

BA/1478/2020

Directorate General GST Intelligence (DGGI) Vs. Satender Kumar Singla

Present: Sh. Manjul Bhardwaj, Intelligence Officer on behalf of the department.
Accused in custody assisted by Sh. Rajesh Sharma, Advocate.

The present order shall dispose of the bail application moved on behalf of applicant/accused Satinder Kumar.

2. It has been contended on behalf of the applicant that he has been falsely implicated in this matter and has also been illegally arrested. The only incriminating evidence against the applicant in this case is the statement of one Hanuman Singh. No recovery has been effected or going to be effected from the applicant, as the alleged allegations pertain purely to the documentary evidence. The maximum punishment liable to be granted for the offences under consideration is 5 years. The applicant has been allegedly roped in vicariously for the commission of offence by other persons, whereas there is no concept of vicarious liability under the Goods and Services Tax Act.

3. The Ld. Counsel for the applicant has further contended that the aforesaid Hanuman has been made an accused in an FIR No. 38 dated 6.01.2019 under Sections 420, 467, 468 & 471 of IPC, P.S. Chandni Bagh, Panipat for running a bogus firm. He submits that there is nothing on record to even suggest that the applicant had ever withdrawn any amount or taken any benefits from the alleged bogus firms namely M/s Hanuman Enterprises

and M/s Jai Bhagwati Sales. The Ld. Counsel requests that keeping in view the instructions issued pursuant to the meeting held on 12.11.2020 held under the Chairpersonship of Hon'ble Justice Daya Chaudhary, Judge Punjab & Haryana High Court, Chandigarh, the accused may kindly be granted concession of bail keeping in view of the prevalent Covid-19 Pandemic situation.

4. The aforesaid application has been replied by the respondent/complainant through the counsel, wherein the averments made in the application have been countered. It has also been submitted on behalf of the respondent that the present applicant has acted as a mastermind in getting establishing and registered bogus firms & in issuing only invoices without actual supply of goods and this was done in order to earn commission. It has been also submitted that the offence under consideration do not refer to the question of vicarious liability, as it relates to any person who commits the offence defined under the relevant section.

5. The Ld. Counsel for the respondent has further submitted that during the course of investigation evidences have been received on record in the form of cash entry in the name of applicant/accused to show that he has received the benefits out of the transactions by the aforementioned firms. In this manner, the applicant was so far found involved in issuing invoices valued at ₹ 75 Crores without any movement of goods and was also involved in passing of ITC to the tune of ₹ 13.08 Crores and, thereby causing a loss to the Government exchequer to the tune of ₹ 13.08 Crores.

The offence being economic in nature affects the society at large and, therefore, no concession of bail be granted to the accused at this stage because not only the investigation in the matter is pending. It is also pertinent to point out that the above mentioned Hanuman has gone missing and in this regard the present applicant was called by the concerned police for the purpose of investigation on a number of occasions. With these submissions, the Ld. Counsel requests that granting of bail to the accused at this stage would seriously prejudice the investigation of the case. Therefore, the application in hand may kindly be dismissed.

6. I have heard the Ld. Counsel for both the sides at length & perused the record very carefully.

7. It is a case where the allegation against the present applicant/accused is that he, being the mastermind behind establishing and registering bogus firms in the name of various persons, was also involved in the issuance of invoices without the actual movement of the goods. In this manner, such transactions were carried out to earn commission out of them. The investigation so far points out that such transactions have caused loss to the tune of ₹ 13.08 Crores to the Government Exchequer. The contention of the applicant that there is nothing on record to show that he had received or obtained any kind of benefit from the aforesaid bogus firms is not sustainable at this stage because not only the investigation is pending but the investigating team has received documents/records showing cash entries in the name of the applicant. This fact is also mentioned in para no. 18 of

the reply to the bail application.

8. It is a matter of common understanding that no prudent person would derive any benefit directly from a bogus firm/entity as it would easily bring out his guilt. Such transactions are naturally done in a clandestine and discreet manner, and, therefore, discovering the direct/tangible evidence may not be possible in each and every case. Since the transactions in questions have been carried out for the last few years, it is natural that investigating agency needs more time to dig out all the relevant record in the case.

9. It has been held by the Hon'ble Superme Court of India in the case of **Ram Narain Popli Vs. CBI (AIR 2003 SCC 3257)** that:

“an economic offence is committed with cool calculation and desperate design with an eye on personal profit regardless of the consequences to the community”.

Similarly, upholding a stringent dealing with the economic offences, the Hon'ble Supreme Court of India in the case of **SFIO Vs. Nitin Johari & another (Crl. Appeal no. 1381/2019 date of decision 12.09.2019)** has made similar observation.

10. Reverting to the case in hand, the entire manner of commission of offence clearly points towards an economic offence squarely covered under Section 132 of CGST Act. The investigation is still pending and, there, has been material recovered reflecting connivance/participation of the accused in the commission of offence and receiving cash from the bogus firms in the form of cash entries in the record. In these circumstances, this

court is of the opinion that granting concession of bail to the accused at this stage will definitely prejudice the fair investigation into the matter.

11. Before parting away this court would like to observe that the instructions regarding the management of jails during the Covid-19 Pandemic situation do not in themselves give a right to bail in each and every case to an accused. An accused cannot invoke the said instructions as of right to obtain bail when the case against him has serious repercussions not only on individual but on society as a whole as well. Hence, in this case although maximum punishment awardable for the offences under consideration is 5 years, this court, for the above discussed reasons, is not of the opinion that applicant deserves concession of bail. Hence, application in hand is hereby **dismissed**. Accused be produced through V.C on **27.11.2020** the date already fixed.

Nothing herein shall be deemed to have any bearing on merits of present case.

Ashish Kumar Sharma
Chief Judicial Magistrate,
Rohtak 19.11.2020.