

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION No.1293/2019

BETWEEN:

Mrs. B.Banu Bee
W/o S. Mohammed Basha
Aged about 39 years
No.85, Mulla Street
Pernambut-635 810
Vellor District, Tamilnadu.

...Petitioner

(By Sri G.Desu Reddy, Advocate)

AND:

State of Karnataka
by Inspector of Central Tax
Bengaluru South Commissionerate, Bengaluru,
Represented by Central Government
Spl. Public Prosecutor,
High Court of Karnataka
Bengaluru-560 001.

...Respondent

(By Sri Jeevan J. Neeralgi, Standing Counsel)

This Criminal Petition is filed under Section 438 of Cr.P.C praying to enlarge the petitioner on bail in the event of his arrest by the respondent in O.R.No.32/2018-19 Commission Central Tax within the jurisdiction of Special Court for Economic Offences at Bengaluru.

This Criminal Petition coming on for Orders this day, the Court made the following:-

ORDER

The present petition has been filed by the petitioner/accused No.2 under Section 438 of Cr.P.C. to release her on anticipatory bail in the event of her arrest in O.R.No.32/2018-19 registered by the Commissioner of Central Tax, Bengaluru South Commissionerate, Bengaluru.

2. This case is taken out of turn at the request of the learned counsel appearing for the petitioner/accused on the ground that the daughter of the petitioner/accused is intending to appear for NEET exam and the petitioner has to take her daughter to the tuition classes. If she go out of the house, there is apprehension of arrest by the police.

3. I have heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent-State.

4. The brief facts of the case are that accused No.1 is the proprietor of Many Shell Firms and accused No.2 is the

partner. It is alleged that in this firm there is diversion and issuance of tax invoices without actual supply of goods in collusion with Firm of the petitioner by name M/S.Basha Enterprises and other various companies, which are Shell Firms. It has been further alleged that the Company of the accused has totally evaded GST of Rs.57.60 Crores, and thereby deprive the Government and has caused loss. On the basis of the complaint a case has been registered and investigation is in progress.

5. It is the submission of the learned counsel for the petitioner that the petitioner/accused is in no way concerned with the said transaction. It is further submitted that as per the GST Act, the maximum punishment which is liable to be imposed even if an offence has been made out and convicted is five years and even as per Section 138 of the GST Act, the said offence is compoundable before the Commissioner on payment. He further submitted that there is no irregularity, no loss of revenue has been caused to the State or Central Government. He further submitted

that they have paid the GST by creating invoice. He further submitted that the accused has not availed any loan or not raised any amount from the bank. He further submitted that the alleged offences are not punishable with death or imprisonment for life and he is ready to abide by the conditions imposed by this Court and ready to offer the sureties. On these grounds he prayed to allow the petition and to release the petitioner on bail.

6. *Per contra*, the learned Standing counsel on behalf of the respondent by substantiating his written objections submitted that if the entire facts are looked into, without there being any movement of the goods fake invoices have been issued and huge loss has been caused to the exchequer to the tune of Rs.57.60 Crores to the State. He further submitted that still investigation is in progress and the petitioner/accused may not co-operate with the investigation and she may tamper with the prosecution evidence. On these grounds, he prayed to dismiss the petition.

7. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

8. Whether the petitioner/accused has committed the alleged offence or not is a matter which has been considered and appreciated only after investigation and the charge sheet is filed. It is the submission of the learned counsel for the petitioner/accused that already accused No.1 in similar facts and circumstances has been released on bail by the learned trial Court.

9. Be that as it may, this Court in the case of **Sri.Avainash Aradhya Vs. the Commissioner of Central Tax in Criminal Petition No.497/2019 c/w Criminal Petition No.498/2019 by order dated 18.2.2019** has elaborately discussed the provisions of law and other aspects as to under what circumstances the bail has to be considered and granted. Those facts and circumstances are also similar to the present facts of the case on hand and as

such I feel that if by following the said precedent by imposing some stringent conditions, if petitioner/accused is ordered to be released on anticipatory bail, it is going to meet the ends of justice.

10. In the light of the discussions held by me above, the petition is **allowed** and petitioner/accused No.2 is ordered to be released on anticipatory/bail in the event of her arrest in C.R.No.32/2018-19 registered by the respondent, subject to the following conditions:

- i) *The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the likesum to the satisfaction of the Investigating Officer.*
- ii) *She shall surrender before the Investigating Officer within 15 days from today.*
- iii) *She shall not tamper with the prosecution evidence directly or indirectly.*
- iv) *She shall mark her attendance in the jurisdictional police on 1st of every month between 10.00 A.M. and 5.00 P.M. till the trial is concluded.*
- v) *She shall not leave the jurisdiction of the Court without prior permission.*

- vi) *She shall not indulge in similar type of criminal activities.*

**Sd/-
JUDGE**

*AP/-