

GST : Where Competent Authority having found that petitioner and his partner defrauded Government Exchequer and evaded GST by creating bogus firms had arrested petitioner for offence punishable under section 132(1) (a), (b) and (c), petitioner's application for grant of bail was rejected by High Court

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[2019] 104 taxmann.com 19 (Madhya Pradesh)

HIGH COURT OF MADHYA PRADESH

Mehul Kheria

v.

Commissioner, CGST & Central Excise, Indore*

VIVEK RUSIA, J.

M.CR.C. NO. 7932 OF 2019

FEBRUARY 26, 2019

Section 132, read with section 69, of the Central Goods and Services Tax Act, 2017/Section 132, read with section 69, of the Madhya Pradesh Goods and Services Tax Act, 2017 - Offences - Punishments for certain offences - Competent Authority having found that petitioner and his partner defrauded Government Exchequer and evaded GST by creating bogus firms had arrested petitioner for offence punishable under section 132(1)(a), (b) and (c) and recorded his statement - Petitioner filed application before High Court for grant of bail - Whether in view of fact that main accused had not been arrested so far, petitioner was not entitled for grant of bail - Held, yes [Para 8] [In favour of revenue]

(NR)

FACTS

- The Competent Authority in the course of investigation found that the petitioner and his partner defrauded Government Exchequer and evaded the GST to the tune of Rs. 3,422.02 lakhs by creating bogus firms. He accordingly arrested the petitioner under section 69 for the offence punishable under section 132(1)(a), (b) and (c) and recorded his statement under section 70.
- The Sessions Judge, on regular bail application filed by the petitioner under section 439 of Cr. P.C., found that *prima facie* the petitioner had said to have committed offence not only under section 132(1)(a), (b) and (c) of the GST Act but also under sections 467, 468, 471 and 120-B of the IPC. He accordingly rejected the application for grant of bail.
- On application under section 439 of Cr. P.C. before High Court:

HELD

- Under section 69 of the Central Goods and Services Tax Act, 2017/Madhya Pradesh Goods and Services Tax Act, 2017, the Commissioner is having power to arrest if he has reasons to believe that a person has committed an offence specified in clause (a)

or (b) or (c) of sub-section (1) of section 132. Section 132(1)(a), (b) and (c) defines types of offences and according to which, whoever commits offence of supply of any goods or services without issue of any invoice or issues any invoice or bill without supply of goods or services or both or avails input tax credit using such invoice, shall be punished with imprisonment of term which may extend to 5 years and with fine, if the amount involved is more than Rs. 500 lakhs. [Para 7]

- In view of the fact that the main accused has not been arrested so far, the petitioner is not entitled for grant of bail. [Para 8]

CASES REFERRED TO

R.S. Co. v. CCE [CEA No. 24 of 2012, dated 8-2-2017] (para 6).

Vivek Dalal, Id. Counsel *for the Petitioner*. **Prasanna Prasad**, Id. Counsel *for the Respondent*.

ORDER

1. This is a first application under Section 439 Cr.P.C. by petitioner- Mehul Kheria, who has been arrested by the respondent on 10.1.2019 during investigation in Cr. Case registered as Crime No.43/2018 by Commissioner, CGST & Central Excise, Indore for the offence punishable under Section 132 (1) (a), (b) and (c) of Goods & Services Tax Act, 2017 (hereinafter, for short, "GST Act").

2. Heard the learned counsel for the parties and perused the case diary.

3. As per prosecution/respondent story, Commissioner and Additional Commissioner noticed huge tax evasion and fraud in respect of payment of GST in the entire country. They apprised that some suppliers are floating fake invoices/good less invoices/taking ITC without receiving the goods. After extensive data mining it revealed that the caucus is operating in different States including Maharashtra, Gujarat, Delhi, West Bengal, etc. The Commissioner, SGST ordered to conduct a joint operation involving officers of CGST and SGST. As per information collected so far, the present petitioner is proprietor of Meena Traders, Mumbai. He has confessed in his statement that he met Jayesh Bhai in Mumbai who has now shifted to Ahmedabad. The petitioner demanded Rs. 2-3 Lakhs from him and he called him to Mumbai then he explained him about the GST registration and assured that he will earn Rs. 2-3 Lakhs within 2-3 months. Thereafter, he came to Mumbai with Rs. 3,000/- and met Jagdish Kanani, then they collected the papers for GST registration. After obtaining GST Registration number, he send the registration number to Jayesh Bhai through Whatsap. Thereafter, Jayesh Bhai has directed him to obtain such type of GST Registration number and offered Rs. 1.00 Lakh for registration. As per his own admission, the petitioner has obtain registration certificate of as many as 59 fake firms. Present petitioner along with Jagdish Kanani created many bogus and fake firms and issued fake invoices to get the input tax-credit through these invoices and defrauded the Govt. Exchequer and as a result of the investigation till date it is found that in total, these firms received fake invoices of Rs. 9,217.14 Lakhs for inward supply and issued fake invoices of Rs. 9,799.09 Lakhs for outward supplies. Accordingly, Jagdish Kanani and his partner defrauded Govt. Exchequer and evaded the GST to the tune of Rs. 3,422.02 Lakhs i.e. @ 18% of total supply Rs. 19,016.23 Lakhs by creating such bogus firms. In the course of investigation, said Jagdish Kanani appeared at CGST & Central Excise Head Quarter on 4.1.2019 and his statements were recorded u/s. 70 of the GST Act. He was confronted with evidence collected during the course of investigation. In his statement, he has disclosed all the information available with him and also admitted that he did not receive any goods physically nor he sold any goods and he did not submit any GST return. He is in contact with present petitioner - Mehul since 1994.

4. The petitioner was formally arrested on 10.1.2019 and produced before the Judicial Magistrate, First

Class. Thereafter, he applied for regular bail u/s. 439 of Cr.P.C. Learned Addl. Sessions Judge has found that prima facie the petitioner has said to have committed offence not only u/s. 132(1)(a), (b) & (c) of GST Act but also u/s. 467, 468, 471 and 120-B of IPC and accordingly rejected the application for grant of bail. Hence, the present petition u/s. 439 of Cr.P.C. before this Court.

5. Shri Vivek Dalal, learned counsel for the petitioner, submits that the petitioner has falsely been implicated in the case. He is neither a supplier/purchaser nor a registered dealer under the GST Act. He has not rendered any services nor issued any invoice, therefore, he has wrongly been made accused u/s. 132 of the GST Act. His statement has already been recorded and his custody is not required for further investigation and he will cooperate in further investigation, if any, and is ready to appear before the respondent/prosecution as and when his presence is required. The investigation may take long time to conclude, hence he deserves to be released on bail.

6. On the other hand, Shri Prasanna Prasad, learned counsel appearing for the respondent/prosecution, opposes the bail application. He has produced the statement of the petitioner and other witnesses. He submits that the statement recorded by the petitioner is admissible in evidence and which can be used against him in the trial as held by this Court in the case of *R.S. Company v. CCE* [CEA No.24/2012, decided on 8-2-2017]. The main accused have not been arrested so far, hence the bail application be rejected.

7. U/s. 69 of the GST Act, the Commissioner is having power to arrest if he has reasons to believe that a person has committed an offence specified in Clause (a) or (b) or (c) of sub-section (1) of Section 132 of the GST Act. Section 132(1) (a), (b) and (c) of GST Act define types of offences and according to which, whoever commits offence of supply of any goods or services without issue of any invoice or issues any invoice or bill without supply of goods or services of both or avails input tax credit using such invoice, shall be punished with imprisonment of term which may extend to 5 years and with fine, if the amount involved is more than Rs. 500 Lakhs.

8. In view of the statement of the petitioner recorded u/s. 70 of the GST Act and the fact that the main accused have not been arrested so far, in the considered opinion of this Court, the petitioner is not entitled for grant of bail.

9. Accordingly, this M.Cr.C. fails and is hereby dismissed.

s.k. jain

*In favour of revenue.