Neutral Citation No. - 2024:AHC-LKO:37995

<u>Court No. - 16</u>

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4859 of 2024
Applicant :- Mohit Kumar
Opposite Party :- Union Of India Thru. Deptt. Revenue Directorate Gst. Intelligence Lko
Counsel for Applicant :- Mukesh Kumar Tewari
Counsel for Opposite Party :- Digvijay Nath Dubey

<u>Hon'ble Mohd. Faiz Alam Khan,J.</u>

1. Heard Shri S.C. Mishra, learned Senior Advocate assisted by Shri Mukesh Kumar Tewari, Advocate, appearing for the accused-applicant -**Mohit Kumar** as well as Shri Dipak Seth, along with Shri Digvijay Nath Dubey, learned counsels appearing for the respondent- Union of India (Department of Revenue, Directorate of GST Intelligence, Lucknow Zonal Unit), and perused the record.

2. This bail application has been moved by the accused-applicant-**Mohit Kumar** for grant of bail in Case Crime No.0316 of 2024, under Section 132(1)(b) Central Goods & Service Tax Act, 2017, Police Station DGGI, Lucknow Zonal Unit Lucknow, District Lucknow, during trial.

3. Shri S.C. Mishra, Learned Senior Advocate, appearing for the applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case without sufficient basis/material and without assessing any tax liability and having regard to the scheme of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “Act of 2017”) as provided under sections 69, 73, 74, 79 and Section 62 of the Act of 2017 without assessing tax liability, the arrest of the accused person may not be made,which is against the scheme of the Act of 2017.

4. While drawing attention of this Court towards the arrest memo, a copy of which has been placed on record, it is submitted that no grounds have been shown in the arresting memo which may justify the arrest of the applicant and vague language has been used therein.

It is further submitted that the applicant is neither the proprietor nor having any position in any of the alleged firms and he was working on the post of Manager (Operation) in M/s Emblica Bio Private Limited and a search is shown to have been conducted at the office of the above company on 20.03.2024 and during such search certain incriminating documents, electronic devices are shown to have been recovered from the possession of the applicant. It is vehemently submitted that no such document or device has been recovered from the possession of the applicant and in pursuance of the summons issued by the Department the applicant had appeared before the Investigating Officer on 21st, 22nd, 23rd and 27th March, 2024 and on 28th March, 2024 the applicant has been illegally arrested, while he was cooperating with the investigation.

5. It is further submitted that the applicant has been arrested on 28th March, 2024 under the authorization given by the Principal Commissioner/Commissioner, CGST, without recording any satisfaction and opinion that as to why arrest of the applicant is required and as the alleged offence is punishable with upto 5 years imprisonment, the arrest of the applicant has been made in violation of the law laid down by the Hon'ble Supreme Court reported in ***(2014) 8 SCC 273 (Arnesh Kumar Vs. State of Bihar and another)*** and ***(2021) 10 SCC 773 (Satender Kumar Antil Vs. Central Bureau of Investigation and another).***

6. It is further submitted that on 29.03.2024 the applicant was produced before the Special Chief Judicial Magistrate (Custom), Lucknow for the purpose of remand and since he had remained before the investigating officer for four days, no further custodial interrogation remand of the applicant was sought by the Department and, thus, the further detention of the applicant appears to be not warranted by the Department also and the Department appears to be satisfied with the interrogation of the applicant and also on account of

the fact that the statement of the applicant has already been recorded on various dates which the applicant specifically denies and retracts.

7. It is further submitted that the arrest of the applicant is shown to have been made as the Directorate of GST Intelligence, Lucknow is shown to be investigating a case of claiming false input tax credit on the basis of fake invoices, without supplying any goods by many firms alleged to have been created by co-accused- Deepanshu Srivastava who was arrested on 02.02.2024 and it was found that the applicant is a key-person who was creating fake firms for the mastermind- Deepanshu Srivastava, who was preparing fake bills in order to claim fake input tax credit.

8. It is vehemently submitted that allegation of the Department is that the applicant is concerned and related with the creation of 97 fake firms and also in selling them to the main accused- Deepanshu Srivastava, however, admittedly the applicant was not holding any position in these firms. It is further submitted that pertaining to the search at the office of M/s Emblica Bio Private Limited the signature of the applicant has been taken under duress and the shelf-firms, which are being attached with the applicant, were granted registration number as per rule 8 and 9 of the Central Goods and Services Tax (CGST) Rules, 2017 (hereinafter referred to as the “Rules of 2017”) and after due verification of their credentials, they were registered, moreover, no money pertaining to any illegal claim of input tax credit has been received by the applicant and illegal income by taking fake input tax credits could only be attributed against co-accused- Deepanshu Srivastava, who has already been enlarged on bail by this court vide order dated 19.03.2024 passed in criminal misc.bail application no.2391 of 2014 and case of the applicant stands on better footing than the case of co-accused- Deepanshu Srivastava.

9. It is further submitted that the applicant is in jail since 29.03.2024 having no previous criminal record to his credit. No formal complaint

or FIR has been lodged till now and the applicant undertakes that he will fully cooperate with the investigation/trial and would remain present before the investigating officer/trial court as and when his presence would be required before them and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

10. Shri Dipak Seth and Shri Digvijay Nath Dubey, learned counsels appearing for the respondent- Union of India (Department of Revenue, Directorate of GST Intelligence, Lucknow Zonal Unit), vehemently opposes the prayer of bail of the applicant on the ground that the submissions, which have been advanced with regard to the fact that in absence of any tax liability the arrest could not be made, is not tenable as in all the matters of tax evasion the prosecution and adjudication may go on simultaneously. In this regard reliance has been placed on the law laid down by the Hon'ble Supreme Court reported in ***2011 (266) E.L.T. 294 (S.C.) (Radheyshyam Kejriwal vs. State of West Bengal).*** It is further submitted that instant is not a case of tax liability, rather the applicant has created 97 shelf-companies by using the credentials of some other persons and has sold them to the main accused- Deepanshu Srivastava who has used these companies in generating false invoices on the basis of which fake input tax credits have been claimed. It is further submitted that the statement of the applicant has been recorded under section 70 of the Act of 2017 and he has confessed his involvement in the crime. It is further submitted that the reasons for arrest have also been recorded by the authority concerned before causing the arrest of the applicant and the applicant has also been informed of the grounds of his arrest.

11. While drawing the attention of this Court towards the law laid down by the Hon'ble Supreme Court in ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation (2013) 7 SCC 439, Nimmagadda Prasad vs. C.B.I. (2013) 7 SCC 466 and Devchand Kalyan Tandel***

vs. State of Gujarat and another (1996) 6 SCC 255, it is submitted that economic offences are of a class of their own and they have to be taken up at a different pedestal as they are causing irreparable injury to the economic health of the country and are required to be dealt with iron hands. In this regard, the law laid down by the Hon'ble Supreme Court vide order dated 07.11.2023 passed in ***Criminal Appeal No. Nil of 2023, arising out of S.L.P. (Crl.) No. 10810 of 2023, 'The State of Jharkhand vs. Dhananjay Gupta @ Dhananjay Prasad Gupta***' has also been highlighted, wherein it is opined that at any rate mere claim of innocence or undertaking to participate in the trial or absence of specific allegation cannot be assigned as reasons for grant of bail in case of offences of serious nature. It is requested that having regard to the magnitude of the crime wherein the State has been inflicted loss of crores of rupees of input tax, the applicant is not entitled to be released on bail. Learned counsels for the respondent Union of India (Department of Revenue, Directorate of GST Intelligence, Lucknow Zonal Unit) have also placed reliance upon the following case-laws:-

i. ***2019 (25) G.S.T.L. 185 (Telengana) (P.V. Ramana Reddy Vs. Union) of India;***

ii. ***2023 (76) G.S.T.L. 146 (S.C.) (State of Gujarat Vs. Choodamani Parmeshwaran Iyer);***

iii. ***(2013) 7 SCC 466 (Nimmagadda Prasad Vs. Central Bureau of Investigation***;

iv. ***2023 (69) G.S.T.L.124 (Chhattisgarh) (Basudev Mittal Vs. Union of India)***; and

v. ***2023 (69) G.S.T.L. 118 (S.C.) (Basudev Mittal Vs. Union of India)***;

12. Having heard learned counsel for the parties and having perused the record, it is evident that the case of the prosecution, as is emerging from the record, is that the allegations against the applicant are to the tune that while investigating the case of co-accused- Deepanshu Srivastava with regard to claiming fake input tax credits, without actually supplying goods the involvement of the applicant was found

and thereafter a search was conducted at the office of M/s Emblica Bio Private Limited at Delhi and a diary containing miscellaneous details with respect to fake invoices and creation of fake supply chain, lap-top, mobile phones, pen-drive and attending incriminating detail/information were recovered from the possession of the applicant and *panchnama* in this regard was prepared and, it was revealed that the applicant was working in close coordination with co-accused- Deepanshu Srivastava in the act of creation and issuance of fake invoices to obtain fake input tax credits without supplying any goods. Statement of the applicant is shown to have been recorded on 21st, 22nd, 23rd and 27th March, 2024 and he is shown to have confessed his guilt in the process of issuance of fake invoices to obtain input tax credits without supplying any goods. Initially, the applicant is shown to have confessed his involvement in registration of 20 firms for Deepanshu Srivastava, but during the course of investigation, it was found that the applicant was actively involved in selling of as many as 77 fake firms and creating other 20 firms for Deepanshu Srivastava which have been used by Deepanshu Srivastava for issuing fake invoices to avail illegal input tax credits without supplying any goods. The illegal input tax credits obtained by the applicant for Deepanshu Srivastava amounts to Rs.144.14 Crore. The crux of the detailed statements of the applicant recorded by the Department have been given in para-12 of the counter affidavit filed by the Department and the same is reproduced as under:-

> *i. Buying GST registrations that were obtained fraudulently using someone else's KYC documents & details and selling it to Deepanshu Srivastava at a cost of Rs.35000-50000 each for a commission of Rs. 2000-3000. Applicant used to change the password of the firms once bought and sold to Deepanshu and provide details of ID, password along with KYC documents to Deepanshu Srivastava.*
>
> *ii. Making amendments in the GST registration like change in name of the firm, changing email id and mobile numbers of fraudulently obtained GST registrations. Mobile numbers,*

email ids were mostly provided by Deepanshu Srivastava and sometimes created by him.

iii. Till date he has sold 77 firms at a cost of Rs.35000-50000 each and obtained GST registration of 20 firms for Deepanshu Srivastava.

iv. The Applicant along with sharing the Id, password of the firms to Deepanshu Srivastava also used to maintain a database of GST id, password, e-way bill id, passwords of the firms operated or controlled by Deepanshu Srivastava. The Applicant used to file GST registrations, apply for amendments in GST registrations, generating e-way bills using these ids and passwords.

v. In addition to the above, Applicant used to issue fake invoices/bills, creation of supply chain using fraudulently obtained GST registrations, maintaining tally database, all for Deepanshu Srivastava.

vi. The Applicant used to ensure that turnover of each firm is between 8-12 Crores and once the limit was reached, the GST registration cancellation was made by him.

Vii. Applicant used to guide Deepanshu Srivastava on which firms to buy since list of firms available for sale used to be 150-200 & state-wise."

13. The above admission of the applicant, which according to learned Senior Advocate appearing for the applicant has been retracted, would show that shelf-companies have been created by the applicant using someone else's KYC documents and were sold to the main accused- Deepanshu Srivastava at the cost of Rs.35000-50000 each for a commission of Rs.2000-3000. The allegations which are emerging in the confessional statements of the applicant are also showing him in close association with the co-accused- Deepanshu Srivastava so as to help him in sharing ID password of the firms and also in issuing fake invoices/bills and creation of supply chain. Thus, even if the confession made by the applicant, which is stated to have been retracted, is taken on its face, the same would show that the applicant has created some shelf-firms by using the credentials of some other persons and has sold them to the main accused- Deepanshu Srivastava and it was/is the main accused-Deepanshu Srivastava, who has used

these shelf-firms in claiming fake input tax credits, without supplying any goods. Thus, the role of the instant applicant in the alleged crime is much lesser than the role of co-accused- Deepanshu Srivastava who has already been enlarged on bail by this court. Nothing has been canvassed by the Department before this court which may suggest the necessity of the further detention of applicant in the prison in the background that no request for custodial interrogation has been made by the Department at the time of remand of the applicant, before Magistrate.

14. Learned counsels appearing for the respondent-Union of India/Department of Revenue, Directorate of GST Intelligence, Lucknow Zonal Unit have relied on various case-laws. Keeping in view the fact that the applicant had appeared before the Department and his statements had been recorded on 21st, 22nd, 23rd and 27th March, 2024 and thereafter he was arrested on 28th March, 2024 and was produced before the Magistrate and no request for custodial interrogation was made by the Department at that point of time and also keeping in view the fact that the applicant is in jail in this case since 29.03.2024 and investigation appears to have reached at an advanced stage and nothing has been shown before this court which may justify the further detention of the applicant in prison and also keeping in view that the alleged offence is punishable with upto 5 years imprisonment and still no formal FIR or complaint has been filed by the Department and also keeping in view that the role of the instant applicant appears to be much lesser than the role of the main accused- Deepanshu Srivastava who is accused of receiving false/illegal input tax credits without supply of goods which is not the case with the applicant, a case of bail is emerging in favour of the applicant, however, apprehension of the Department pertaining to non-cooperation of the applicant in investigation while on bail may be taken care of by placing adequate conditions upon the applicant.

15. In result, the instant bail application moved by the applicant is hereby **allowed**.

16. Let the accused/applicant- **Mohit Kumar,** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall deposit his passport before the Trial Court, if he is having the same.

(ii) The applicant shall not sell any property of himself or of any of the companies in which he has a substantial interest and which are under investigation.

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses during the investigation/trial.

(iv) The applicant shall cooperate in the investigation as well as in trial sincerely without seeking any adjournment and will remain present before the investigating officer as and when his presence will be required.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

17. Breach of any of the above conditions shall be a ground for cancellation of bail.

18. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

19. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

[Mohd. Faiz Alam Khan,J.]

Order Date :- May 15th, 2024 MVS/-