

Sh. Vikas Jain v. Union Of India And Another

CRIMINAL MISC. BAIL APPLICATION No. 48464 of 2023 | Decision: 2023-11-09 | Allahabad High Court

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Court No. - 83

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48464 of 2023

Applicant :- Sh. Vikas Jain Opposite Party :- Union Of India And Another Counsel for Applicant :-
Raghuvansh Misra Counsel for Opposite Party :- Parv Agarwal

Hon'ble Sanjay Kumar Pachori,J.

Second supplementary affidavit is filed and it is taken on record today.

Heard Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Raghuvansh Misra and Shri Ujjwal Sharma, learned counsels for the applicant and Sri Parv Agarwal, learned counsel for opposite party no. 2.

The present bail application has been filed on behalf of applicant Vikas Jain under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case No. 2924 of 2023 for offence punishable under Section 132(1)(b)(i) of the Central Goods and Service Tax Act, 2017, Department DGGI, Ghaziabad, during pendency of the trial, after rejecting the bail application of the applicant by Sessions Judge, Meerut vide order dated 31.10.2023.

Learned senior counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. It is further submitted that the applicant has been arrested without assigning any reason to believe nor any satisfaction to justified his arrest as provided in the Code. It is further submitted that offences as alleged are punishable up-to 5 years imprisonment. It is further submitted that no notice for recovery of G.S.T. has been issued against the applicant and he is illegally arrested. It is further submitted that till date penalty or taxes has not been ascertained as per Act. It is further submitted that the offences are compoundable in nature and triable by Magistrate. The applicant is languishing in jail since 19.09.2023. In support of his submission, he relied upon the judgment of Apex Court in Satender Kumar Antil Vs. Central Bureau of Investigation & Another, (2021) 10 SCC 773.

It is further submitted that applicant has criminal history of one case no. 169 of 2021 under Sections 132(1)(b), 132(1)(c), 132 (1) (i) of CGST Act, in which the applicant was granted bail by Sessions Judge vide order dated 25.05.2021. It is further submitted that both the cases are related to the offence which are compoundable in nature. It is further submitted that the complaint for recovery of the tax has not been filed till today.

Per contra, learned counsel for D.G.G.I has supported the order passed by the Session court and vehemently opposed the prayer for grant of bail to the applicant and submits that the allegations involved are very serious in nature. But he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

Learned counsel for opposite party no. 2 submits that this is second case of the same nature of the applicant.

After considering the facts of the present case it prima facie appears that;

(a) The applicant has been arrested without assigning any reason to believe nor any satisfaction to justified his arrest as provided in the Act;

(b) Offences as alleged are punishable up-to 5 years imprisonment;

- (c) No notice for recovery of G.S.T. has been issued against the applicant and he is illegally arrested;
- (d) Till date penalty or taxes has not been ascertained as per Act;
- (e) Offences are compoundable in nature and triable by Magistrate;

It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with.

Taking into account the totality of facts and keeping in mind, the ratio of the Apex Court's judgment in the case of *State of Rajasthan v. Balchand @ Baliay* (1977) 4 SCC 308, *Gudikanti*

Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, *Ram Govind Upadhyay v. Sudarshan Singh & Ors.*, (2002) 3 SCC 598, *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.*, (2010) 14 SCC 496 and *Mahipal v. Rajesh Kumar & Anr.*, (2020) 2 SCC 118, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present bail application is allowed.

Let applicant, Vikas Jain, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

- (i) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.
- (ii) The applicant shall not pressurize/intimidate the prosecution witnesses.
- (iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.
- (iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.
- (v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.
- (vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- (vii) The applicant shall surrender his passport, if any, to the concerned Police Station.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavor and try to conclude the trial expeditiously in accordance with law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 9.11.2023 Saurabh

2023-11-09T18:24:25+0530 High Court of Judicature at Allahabad