

**IN THE HIGH COURT OF MADHYA PRADESH AT
GWALIOR**

MCRC. 13019/2019

NITIN NIKHRA

Vs

STATE OF M.P.

Anand Pathak, J

Dated: April 09, 2019

Appellant Rep. by: Shri Yogesh Chaturvedi, Learned Counsel

Respondent Rep. by: Shri Pravin Surange with Shri Harshvardhan Topre,

Learned Counsel, Shri Ghanshyam Sharma, (Inspector, Goods and Service Tax, Gwalior)

JUDGEMENT

1. The applicant has filed this second application under Section 439 of Cr.P.C for grant of bail, who has been arrested and is in custody since 6.2.2019, in connection with Case No.8/18-19, registered at Police Station Commissioner, Central Goods and Service Tax Department, Gwalior M.P., for the offence punishable under Sections 132 of the **Central Goods and Service Tax Act, 2017** (hereinafter would be referred as to the "Act of 2017") and 467, 471 and 120B of the Indian Penal Code. His first application M.Cr.C.No.8628 of 2019 was dismissed as withdrawn by this court vide order dated 5.3.2019.

2. It is the submission of learned counsel for the applicant that on the basis of false case, applicant is in confinement since 6.2.2019. Respondent authorities summoned the applicant on 5.2.2019 and when he appeared before them, they took him in custody and since then, he is in custody. As per Section 69 of the Act, without authorization, no arrest can be made and in absence of such authorization, it is illegal detention. Ingredients of Section 132 of the Act of 2017 are not available in the present case. Tax liability has not been adjudicated by the respondent under the Act by issuing show cause notice and quantifying the evasion of duties.

3. It is further submitted on behalf of the applicant that applicant was arrested on 6.2.2019 and charge sheet has not been filed within 60 days.

4. Offence under Section 132 of the Act is punishable with maximum jail sentence of five years, therefore, charge sheet ought to have been filed within 60 days but omission to file charge sheet within 60 days, applicant gets indefeasible right to be released on bail. Till today, he has already suffered confinement for 63 days and the charge sheet has not been filed. He relied upon Section 167 (2) of the Code of Criminal Procedure and also on the judgments rendered by the Apex Court in the case of *Union of India Through Central Bureau of Investigation Vs. Nirlay Yadav (2014) 9 SCC 457*, *Achpal @ Ramswaroop Vs. State of Rajasthan (2018) Cr.L.R (SC) 961* and *Rakesh*

Kumar Paul Vs. State of Assam (2017) 15 SCC 67. It is further submitted that no application for extension of time was moved by the respondent, therefore, benefit be given to the applicant.

5. On the other hand, learned counsel for the respondent opposed the prayer and submits that applicant has not cooperated in the investigation and did not mention details therefore, he has been retained in custody. Since the documents have been alleged to be forged by the applicant, therefore, ingredients of offence under Section 467 of the I.P.C are also available in the case in hand and since Section 467 of the Cr.P.C involves punishment for more than ten years, therefore, department has the authority to file charge sheet up till 90 days. He relied upon Section 69 and 70 of the Act. In this regard, he referred the judgments rendered by the Apex Court in the case of *A.A.Mulla and Others Vs. State of Maharashtra AIR 1997 SC 1441*, *Safiya Vs. Government of Kerala and Others AIR 2003 SC 3562*, judgment rendered by the Rajasthan High Court in the case of *Amal Mubarak Salim Al Reiyami and Others Vs. Union of India 2015 (321) ELT 590 (Raj) = 2015-TIOL-2161-HC- RAJ-CUS* and judgment rendered in the case of *Manoj Kumar Arora Vs. Union of India 2018 (15) G.S.T.L. 323 and Sanjay Kumar Bhuwalka Vs. Union of India reported as 2018 (19) G.S.T.L. 591 (Cal.) =2018-TIOL-2883- HC-KOL-GST* and hence, prayed for dismissal of the bail application.

6. Heard learned counsel for the parties at length and perused the case diary.

7. This is a case where the applicant is facing heat of investigation under Section 132 of the Act. Section 132 of the Act prescribes punishment for certain offences and maximum sentence which can be awarded, is five years. Section 167 (2) of the Cr.P.C provides 60 days time to the investigating agency to submit charge sheet for the offences where investigation relates to any offence other than total imprisonment for life or imprisonment for a term of not less than 10 years. Here the maximum sentence punishable is imprisonment for five years therefore, respondent had to file the charge sheet within 60 days. But admittedly, charge sheet has not been filed, therefore, right of 'default bail' accrued to the applicant after completion of 60 days. It was the duty of the investigating agency to submit charge sheet within the stipulated period, but same has not happened. Apex Court in the case of *Rakesh Kumar Paul (supra)* has categorically outlined the concept of 'default bail' and held that in the case of indefeasible right, right is said to be accrued to the accused if the charge sheet is not filed within the stipulated period (60 days in the present case). In the case of *Achpal alias Ramswaroop (Supra)* said principle has been reiterated by the Apex Court.

8. Considering the over all fact situation and legal position, the right has been accrued to the applicant. But looking to the nature of allegations, bail can only be granted to the applicant with certain stringent conditions.

9. Therefore, without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant be released on bail on furnishing a personal bond in the sum of Rs. 5,00,000/- (Rs. Five lac only) with two solvent sureties of the like amount to the satisfaction of the concerned trial Court.

10. This order will remain operative subject to compliance of the following stringent conditions :-

1. Applicant shall deposit his Passport with the trial court which shall be kept by the trial court till conclusion of trial or with the leave of the court, as the case may be;

2. The applicant shall appear before O.I.C of the case/Investigating Officer of the case in hand on every Monday, Wednesday and Friday between 10.30 AM to 5 PM without any default till filing of the charge sheet and till full completion of investigation of the case and any default or absence, would dis-entitle him from the benefit of bail granted by this Court;

3. The applicant shall cooperate in the investigation and shall have to respond to the queries posed by the Investigating Officer/other officers of the department. Non-cooperation would also dis-entitle him from the benefit of bail;

4. The applicant will comply with all the terms and conditions of the bond executed by him;
5. The applicant will cooperate in the investigation/trial, as the case may be;
6. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
7. The applicant shall not commit an offence similar to the offence of which he is accused;
8. The applicant will not seek unnecessary adjournments during the trial; and
9. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be;

A copy of this order be sent to the trial court concerned for information and compliance.

C.C. as per rules.