IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88214 of 2024

Arising Out of PS. Case No.-35 Year-2024 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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Prem Sundar Chaudhary Proprietor of M/S Neha Enterprises S/O Late Ram Chandra Chaudhary Resident of Village Near Vishal Mega Mart Zero MIle Ahiyapur Mushari Muzaffarpur Bihar Pin Code- 842001

... ... Petitioner/s

Versus

Union of India through Directorate General of GST Intelligence Zonal Unit, Cybo Tech Tower Near Pani Tanki, Boring Road- Patliputra Road, Patna-800013

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Sr. Advocate
		Mr. Sadashiv Tiwari, Advocate
		Mr. Hiresh Karan, Advocate
		Ms. Shivani Dewalla, Advocate
		Ms. Prachi Pallavi, Advocate
For the Respondents	:	Mr. Sriram Krishna, Sr. Standing Counsel for DRI
		Mr. Prabhat Kr. Singh, Advocate
		Mr. Shashank Shekhar, Advocate
		Ms. Rashmi Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

CAV ORDER

5 22-03-2025 Heard learned senior counsel for the petitioner and learned counsels for Union of India (DRI).

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under section 132(1) of the Central Goods and Service Tax Act (CGST), 2017 under Clause(a) or Clause (b) or Clause(c) or Clause (d) of the said section 132(5).

3. The case of the prosecution is that Senior Intelligence Officer of Directorate General of GST Intelligence Zonal Unit,

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Patna made complaint before the Special Judge Economic Offence, Patna on 23.08.2024 alleging therein that iron scrap and miscellaneous scrap have been transported by way of vehicle using fake Invoices, e-way bill from Bihar to Punjab. It is further alleged that various fake suppliers firms were created for generation of e-way bills for the purpose of supplying of goods to the recipients located at Punjab. Further allegation is that on search at the residence of the petitioner, four mobile, one laptop and some documents and invoices were recovered and seized. On scrutiny it was found that ten firms engaged in issuance of fake invoices along with e-way bill were indulged. It is further alleged that statement of the petitioner under section 17 of the CGST Act was recorded and it was found M/s Neha Enterprises and M/s Mr. Enterprises were run by him and he handled all the legal activities personally through mobile using whatsapp. Further allegation is that petitioner has caused loss of more than rupees thirty three crores of the revenue of the governments.

4. Learned senior counsel for the petitioner submits that the petitioner is innocent and has committed no offence. He has falsely been implicated in this case. Learned senior counsel for the petitioner has submitted that petitioner was arrested only on

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the basis of suspicion. There is no evasion of tax by the petitioner. The FIR was lodged without verification of the facts in respect of alleged allegation against the petitioner. In GST regime, the petitioner is liable for filing the return as per the turn over and pay as per the disclosure of the turn over. Petitioner as per the liability filed the return and paid the taxes so there is no evasion or suppression of facts. The prosecution fails to understand the submissions made by the petitioner during interrogation. A statement has been made in para-3 of this petition that the petitioner has got no criminal antecedent. Moreover, the petitioner is languishing in judicial custody since 23.08.2024.

5. After reading of Section 69 of CGST Act, 2017 there must be reason to believe that a person has committed an offence and from perusal of Section 132 of the Act, it is clear that there must be reason to believe of tax evasion or condition as specified in section 132 for arresting of such person under the Act. Learned senior counsel for the petitioner further submits that the monetary limit which is specified in section 132 regarding period of conviction as per the amount of tax evasion but in arrest memo of the petitioner the amount of tax evasion is not specified. It means that the arresting of the petitioner is

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merely on the basis of suspicion or there is nothing in this case. The Ministry of Finance GST Investigation also issues a guideline for arrest and bail in relation to offences punishable under CGST Act, 2017 in which the condition precedent to arrest, procedure for arrest, post-arrest formalities and reports to be sent is described in detail. The guidelines determine some questions must be affirmative and accused should not be arrested on the basis of bail non-affirmative. In this case, guidelines were not followed. The learned senior counsel for the petitioner has also brought to the notice of this Court, Instruction No. 2/2022-2023 GST Investigation guideline for arrest and bail in relation to offences punishable under CGST Act, 2017. **Hon'ble the Supreme Court of India in its judgment dated 16th August, 2021 in Cr. APP. No. 838 of 2021 arising out of SLP (Crl.) No. 5442 of 2021,** has observed as follows:

> *"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must*

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be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

6. As against this, learned counsel for the Union of India has submitted that the petitioner has caused loss of revenue to the tune of Rupees thirty three crore and odd.

7. On perusal of Section 132 of CGST Act, it is clear that the punishment for the alleged offence is up to five years. Section 132(1) (l) (i) of CGST Act reads as under:

"(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;"

8. Having heard learned senior counsel for the petitioner and learned counsel for the respondent and considering the facts and circumstances of the case, this Court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Case No. 35(O) of 2024 on

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furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge Economic Offences at Patna.

(Ashok Kumar Pandey, J)

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