

Vivek Mishra v. Union Of India

CRIMINAL MISC. BAIL APPLICATION No. 13703 of 2023 | Decision: 2023-05-26 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:118385

Reserved

Court No. - 69 Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13703 of 2023 Applicant :- Vivek Mishra
Opposite Party :- Union of India Counsel for Applicant :- Ami Tandon, Sr. Advocate Counsel for Opposite Party :- Dhananjay Awasthi

Hon'ble Vipin Chandra Dixit,J.

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Ami Tandon, learned counsel for the applicant, Sri Dhananjay Awasthi, learned counsel for the opposite parties and perused the records.
2. This bail application has been filed on behalf of applicant seeking bail in Complaint Case No.03 of 2022-23, arising out of Case File No: DGGI/INT/INTL/1387/2022, under Section 132(1)(a) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'Act, 2017') registered by the Department of D.G.G.I., Ghaziabad Unit, Ghaziabad.
3. As per prosecution case, a search was conducted on 11.11.2022 at the factory premises of M/s Vivek International (hereinafter referred to as 'firm') located at Plot No.81, Sector 59, Pragati Vihar, Industrial Area, Faridabad, Haryana. A search was also conducted at the residence of applicant Vivek Mishra on 11.11.2022. It is alleged that during search some incriminating records such as handwritten sales slips, dispatch registers of unaccounted sales, sales invoices, e-way bills were recovered and Panchnama was prepared by search team.
4. After analysis of the documents/records it was found that the firm has suppressed actual sales in their monthly GSTR-3B returns. The actual sales of M/s Vivek International is entirely different from the values shown in the GST returns for the period July, 2017 to September, 2022. It is found from the records that M/s Ganesh Battery Works, M/s Pressco

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Batteries and Inverters, M/s Supertech Trading Company are recipients of clandestine supply of M/s Vivek International. The statement of proprietor of M/s Vivek International Smt. Anusuiya Mishra was also recorded under Section 70 of the Act, 2017. After due scrutiny of the records, which was recovered from the premises of firm and residence of applicant, it was

found that the total sale of firm was Rs.12.97 Crore as per GSTR-3B returns filed for the period of July, 2017 to September, 2017, whereas from the sales ledger recovered from the premises of firm the total sale for the aforesaid period was Rs.66.11 Crore and the firm had evaded GST of Rs.11.62 Crore by making clandestine supplies without issuance of invoices. The opposite parties had filed complaint to punish the applicant under Section 132(1)(a) of the Act, 2017.

5. It is submitted by learned Senior Advocate appearing on behalf of applicant that the applicant is neither owner nor proprietor of firm, whereas his mother Smt. Anusuiya Mishra is the proprietor of the firm. The firm is engaged in manufacturing of Lead Acid batteries which is being supplied and transfers by way of sale. The firm is engaged in purchase of raw materials and sale of finished product strictly in accordance with the provisions of the Act, 2017. The applicant was not involved directly in the sale and purchase of raw material on behalf of the firm.

6. It is further submitted that the officers of Department had erred in calculating the GST on the basis of record seized during search to the effect that the sale of finished products by the firm for the period July, 2017 to September, 2017 was to the tune of Rs.66.11 Crore whereas the taxable value of the sale shown by the firm in its return was only Rs.12.97 Crore.

7. It is further submitted that the investigation by the Department was completed and the applicant had fully co-operated with the investigation

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and now the complaint has been filed by the Department. It is further submitted that the applicant was arrested on 8.12.2022 without ascertaining liability and without following the procedure prescribed under Sections 73 and 74 of the Act, 2017. Since the investigation was completed and charge-sheet/complaint was filed by the Department, there is no apprehension of tamper of evidence or influence of witnesses.

8. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Punjab and Haryana High Court at Chandigarh in the case of Akhil Krishan Maggu and another Vs. Deputy Director, Directorate General of GST Intelligence and others, reported in 2020 (32) Goods and Services Tax TL 516 (P & H). The relevant paragraph

10.1 is quoted herein below:-

“10.1. The persons who are having established manufacturing units and paying good amount of direct or indirect taxes; persons against whom there is no documentary or otherwise concrete evidences to establish direct involvement in the evasion of huge amounts of tax, should not be arrested prior to determination of liability and imposition of penalty. Similarly, arrest of Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of statement without any corroborative evidence linking the professional with alleged offence should be avoided. It is well known that if top brass of a running concern is arrested, there are all possibilities of closure of unit which results into unemployment and wastage of precious natural resources.”

9. This Court on relying the judgment of Akhil Krishan Maggu (supra)

had granted anticipatory bail in Criminal Misc. Anticipatory Bail

Application No.4116 of 2020. The relevant paragraph 9 is reproduced

herein below:-

“9. Relying upon the judgement of the Punjab and Haryana High Court, in the case of Akhil Krishan Maggu (supra), this Court finds that the applicant has no prior criminal antecedents brought on record. His implication can be made under cognizable and non-bailable offences u/s 132 (5) of the C.G.S.T. Act, if the allegations are found to be correct. The applicant has not given any statement in inquiry till date due to fear of arrest. As disclosed above, the personal liberty guaranteed under Article 21 of the Constitution of India is a fundamental right and in every case, arrest is not necessary. Under Section 438 Cr.P.C., where the implication of a person is for a non-bailable offence, he can apply for anticipatory bail. If the applicant cooperates with the inquiry, there is no requirement of his arrest. The applicant is having his own address of residence and business. He can give surety ensuring his appearance. He does not appears to be habitual

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offender, prosecuted or convicted earlier. Therefore, he deserves to be granted limited protection for the purpose of conclusion of inquiry by the Proper Officer.”

10. Lastly, it is submitted by learned Senior Counsel appearing for the

applicant that the applicant is neither owner nor proprietor of the firm and

the Panchnama prepared by the Department is completely vague and

unreliable against the applicant. The investigation has been completed and

the charge-sheet/complaint has already been filed. The applicant had fully

co-operated in the investigation and there is no chance of tampering the

witnesses. There is no criminal history of the applicant. The applicant has

fixed place of residence having good reputation in the society and there is

no chance of absconding. The maximum punishment under Section

132(1)(a) of the Act, 2017 is five years and is triable by Magistrate. The

applicant is in jail since 8.12.2022. The applicant undertakes that he will

co-operate with the investigation/trial and if he is released on bail, he will

not misuse the liberty of bail.

11. On the other hand, Sri Dhananjay Awasthi, learned counsel

appearing for the opposite parties has submitted that search of firm was

conducted and the house of applicant was also searched and handwritten sales slips, dispatch registers of unaccounted sales were recovered and Panchnama was prepared by the search team. From the documents/records recovered from the premises of firm and residence of applicant, it was found that the firm has suppressed the actual sales in their monthly GSTR-3B returns. In the scrutiny of document it reveals that the total sale of firm for the period of July, 2017 to September, 2017 was Rs.66.11 Crore whereas the firm in its return had shown the total sale for the aforesaid period only Rs.12.97 Crore and evade GST of Rs.11.62 Crore by making clandestine supply without issuance of invoices. The statement of proprietor Smt. Anusuiya Mishra was also recorded under Section 70 of the Act, 2017 in which she has stated that his son (present applicant) is controller of firm and all the sale and purchase were done by the applicant. It is further submitted by learned counsel for the opposite

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parties that competent authority after careful examination of record and corroborating the evidence had filed complaint against the applicant. The firm has clandestine supply of finished goods without payment of GST causing huge revenue loss to the Government exchequer. The applicant has committed offence under Section 132(1)(a) of the Act, 2017, which is cognizable and non-bailable offence. Since the applicant was the controller of the firm which involve in clandestine supply of product without issuance of invoices and as such the applicant was arrested on 8.12.2022. Since the applicant is the controller of firm, who involve in evasion of GST of Rs.11.62 Crore, is not entitled for bail and his bail application is liable to be rejected.

12. Considering the rival submissions of learned counsel for the parties and perused the record. It is an admitted fact that the applicant is neither proprietor nor owner of the firm, whereas his mother Smt. Anusuiya Mishra is the proprietor of the firm. No charge-sheet or complaint has been filed by the Department against Smt. Anusuiya Mishra. The investigation of the Department was completed and there is no evidence or material that the applicant had not co-operated with the investigation or tampering the evidence or witnesses. The investigation was completed and charge-sheet/complaint has already been filed and there is no chance of tampering of evidence or influence of witnesses. The maximum

punishment under Section 132(1)(a) of the Act, 2017 is five years which is triable by Magistrate. There is no criminal history of the applicant. The applicant is having fixed place of residence and there is no chance of his absconding.

13. Considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage, without commenting on the merits of the case, I find it a fit case for bail. The bail application is allowed.

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14. Let applicant- Vivek Mishra be released on bail in Complaint Cae No.03 of 2022-23, arising out of Case File

No.DGGI/INT/INTL/1387/2022, under Section 132(1)(a) of the Central Goods and Services Tax Act, 2017 registered by the Department of D.G.G.I., Ghaziabad Unit, Ghaziabad, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate concerned, subject to the following conditions:

(i) The applicant will not leave the country without prior permission of the trial court.

(ii) The applicant will abide by the orders of the court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant will not indulge in any unlawful activity.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever.

15. The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

Order Date :- 26.05.2023 Kpy

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2023-05-26T18:14:54+0530 High Court of Judicature at Allahabad