

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
M.Cr.C. No.23289 of 2020
Vijay Kumar Nair Vs. State of M.P.

Indore, Dated:- 13/08/2020

**Heard with consent of the parties through
Video Conferencing.**

Shri Sanjay Agrawal, learned Senior Counsel with Shri N. L. Tiwari, learned Counsel for the petitioner—Vijay Kumar Nair.

Shri Vikramjit Banerjee, learned Additional Solicitor General along with Shri Prasanna Prasad, learned counsel for the respondent/Union of India.

1. This is the first application under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as “GST Act”), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the ‘Department’).

2. At the outset, learned Senior Counsel for the petitioner claimed parity with co-accused—Amit Bothra and Ashok Daga, who have been granted bail by this Court vide order dated 27.07.2020 passed in M.Cr.C. Nos.21628/2020 and 21618/2020 respectively.

3. He further asserted that rather the case of the petitioner is on better footing than the case of co-accused—Amit Bothra and Ashok Daga, because all the allegations of the department of tax evasion are against their firm M/s

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Vishnu Essence, while the petitioner is neither a partner nor in any other way concerned or connected with the firm. He is proprietor of the firm M/s AAA Enterprises. As per the prosecution case itself, he was only a trader, supplier or commission agent of the firm Vishnu Essence. There is no allegation of the department that he clandestinely removed or transported Pan Masala. No document to show that any goods was procured, received or sold without invoices is produced.

4. It is contended that the entire case of the respondent is based on the statement of the petitioner recorded under Section 70 of the Act, which was recorded under coercion and duress and was retracted immediately after coming out of the pressure. Simply on the basis of suspicion, conjecture and involuntary confessions, no offence can be made out against the petitioner.

5. Besides, the advance age (63 years), ailment (BP & Respiratory problems) and high risk to the life of such person due to spread of Covid-19 virus generated pandemic have also been taken as additional grounds for pressing the bail.

6. Learned Additional Solicitor General contested the parity as claimed by the learned Senior Counsel for the petitioner. However, nothing substantial could be pointed out to distinguish the case of the petitioner from the case of the co-accused Amit Bothra and Ashok Daga.

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7. The fact that the petitioner is neither partner nor in any other way connected with the firm M/s Vishnu Essence is not rebutted.

8. For the sake of convenience, facts and other contention of the parties can be borrowed from the order passed in the case of Amit Bothra and Ashok Daga, relevant part of which is being reproduced below:-

“1. Both these petitions have arisen out of the same crime number of the same office/police station, therefore, they are heard together and are being decided by this common order.

2. These are the first applications under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as “GST Act”), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the ‘Department’).

3. The case of the prosecution in brief is that the officials of the department received intelligence input that one Pakistani national Sanjay Matta is indulged in clandestine clearance of mouth freshener, commonly known as “*Pan Masala*”, without payment of GST. Acting on this information, several searches were conducted at various places between 30.05.2020 to 02.06.2020 and unaccounted goods worth Rs.2.59 crores were found in different godowns of Mr. Matta, which were seized. Subsequent information received during search led to the search of premises of transporter M/s Ashu Roadlines, Indore. During this search 10 vehicles, unaccounted Pan Masala, its packing material and some raw material was seized. The Pan Masala was found to be of ‘Vimal’ brand manufactured by M/s Vishnu Essence, Sanwer Road, Indore. The truck drivers also confirmed clandestine transportation of Pan Masala. Information extracted from the mobile of an employee of Aashu Roadlines Mr. Sameer Khan, indicated that the firm M/s Vishnu Essence had procured large quantities of raw material and packing material from Ahmadabad clandestinely and

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had supplied the finished goods in the same manner to M/s AAA Enterprises, Indore. The petitioners Amit Bothara and Ashok Daga are partners of the firm M/s Vishnu Essence. They were called and interrogated. They confessed in their statements recorded under Section 70 of the GST Act that their firm had supplied Vimal brand Pan Masala worth Rs.320 crores clandestinely and has evaded payment of the GST to the tune of Rs.225 crores. Subsequent search of various places and statements of various persons further confirmed the aforesaid tax evasion. Following the due process, the petitioners were taken into custody and booked in the aforementioned crime.

4. Refuting all the allegations made by the prosecution, it is submitted by the learned senior counsel for the petitioners that the firm M/s Vishnu Essence is duly registered with the GST vide registration no.23AAQFV6401JIZZ. The firm is honestly doing its business. It is paying GST to the tune of Rs.7-8 crores per month on an average on the sales. Their product contains 85% betel nut (Supari) and 15% Sugandh, Kattha, Elaichi (essence, catechu, cardamom) etc. Supari is purchased from the undertakings/companies of the government or from the societies run by the government; therefore, clandestine purchase is not possible. Rest of the raw material is purchased from the open market but only from the traders duly registered under the GST through invoices. Therefore, there has never been any scope to evade the tax.

5. It is asserted that the petitioners have never confessed anything before the officials. Their statements were recorded under threat and pressure. They retracted them immediately after coming out of the fear.

6. It is further averred that the petitioners were doing their business honestly and were paying GST to the tune of Rs. 7 crore per month regularly, but due to unprecedented circumstances of spread of COVID-19 pandemic and complete lockdown pursuant thereto; there was some delay in paper work and submission of the invoices etc. Taking advantage of this beyond control peculiar circumstance, the officials of the department abused their authority, presumed the tax evasion and assessed the amount only on the basis of their conjecture and surmises as there was no production during the period of lockdown. Nil electricity consumption

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establishes the fact of closure of the factory during this period. Therefore, the allegation of evasion of tax is false and frivolous from its very foundation.

7. It is also submitted that the petitioners were earlier paying GST honestly and are also ready to pay the same in future. Though under pressure, but they have already paid Rs. 7 crores and are still ready to pay the deficit, if any, found due on the final assessment.

8. It is argued that the dispute is only a revenue matter. The alleged evasion is assessed about Rs. 7 crores. Despite their right to challenge the assessment by depositing 10% of the amount assessed, they have deposited entire amount of Rs. 7 crores.

9. It is asserted that the petitioners have no connection with Pakistani national Sanjay Matta or alleged main accused Kishore Wadhwani.

10. It is further argued that the petitioners have been falsely implicated in the case. The officials have acted maliciously. The allegation made against them is vague. There is no incriminating evidence or supporting documents qua the petitioners. Details of alleged tax evasion have not been supplied to them. Their custody is illegal as there is no evidence to show that the officials were having "reasons to believe" that their custody was necessary. The department has not sought their police remand. This shows that their detention was unnecessary and illegal. The sole basis of their arrest is their statements recorded by the officials, but the same were recorded under threat and pressure and have been retracted immediately. Procedure prescribed under Ss. 67, 69, 74, 134, 136, 138 of the GST Act and S.41A of Cr.P.C. for arrest, recording of statement, search and seizure have not been followed. The dispute is entirely covered under Section 132 of the G.S.T. Act. Initially the offence was also registered under the same Section. Offences under Sections 409, 467, 471 and 120-B IPC are not made out. Record shows that these offences have been added by the officials at a later stage merely with intent to harass the petitioners.

11. It is also stated that the petitioners are in custody since 11.06.2020 and are in jail since 13.06.2020. Their custodial interrogation is not required. The nature of evidence is documentary and all documents are in custody of the Department. Hence, there is no fruitful purpose to keep them in custody. They are paying around

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70-80 crores G.S.T. per anum on an average. Their detention would cause loss of this amount to the State exchequer. About 150 workers are working in the firm of the petitioners. In case of their detention, the work of the firm will be at a halt and hence, affect the survival of the families of those 150 workers. The offence is punishable with maximum 5 years imprisonment and is triable by the Judicial Magistrate First Class. The petitioners are ready to abide by the terms and conditions to be imposed by this Court, therefore, it is prayed that they be granted bail.

12. The petitioners have relied upon ***Joti Prasad Vs. State of Haryana 1993 supp. SCC 497, P. Chidambaram Vs. Directorate of Enforcement 2019 Lawsuit (SC) 1947, D.K. Sethi Vs. Central Bureau of Investigation, Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr (2010) Vol.14 SCC 496, Sandeep Kumar Bafna Vs. State of Maharashtra and Anr (2014) 16 SCC 623, C. Pradeep Vs. The Commissioner of GST and Central Excise Selman and Anr SLP 6834/2019, Madhav Gopaldas Shah Vs. State of Gujarat, Prasad Purshottam Mantri Vs. UOI and Ors, Sanjay Kumar Bhuwalka Vs. UOI 2018 SCC Online Cal 4674, Mohit Vijay Vs. UOI (Rajasthan High Court), Lalit Kumar Gandhi Vs. State of MP and Make My Trip Vs. UOI and Ors Delhi High Court WP (c) 525/2016 and C.M.2153/2016.***

13. Stand taken by the department is that the petitioners have a very proximate nexus to the entire syndicate involved in clandestine manufacturing of pan masala and have caused huge loss to the sovereign exchequer. Acting on the intelligence information, when several persons were interrogated and search of several places was conducted, tax evasion of crores of rupees was detected. Still the investigation is going on. As many as 11 searches and 14 statements have been recorded after the arrest of the petitioners. In all possibilities the magnitude of the offence would increase in many folds. Release of the petitioners would hamper the investigation, which is at very crucial stage, therefore, it is prayed that they be not granted bail.

14. It is submitted that during the course of investigating very clinching and cogent evidence has been unearthed which indicates that in connivance with each

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other, the petitioners as well as other wrongdoers have adopted a peculiar modus operandi for clandestine manufacturing and sale of pan masala. The petitioners are not merely benefactors of illegal activities, but had a very proximate nexus with the entire band of persons involved in the said syndicate. Investigation revealed that Mr. Vijay Kumar Nair of M/s. AAA Enterprises is the front man of Kishore Wadhwani. Kishore Wadhwani is the kingpin of the entire illegal procurement, production and supply chain of pan masala clandestinely. Investigation has further revealed that the petitioners had procured raw materials of pan masala and packing material from Ahmadabad and various other cities in Gujarat in clandestine manner and supplied manufactured pan masala to M/s. AAA Enterprises without invoices and payment of G.S.T.

15. Sale and distribution of pan masala has been completely banned across the country due to pandemic induced lockdown from 25th March, 2020 considering its risk in spread of Covid-19 infection. In spite of the strict restriction, the petitioners' firms took undue benefit of this emergent situation and supplied their finished goods clandestinely in the State of Madhya Pradesh in connivance with M/s. AAA Enterprises. In view of the seriousness of the offence committed by the petitioners, they were arrested under Section 69 of the G.S.T. Act, 2017. As per Section 132(5), since the G.S.T. evasion detected is more than five crores rupees, the offence is cognizable and non-bailable. There is every likelihood of the petitioners affecting the investigation and tampering with the witness. The officials of the DGGI were assaulted when they tried to search the house of Kishore Wadhwani for which an FIR is lodged with Police Station—Juni, Indore.

16. In the case of ***P. V. Ramana Reddy Vs. UOI W.P. No.4764 of 2019*** at paras 56 and 57, the Telangana High Court has observed that the object of arrest is to prevent a person from committing any offence or from causing the evidence of the offence to disappear or tempering with such evidence in any manner or to prevent such person from any inducement, threat or promise to any person acquainted with the facts of the case and to do proper investigation or inquiry. The Hon'ble Supreme Court in ***SLP (Crl.)4430/2019*** has upheld this observation the High Court of Telangana.

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17. The Hon'ble Supreme Court in **Cr.A. No.730/2013** decided on 9th May, 2013 in the case of **Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation** has observed in para 34 that the Economic Offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Therefore, the petitioners be not granted bail.

18. Reliance has also been placed on **The State of Gujrat Vs. Mohanlal Jitmalji Porwal and others** reported in **AIR 1987 SC 1321**.

19. Provisions of section 69, 70, 131, 133, 135, 136 of the GST Act have been referred by the learned counsel for the respondent/UOI.

20. I have heard the learned senior counsels at length and have perused the record supplied by the department.

21. On careful consideration of nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

22. It is directed that the petitioners **Amit S/o Shri Shubhkaran Ji Bothara** and **Ashok Daga S/o Shri Ghawarchand Daga** be released from custody on their furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lakhs Only)** each with separate sureties to the satisfaction of the Trial Court for their appearance before it as and when required further subject to the following conditions :-

(i) The petitioners shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial.;

(ii) The petitioners shall not directly or indirectly allure or make any inducement, threat or promise to the

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prosecution witnesses, so as to dissuade him from disclosing truth before the Court;

(iii) The petitioners shall not commit any offence or involve in any criminal activity;

(iv) In case of their involvement in any other criminal activity or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.

(v) The petitioners shall submit their passports, if any, before the Trial Court and shall not leave India without prior permission of this Court.”

9. I have considered the rival contentions of the parties and have gone through the documents produced before the Court as well as the statements recorded under Section 70 of the G.S.T. Act..

10. On due consideration of the allegation against the petitioner, evidence produced before the court to show his involvement, the act attributed to him, the part played by him in the alleged tax evasion, parity of his case with the case of the co-accused persons who have been granted bail and other facts and circumstances of the case, I deem it appropriate to allow the application. Therefore, without commenting on the merits of the case, the petition is allowed on the same terms, as is allowed in the case of co-accused Amit Bothra and Ashok Daga.

11. All the pending IAs, if any, stand closed.

(Virender Singh)
Judge

Pankaj