IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10. 2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 26116 of 2023

The state Rep by
Senior Intelligence officer,
DGGI, Chennai Zonal Unit,
No.16, BSNL Building, Tower - II,
5th & 8th Floors,
Greams Road,
Chennai.

...petitioner

Vs.

M.Premraja

...Respondent

PRAYER : This petition has been filed under Section 439(2) of Cr.P.C, to cancel the bail order dated 14.08.2023 granted by the Principal Sessions Judge, Chennai, in Crl.MP No. 19972 of 2023 in R.R.No.23 of 2023 on the file of Principal Sessions Court, Chennai.

For Petitioner : Mr.N.P.Kumar,
Special Public Prosecutor.
For Respondent : Mr.B.Kumar, Senior counsel,

for E.Soundar Rajan.

ORDER

This petition has been filed to cancel the bail order dated 14.08.2023 granted by the Principal Sessions Judge, Chennai, in Crl.MP No. 19972 of 2023 in R.R.No.23 of 2023 on the file of Principal Sessions Court, Chennai.

2. The learned Special Public Prosecutor appeared for the petitioner submitted that the Court below failed to appreciate the fact that the respondent was not cooperate with the investigating agency during the initial stage of investigation and also failed to present himself for investigation despite issuing several summons, and thereafter look out circular was issued vide No.1/SIC/(ACK)/LOC/2023-9099 by Bureau of Immigration, by Ministry of Home Affairs dated 28.06.2023 while purportedly attempted to flee from the country through Bangalore International Airport on 28.06.2023 he was apprehended by the Immigration officials. Finally, he appeared before the investigating agency on 29.06.2023, after destroying key evidences such as the sim card and phone used by him for communicating with his accomplices. Thereafter on issuance of summons, statement was recorded on 30.06.2023 under Goods and Service Tax Rules 2017 (in short "GST") *inter alia* he admitted being involved in bill trading activities along

with another accused Premanathan and he explained the entire process. The facts unearthed during the course of the investigation reveals that he was master mind in forming various dummy firms/entities, opening bank accounts in the name of the same and was issuing face invoices without supply of goods and services which was resulted in causing huge revenue loss to the Government Exchequer. The entities created and operated by Shri Premaraja has passed on fraudulent input tax credit of Rs.175.88 Crore with corresponding taxable value of Rs.973.64 crore without any actual supply of Goods and services. Thus, he has created a loss to the exchequer to the extent of Rs.175.88 crore in violation of provisions of Central Goods and Service Tax Act, 2017. While granting bail the learned Sessions Judge failed to appreciate the alleged involvement of the accused/respondent by creating fake invoices which was operated by Sri Premraja and there is high possibility that he may flee again. Further, accused/respondent may threaten the evidence which may hamper the progress of investigation. Besides, the learned judge granted bail for the reason that Section 41-A of Cr.P.C has not complied with by the investigating agency. In fact, the respondent not cooperate during the course of the investigation and he was asked to appear before investigating officer dated 23.06.2023 and also again summon was issued to him but he failed to complied with the summon and also no explanation was offered by him for non appearance. He deliberately avoided to appear before the investigating agency with an intention to flee away from the country but without appreciating such facts and circumstances the Court below granted bail as such is erroneous and liable to be set aside.

3. Further, the reason assigned by the Court below for grating bail is that the procedure as contemplated under Section 41A of Cr.P.C, not been complied with, which is not correct for the reason that the respondent/accused issued with summons under Section 70 of GST Act which is equivalent to Section 41A of Cr.P.C and the grounds for arrest also informed as per Section 69(ii) of the GST Act. Therefore, the reason assigned by the learned Judge for granting bail is unsustainable. Further, the respondent again trying to leave the country and refused to cooperate for the investigation. Hence, he prayed to cancel the bail.

4. The learned counsel for the respondent submitted that as a Director of the Mr.Puppuy Exim Private Limited, the accused/respondent was falsely implicated by the prosecution as if he created various fictious invoices without supplying the goods thereby he causes loses to the Government to the tune of Rs.175.88 crores by claiming input tax credig "ITC" and he was

arrested and remanded to custody for the offence under Section132(i)(ii) of GST Act on 30.01.2023 after 46 days of his arrest the bail was granted by the Trial Court and the ground raised by the petitioner's counsel for canceling the bail is not valid. Further there is nothing in the GST Act, 2017 which provides procedure so as to exclude section 41 41A of Cr.P.C as per the circular by the Central Board to Indirect taxes and customs, Section 41A of Cr.P.C is applicable. Besides, already division bench of the High Court of Telangana, in the case of P.V.Raman Reddy Vs. Union of India, reported in 2022 (SCC) Online TS 472 clearly held that Section 41 and 41A of Cr.P.C is available to the person said to have committed offence under Section GST Act. In the instant case the respondent was not served with Section 41A notice. Therefore, the sessions judge rightly granted bail by holding that the procedure was not followed before arresting the accused. Hence, he prayed to dismiss this petition.

5. Heard both sides.

6. According to the petitioner, the respondent committed offence under Section 132(1)(b) and Section 132(1) of CGST Act in crime No.23 of 2023 on the file of the petitioner. During the course of the investigation it was found that the respondent is the master mind in forming various dummy

firms by opening bank accounts in the name of the dummy entities by issuing fake invoices without supplying goods and services which was resulted in huge revenue loss to the Government exchequer. Accordingly, entities created and operated by Shri Premraja has passed on fraudulent input tax credit of Rs. 175.88 crore with corresponding taxable value of Rs.973.64 crores without supply of goods and services. He was arrested on 30.06.2023 and after 46 days the bail was granted on 14.08.2023 in Crl.MP.No. 19972/2023 in RR No. 23 of 2023. While granting bail authorized officer failed to follow the provisions of Cr.P.C section 69(ii) GST relating to arrest but the authorized officer failed to adhere procedure of Cr.P.C especially provisions of sections 41 and 41A of Cr.P.C. Though the notice issued under Section 70 CGST Act but they failed to adhere the provisions of Cr.P.C by non compliance of issuing notice under Section 41 A Cr.P.C. and the same is considered as one of the ground for releasing the respondent on bail with other grounds.

7. The learned special public prosecutor submits that notice was issued under Section 70 of CGST Act which safeguard the accused as incorporated under Section 41-A of Cr.P.C. The procedures mentioned in the Cr.P.C is covered in the terms of Section 69 of CGST Act.

8. After careful examination of materials available on record, it reveals that during the course of the search proceedings " the reason to believe" was formed based on the material evidence. Therefore, the commissioner authorized the CGST authorities to arrest the accused/respondent which reduced into wittings by the commissioner in the case investigation file. Accordingly, arrest was made by the authorities/petitioner by following due process of law. During the arrest copy of the memorandum of arrest was given to the accused. Further, while remanding the accused/respondent copy of the arrest memo was submitted before the Court, the grounds for arrest also explained to the accused/respondent and also mentioned about the tax evaded by the accused/respondent in the remand report. In the report, it is clearly mentioned as the accused is the master mind in creating non existing fictious firms and caused tax loss to the Government to the tune of Rs.175.88 crores and also submitted the voluntary statement made by the respondent along with remand report. Based on the aforesaid material and evidence the Additional Director authorized the officers to arrest the respondent. Upon examining the material available on record, it shows that the investigating agencies complied the provisions of Section 69(iii) of CGST Act which is equivalent to the procedures in Section 41 and 41A of Cr.P.C.

The learned special Public Prosecutor submitted that Section 70 of CGST is to take care and safeguard the accused interest like Section 41A of Cr.P.C. So there is no violation of the procedures while arresting the accused/respondent.

9. Section 69, 70 of CGST Act and Section 41 A of Cr.P.C extracted below:

Section 69 – Power to arrest

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of
sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—
(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Section 70 – Power to summon persons to give evidence and produce documents

(1) The proper officer under this Act shall have power to summon any person
whose attendance he considers necessary either to give evidence or to produce a document
or any other thing in any inquiry in the same manner, as provided in the case of a civil court
under the provisions of the Code of Civil Procedure, 1908.
(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial
proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

***1[41A. Notice of appearance before police officer.**-- (1) 2[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

3[(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]

10. Accordingly, as per Section 70 of CGST Act, the summon was issued to the respondent/accused calling upon him to appear for enquiry and also to return the statement on 24.06.2023 and the same was received by his wife/Meerakumari on 23.06.2023 but he was not appeared. Again another summon was issued to the respondent/accused for appearance but he was not appeared. Therefore, the search was made in his premise in the presence of his wife on 21.03.2023 along with other individual witnesses. On came to know about the search of the investigating agency, the respondent attempted to flee away from the country and he was apprehended by the immigration officials in the Bangalore Airport on 26.08.2023. In fact, he deliberately avoided to appear before the investigating agency hence, Look out circular

by Home Affairs Ministry on 24.06.2023, was issued at the request of the investigating agency. Finally, he was appeared before the investigating agency on 29.06.2023 he gave a voluntary statement, wherein two questions posed on him as to why he was failed to appear before the authorities in spite of summons issued on 26.03.2023, for that he gave a reply that he was mis-leaded by the lawyers, the said statement recorded during the investigation. The copy of the summons, which was received by the respondent's wife also produced before this Court by the petitioner for perusal. Therefore, under Section 70 of CGST Act, the copy of the summons was issued to the accused/respondent for that he failed to appear. On the other hand, he attempted to flee away from the country but he was caught hold by the immigration officials at Bangalore International Airport. As per Section 70 of CGST Act, the summons issued to the respondent to appear before the appropriate officer but he was not appeared. So also Section 41A of Cr.P.C indicated that issue a notice directing the person against whom reasonable complaint has been made. Therefore summons issued to the accused /respondent in relation to cognizable offence is equivalent to the duty cast upon the police officer under Section 41A of Cr.P.C. In the present case, authorization of arrest was issued under Section 69 of CGST Act with reasons and they complied with the other procedures before arrest under Section 69(ii) of the CGST Act and in fact grounds of arrest informed to the accused/respondent which is also a equivalent procedural safeguards mentioned in Cr.P.C. Moreover, the amount of tax evaded also recorded in the memo of arrest which enclosed with arrest memo and that copy also provided to the accused at the time of the arrest all these procedural formalities not been denied by the respondent, so there is no procedural default on the side of the investigating agency. Therefore, the reason assigned by the Court for granting bail that the investigating agency had committed default in following the procedures as contemplated under Section 41 A is erroneous. Further, the judgements relied by the respondent is not applicable to the facts of the case.

11. Further, the respondent attempted to flee from the country after he came to know about his accomplice's arrest. Therefore, if the bail is granted to him, he may flee to foreign countries or may tamper the evidence. The prime facie investigation shows that accused/respondent caused loss to the Government exchequer to the tune of Rs.173.88 crores. Hence this court is inclined to cancel the bail.

12. In the result, this petition is allowed, the concerned authorities are

directed to secure the accused as per manner known to law.

03.10.2024

pbl

To
The Public Prosecutor,
High Court, Madras.

T.V.THAMILSELVI, J.

pbl

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