THE HIGH COURT AT CALCUTTA CRIMINAL REVISIONAL JURISDICTION APPELLATE SIDE Present : The Hon'ble Justice Shivakant Prasad CRM 1259 of 2020

Arvind Kumar Munka

-Vs.--

Union of India

For the Petitioner : Mr. Sekhar Basu
Mr. Rajdeep Mazumdar
Mr. Moyukh Mukherjee
Ms. Arushi Rathore

For Union of India : Mr. K. K. Maity

CAV on : 24.02.2020

Judgment on : 28.02.2020

The petitioner has renewed his prayer for bail under Section 439 of the Code of Criminal Procedure, 1973 as his earlier application being CRM No. 10075 of 2019 was rejected by this Court vide order dated 24.12.2019. The petitioner prayer for bail was lastly rejected by the Court of Judicial Magistrate, 2nd Court, Alipore, 24 Parganas (South) vide order dated 31.12.2019 which is evident from the Annexure-P1 being the orders. The petitioner as I have been found in the earlier order that he is a Chartered Accountant by profession and with the similar contention he has averred that he is no way connected with the instant case. The petitioner has been arraigned as an accused in this case under Section 69 read with Section 132(1) of the Central Goods and Services Tax Act, 2017 on the allegation that in connivance with the other accused persons, namely, Sanjay Kumar Pandit, Nagendra Kumar Dubey alias Sandip Dube, and Mr. Vijay Rajpuriya along with various other persons he allegedly issued GST Invoices without any supply of the goods or services to anybody on commission basis causing loss of more than 98 crores approximately.

It is submitted that the petitioner is in custody since 06.6.2019 and his further detention is not warranted as the Charge-sheet has already been submitted on completion of the investigation.

It is also submitted that the petitioner is no way responsible person as no notice was issued under Section 73 of the CGST Act, 2017 and has been falsely entangled in this

case as he is neither a proprietor nor a person responsible for the running of any proprietary business.

Mr. Sekhar Basu learned senior counsel for the petitioner reiterated that the prosecution has been lodged without the sanction of the Commissioner which is absolutely contrary to mandates provided under Section 134 of CGST Act as the Commissioner has only authorized the Investigating Officer to arrest under Section 69 read with Section 132(1) of the CGST Act but has not granted sanction under Section 134 of the CGST Act and as such the instant prosecution is not maintainable.

It is further pointed out that the peitioner is now extremely sick and suffering from severe chest pain and viral fever from long time and despite his repeated request proper medical treatment was not provided by the authority, despite knowing the fact that the petitioner has been hospitalized from 25th May, 2019 to 28th May, 2019 for proper medical care.

It is also submitted that the petitioner has not supplied any goods or services or both and did not issue any invoice in violation of the provisions of CGST Act, 2017 with the intention to evade tax or any of the offence enumerated in Section 132 of the CGST Act, 2017. Accordingly, the petitioner has renewed his prayer for his release on bail in connection with this case now pending before the learned Judicial Magistrate, 2nd Court, Alipore, 24- Parganas (South).

It woud appear from the Order-sheet of the Judicial Magistrate, 2nd Court, Alipore, 24-Parganas (South) vide order dated 19.02.2020 that case has been posted on 3rd March, 2020 for production of the accused from custody and for consideration of charge.

Mr. K.K. Maity learned counsel for the opposite party-Union of Inddia reference to a decision in case of State of Tamil Nadu Vs. S.A. Raja [2006(1) SCC (Cri.), 58] to submit that second application in absence of change in circumstances, the principle of res-judicate are not applicable to bail applications, but repeated filing of bail applications without there being any change of circumstances would lead to bad precedents.

Reliance is also placed to case in State of Gujarat vs. Mohanlal Jitamalji Porwal and another [1987 SCC (Cri.) 364] to argue that long incarceration in fail is no ground for releasing the accused on bail as in the cited case it has been held that mere fact that six years had elapsed, for which time- lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interest of justice in an age when delays in the Court have become a part of life and the order of the day.

It has been submitted that the Community or the State is not a person- non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of

criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

Again a reference to a decision in case of Mukesh Jain Vs. CBI reported in (2010) 1 AD (Delhi) 443 : (2010) 88 AIC 319 : (2010) 1 JCC 417 : (2010) 1 LRC 18 is made to the observation in paragraph 9 thus--

"9. It is true that the petitioner has been in custody for more than eight months and the chargesheet has already been filed, but considering the huge amount of public money, being retained by him, his having been in custody for eight months by itself would, in the facts and circumstances of this case, not entitle him to grant of bail at this stage. The economic offences having deep rooted conspiracies and involving huge loss of public funds whether of nationalized banks or of the State and its instrumentalities need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of our country. Therefore, the persons involved in such offences, particularly those who continue to reap the benefit of the crime committed by them, do not deserve any indulgence and any sympathy to them would not only be entirely misplaced but also against the larger interest of the society. The Court cannot be oblivious to the fact that such offences are preceded by cool, calculated and deliberate design, with an eye on personal gains, and in fact, not all such offences come to the surface. If a person knows that even after misappropriating huge public funds, he can come out on bail after spending a few months in jail, and thereafter, he can continue to enjoy the ill-gotten wealth, obtained by illegal means, that would only encourage many others to commit similar crimes in the belief that even if they have to spend a few months in jail, they can lead a lavish and comfortable life thereafter, utilizing the public funds acquired by them. In fact, not everyone would mind luxurious living for him and his family, even if it comes at the cost of spending a few months in jail. A strong message therefore needs to be sent to these white collared criminals and those who are waiting in the wings, that in the long run, it does not pay to be on the wrong side of law. Unless it is done, we will not be able to check the growing tendency to adopt dubious and illegal means, to get rich overnight so as to be able to enjoy all those luxurious of life, which now are available in abundance, courtesy liberation and globalization of our economy. I do not wish to suggest that the time already spent in jail is not a relevant consideration in the matter of grant of bail or that the economic offenders should not at all be enlarged on bail. Of course, we cannot keep anyone in prison for an unreasonably long period. But, how much period spent in jail would by itself entitle an under trial prisoner to bail, would depend upon the facts of each case, including the amount of public funds involved, the quantum of public funds being retained by him, the circumstances in which the offence was committed and the nature of the defence, if any, taken by him. No hard and fast rule can be laid down in such matters and every case has to be examined in the light of its individual facts and circumstances."

I have heard Mr. Basu learned senior counsel appearing for the petitioner and Mr. Maity learned counsel appearing for the Union of India and considered my earlier judgment dated 24.12.2019 passed in CRM 10075 of 2019 wherein I have vividly discussed the facts and the law involved in the case and bearing in mind the gravity of the economic offence and the principle as laid in case of P.V. Ramanna Reddy vs. Union of India reported in 2019(26) GSTL J(175) SC holding that though Section 69(1) of CGST,

2017 confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguard incorporated in Section 41 and 41A of the Code of Criminal Procedure, 1973 in view of provision of Section 70(1) of the said Act same must be kept in mind before arresting a person. However, Section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest, while turning down the prayer for release of the petitioner on bail and thereby held that petitioner would not be entitled to be enlarged on bail but gave him the liberty to approach the authority for compounding of the offence under Section 138 of CGST Act. I once again reiterate and record that the petitioner may be released on bail by the learned Trial Court if he finds that he has approached the authority for compounding of the offence on deposit of at least 20% of the evaded amount on account of CGST.

In the context above, the CRM 1259 of 2020 is dismissed. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)