Yogesh Mittal v. Union Of India And Another

CRIMINAL MISC. BAIL APPLICATION No. 25170 of 2022 | Decision: 2023-07-06 | Allahabad High Court

Neutral Citation No. - 2023:AHC:134529

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25170 of 2022

Applicant :- Yogesh Mittal Opposite Party :- Union Of India And Another Counsel for Applicant :- Vimlendu Tripathi,Ajay Kumar Mishra,Amrendra Nath Rai,Arpan Srivastava,Atharva Dixit,Narendra Singh Chahar,Pranav Tiwary,Vrindavan Mishra Counsel for Opposite Party :- A.S.G.I.,Dhananjay Awasthi,Sanjeev Kumar Pandey

Hon'ble Vikram D. Chauhan,J.

1. Learned counsel for the opposite party no.2 submits that instructions have been received and he has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, Sri Dhananjay Awasthi, learned counsel for the opposite party no.2, Sri Sanjeev Kumar Pandey, learned counsel for the Union of India and perused the record.

3. It is submitted by learned counsel for the applicant that the criminal case against the applicant has bee lodged on the basis of complaint case for discrepancies in the Input Tax Credit. The summons were issued by the court concerned and the applicant was apprehended. Thereafter, interim bail was granted to the applicant by order dated 13.7.2022, which is quoted hereunder:-

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 1402 of 2021 & 3837 of 2022, under Sections 132(1)(b)(c), 132(1)(i) of Central Goods and Services Tax Act, 2017, Department DGGI, Ghaziabad.

Learned counsel for the complainant submits that he will file counter affidavit in the case, therefore, some time may be given to him on which learned counsel for the applicant submits that applicant is suffering from ailment of cardiac attack and he is presently admitted in hospital, therefore, he may be enlarged on interim bail till the date fixed. He further submits that co-accused has also been granted bail by the court below. There is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses and, in case, the applicant is enlarged on interim bail, he shall not misuse the liberty of bail.

Learned A.G.A. produced the copy of the medical report of the applicant

stating that medical status of the applicant was called for, according to which he is presently admitted in L.L.R.M. Medical College Meerut with effect from 3rd July, 2022.

Considering the submissions of the parties, applicant admitted in hospital for ailment of cardiac attack and time sought by the informant for filing counter affidavit, let this matter be taken up on 3rd August, 2022 as fresh. Till then applicant may be enlarged on interim bail with the condition:-

(i) on the date fixed he will surrender before the trial court and to this aspect affidavit shall be filed before this court.

(ii) The applicant shall file an undertaking to the effect that he will not tamper with the evidence and will not pressurize/intimidate the prosecution witnesses during the period of interim bail.

(iii) In case, the applicant misuses the liberty of bail during the period, it shall be a ground for cancellation of interim bail."

3A. According to learned counsel for the applicant the alleged dispute is of 322 crores with respect to Input Tax Credit. There is no proof with regard to any realization of the tax credit on the basis of forged documents. The matter is under consideration before the court concerned.

3B. It is further submitted by learned counsel for the applicant that the maximum punishment in the present case is 5 years and as such the applicant is entitled to be enlarged on bail in view of the judgment passed by the Apex Court in the case of Satyendra Kumar Antil Vs Central Bureau of Investigation and another, 2022 (10) SCC 51. The applicant has no criminal history. Applicant is languishing in jail since 26.1.2022 till passing of the interim bail order and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Sri Dhananjay Awasthi, learned counsel for the opposite party no.2 does not dispute the fact that the applicant is on interim bail and during bail no adverse material with regard to conduct of the applicant was found. He also does not dispute the fact that the maximum punishment in the present case is 5 years. He would have no objection in case the applicant is released on bail subject to heavy sureties and stringent condition.

4A. Sri Sanjeev Kumar Pandey, learned counsel for the Union of India does not dispute the law down by the Apex Court in the case of Satyendra Kumar Antil (supra) and submit that the ends of justice would be served in case the applicant released on bail on stringent condition.

5.Learned counsel for the opposite party no.2 opposed the prayer for bail but does not dispute factual matrix of the case.

5A. Learned counsel for the opposite party no.2 has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

6. It is not the case of the opposite party no.2 that the applicant has not cooperated in the investigation or proceedings before the trial court.

7. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in Satyendra Kumar Antil Vs Central Bureau of Investigation and another, 2022 (10) SCC 51. Learned counsel for the opposite party no.2 has not shown any exceptional circumstances which would warrant denial of bail to the Applicant.

8. No material, facts or circumstances has been shown by learned counsel for the opposite party no.2 that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

9. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned counsel for the opposite party no.2.

10. Learned counsel for the opposite party no.2 has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

10A. The applicant is a businessman, who has been found to have being involved in a criminal case arising out of the GST Act. According to the prosecution, a discrepancy of 322 crores of Input Tax Credit has been found. The applicant name has surfaced in the statement of co-accused. The controversy of illegal availment of Input Tax Credit is subject matter of trial. The availment of Tax Credit is required to be shown at the time of trial. Criminal history has been shown in paragraph87 of the affidavit. The applicant is already been enlarged on interim bail

on account of ailment.

11. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant Yogesh Mittal involved in Case Crime No.1402 of 2021, Case No.3837 of 2022, under Sections 132(1) (b)(c), 132(1)(i) of Central Goods and Services Act, 2017, Department DGGI, Ghaziabad be released on bail on furnishing a personal bond and two heavy sureties of Rs.5,00,000/- each to the satisfaction of the court concerned subject to the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. 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.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes his residential address, the applicant shall inform the court concerned about new residential address in writing.

viii. It is hereby provided that in case the applicant intends to leave the country, he shall inform 20 days prior to leaving the country to the court concerned and the opposite party no.2 and shall submit the schedule of travel.

13. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 6.7.2023 Bhaskar

2023-07-13T16:30:08+0530 High Court of Judicature at Allahabad