Zonal Unit are investigating the same entities i.e. M/s Brilliant Metal Private Limited, M/s Progressive Alloys India Private Limited and M/s JBN Impax Private Limited though the period covered under investigation was different. In the backdrop of the aforesaid facts, the competent authority in order to avoid any duplication, decided that investigation in respect of the aforesaid Firms being investigated by the DGGI, Hora shall be centralized to DGGI, Meerut Zonal Unit and this fact was also brought to the notice of the Delhi High Court where the accused-applicant has initiated certain legal proceedings.

5. It is said that the applicant-accused in his statement had admitted that he looks after the day-to-day affairs of both these companies. From the 'Panchnamas' drawn at the registered premises of M/s Relycare Metal

Trading Private Limited, M/s State Metal Enterprises, M/s Classic Metcraft Impex and M/s Kalikaa Industries Private Limited from which all those suppliers were found to be on-existent. It is said that Amit Gupta has masterminded fraudulent availment of fake/ineligible Input Tax Credit (ITC) of Rs. 46.54 crore in his companies i.e. M/s Progressive Alloys India Limited and M/s Brilliant Metals Private Limited during the period March 2019 to January, 2021 on the basis of bogus invoices without supply of good with the mens rea to evade Input Tax Credit.

6. As clinching evidence was found against the accused-applicant, the applicant was arrested in terms of Section 132(1) (c) of CGST Act, 2017 for offence of availment of ineligible Input Tax Credit (ITC) of Rs. 46.54 Crore on the strength of bogus invoices issued either by non-existent Firms or by entities, which have admitted to have issued bogus invoices without supply of concomitant goods.

7. Learned Counsel for the applicant has vehemently argued that the applicant is an innocent and peace loving citizen who has been falsely implicated and arrested by the officers of the department on 19.1.2023 from Vasant Vihar Delhi under Section 69 read with Section 132(1)(c) of the Central Goods and Service Tax Act, 2017 without serving any notice under Section 41A of the Code of Criminal Procedure.

8. According to learned Counsel for the applicant, the applicant is engaged in the business of trading of goods (metals) and is Director of both the companies, namely, M/s Progressive Alloys India Limited and M/s Brilliant Metals Private Limited, which are registered with the Excise Department as a dealer since 2011 and the applicant is duly registered with the GST authorities and other government authorities in Delhi. However, the authorities of GST Department initiated investigation on the basis of allegation of GST evasion on the premise that the applicant through its companies received fake invoices from one Mr Chirag Jain and Input Tax Credit was availed by the Companies. Ultimately, the applicant was arrested by the DGGI R.K.Puram, New Delhi on 1.12.2019 for the offence punishable under Section 69 read with Section 132(1)(b) and (c) of the Central Goods and Service Tax Act, 2017. In this case, the Chief Metropolitan Magistrate, Patiala vide order dated 23.12.2019 granted bail with the condition that the applicant shall deposit Rs. 2.70 crore and will cooperate in the investigation.

9. To utter surprise of the applicant, DCGI Meerut also initiated investigation into the alleged evasion of tax by the applicant for transaction made during different quarters wherein allegedly applicant is said to have availed ineligible Input Tax Credit from three firms, namely, M/s Classis Metacraft Impex, M/s Star Metal Enterprises and Relycare Metal Trading Private Limited.

10. Learned Counsel for the applicant has submitted that the applicant is in jail since 19.1.2023 and the applicant is no more required for any investigation as complaint/charge-sheet has already been filed before the Trial Court at Meerut. It has also been pointed out that most of the witnesses are government officials and there is no likelihood of applicant influencing the witnesses. Even otherwise, the case is based on documentary evidences which are already on record and hence there is no requirement of applicant to remain confine in jail.

11. It has also been urged that even assuming, though not admitted that the applicant is guilty of offence, then too maximum punishment is upto five years whereas the applicant is in jail since January, 2023.

12. It has also been pointed that the co-accused persons of the case, namely, Anand Rastogi, Gulshan Sharma and Manish have already been enlarged on bail by the Special Chief Judicial Magistrate, Meerut. In these circumstances, the applicant is also entitled for bail as he is languishing in jail since January, 2023.

13. Lastly, it has been argued that in an identical case pertaining to tax evasion matter of Ghaziabad Regional Unit, Meerut the accused Paras Jain @ Rohan has been granted bail vide order dated 29.7.2022 as also by the order dated 3.8.2022 passed in criminal Misc. Bail Application NO. 54497 of 2021; Nitin Verma Versus Union of India and another, accused Nitin Verma has been enlarged on bail. The case of the applicant is almost identical to the aforesaid cases and as such he is also entitled to bail. Apart from these cases, learned Counsel for the applicant in support of above assertions has referred to various other judgments.

14. The learned Counsel for opposite party vehemently opposed the prayer for grant of bail. The learned counsel appearing for the Union of India has submitted that the applicant is an economic offender and he has caused a loss of Government Revenue to the tune of around four crore by creating fake firms, issuing bogus invoices and by wrongly claiming input tax credit.

15. Learned counsel for the Union of India has placed reliance upon a judgment of Hon'ble Supreme Court in the case of **State of Bihar Vs. Amit Kumar, 2017 (13) SCC 751** in which the Hon'ble Supreme Court has held that "socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously."

16. Learned counsel for the Union of India has also placed reliance on a judgment rendered in the case of **Chhaya Devi Vs. Union of India, 2021 (52) GSTL 390 (Alld.)**, wherein a coordinate Bench of this Court held as follows:

"14. The offence alleged against the applicant is economic offence in which the evasion of duty amounting Rs. 62,10,28,165/- is made against the applicant. Although the offence is punishable with imprisonment of five years yet the evasion of huge amount of duty is a great loss to the Government Exchequer."

17. In the present case, both the courts have refused the bail on two grounds : the primary ground is that the offence alleged against the accused-applicant is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and4 dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to five years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

18. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him incarceration, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction. Therefore, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required is imperative.

19. In **Y. S. Jagan Mohan Reddy, (2013) 7 SCC 439**, the Hon'ble Supreme Court was dealing with allegations of offences which were punishable with upto life imprisonment, but in the present case, the maximum punishment that can be imposed upon the applicant is five years' imprisonment. Moreover, the offence is compoundable as per the provision contained in Section 138 of the CGST Act, sub-Section (1) whereof provides that "Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed".

20. In a recent decision in the case of **Satender Kumar Antil versus Central Bureau of Investigation, 2022 Scc OnLine SC 825**, the Hon'ble Supreme Court has summarized and reiterated the law regarding

grant of bail in economic offences, as laid down in its earlier decisions, in the following words:

"66.What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:--

In **P. Chidambaram v. Directorate of Enforcement,(2020) 13 SCC 791**, the Apex Court held as follows:

"23. 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 provide 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."

21. The seriousness of the offences alone is not conclusive of the applicant's entitlement to bail, as held by the Supreme Court inter alia in **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40** in the following terms:

"23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for

it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the Bail Application. 21/2022 Page 6 of 7 relevant considerations while considering bail applications but that is not the only test or the factor; the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provision of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

22. Analyzing the facts of the case in light of the law as explained in the case of **Y.S. Jagan Mohan Reddy, Dataram Singh and Satender Kumar Antil (Supra)**, it has to be taken into consideration that co-accused persons of the present case have already been enlarged on bail; charge-sheet/complaint has already been filed before the Trial Court; and, therefore, it cannot be said that now the applicant is in a position to influence the investigation of the case. Apart from the aforesaid facts, it is not disputed that the the applicant is languishing in jail since January, 2023 and that the maximum punishment that can be imposed upon the applicant is five years' imprisonment. Needless to mention that the offence is compoundable as per provision contained in Section 138 of the CGST Act, I am of the considered view that the applicant is entitled to be released on bail.

23. In view of the aforesaid facts and circumstances, and without making any observation on the merits of the case, the instant application for bail is **allowed**.

24. Let the applicant- Amit Gupta be released on bail in Case Crime No. 2415 of 2021 under Section 132(1)(c), 132(1) (2) and Section 132(1)(i) of the CGST Act, 2017 read with Section 69 of CGST Act, Department DGGI, Meerut on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court below, subject to the following conditions:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

25. In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail.

Order Date :- 8.5.2023
M. Tarik