HIGH COURT OF MADHYA PRADESH : JABALPUR

SINGLE BENCH: HON.SHRI JUSTICE RAJEEV KUMAR DUBEY,J.

M.CR.C. No.40653/2019

Shailesh Rajpal
Versus
Commissioner

Shri Manish Datt, learned Senior Advocate with Shri Siddharth Datt, Advocate for the applicant.

Shri Siddharth Seth, Sr. Standing Counsel with Shri Himanshu Shrivastava, Advocates for the respondent/Commissioner.

O R D E R
(Reserved on 21/10/2019)
(Delivered on 31/10/2019)

This is first application filed under Section 439 of the Cr.P.C. Applicant Shailesh Rajpal was arrested on 17/9/2019 in connection with Crime No.01/2019 registered at Commissioner, Central Goods and Service Tax, G.S.T. Bhawan, Jabalpur (M.P.) for the offences punishable under Sections 132(1)(d) of Central Goods and Service Tax Act, 2017 and Sections 471 and 120-B of the IPC.

2. As per the prosecution case, an intelligence was developed by the officers of Prevention Branch, Central GST and Central Excise Commissionerate, Jabalpur which reveals that M/s Sai Sun, a Proprietorship Firm engaged in supply of services of recruitment and supply of Manpower services, cleaning services, housekeeping services etc. to its various clients (many Private Limited companies, Banks, Ordnance Factory, municipal corporation, Tata Consultancy, Express Private Limited, E-Com Express, Instakarts Services Private Limited etc.) has not paid GST since 1st July

2017 against the payments received by the firm in accordance to the GST law and procedure. It was also revealed that the firm has been registered under GST but it neither filed any GST return nor paid any GST. Applicant Sailesh Rajpal has been running various companies/firms viz M/s Sai sun outsourcing Service Private Limited, M/s Seven Eye IT Solutions Private Limited, M/s Happiest Job consultants Limited etc. from the same premises. On that, a search was conducted at the office premises of M/s Sai Sun on 12/09/2019 by the offices of Headquarters-Preventive Branch Central GST & Central Excise Jabalpur Commissionerate. During the search, bills, invoices books of accounts, contracts/agreements, printouts of the computerized tally data were recovered. On examining these documents and from the statement of the applicant himself and other persons, it was revealed that M/s Sai Sun and M/s Sai Sun Outsourcing Services Private Limited have collected the Service tax and GST from their clients on gross value but did not pay/short paid the same to the government exchequer. Turn over of M/s Sai Sun (Prop.Shri Shailesh Rajpal, present applicant) July 2017 to March 2018, was Rs.9,42,26,656/- on which GST liability was Rs.1,69,60,798/- and the turnover of M/s Sai Sun during 2018-19 was Rs.7,88,84,700/- on which GST liability was Rs 1,41,99,246/-which was completely suppressed by the applicant and in this regard, he did not file any GST return.

3. Likewise, Turnover of M/s Sai Sun Outsourcing Services Private Limited from July 2017 to March 2018 was Rs 174,26, 61,455/- (Rs 174.27 crores) on which GST liability amounted to Rs.31,36,79,062 /-. While turnover shown in GST returns was Rs. 79,01,25,667/- and GST paid Rs. 14,22,23,285/-, thus applicant evaded the tax amount worth Rs. 17,14,55,777/-. The total liability of the applicant towards short payment of GST, interest payable on it and penalty payable under section 122 of GST Act is Rs.62,08,48,909/-.

4. Learned counsel for the applicant submitted that the applicant is innocent and has falsely been implicated in the matter. It is further submitted

that the time of filing annual GST return for the year 2017-18 is up to 30th of November, 2019 and for the year 2018-2019 is up to 31st of December, 2019. So, the applicant has time to file the return and to deposit the final amount of taxes due on him. He further submitted that the amount to the extent of Rs.24 Crore is yet to be received by the applicant from various companies. The applicant has already paid Rs.9 Crore GST from April 2019 to September 2019. In respect of tax liability of the company, during the FY 2018-19, applicant in his statement dated 13/9/2019 clearly stated that information mentioned in tally software is not correct and actual receipts of income during 2018-19 shall be submitted after scrutiny of data. So, no offence under Section 132(1)(d) of the GST Act and also under Sections 471 and 120-B of the IPC is made out against the applicant. The applicant is in custody since 17/9/2019 and conclusion of the trial will take time. On the aforesaid grounds, learned counsel prayed that the applicant be released on bail.

5. Learned counsels for the Commissioner Central Goods and Service Tax, Jabalpur opposed the prayer and submitted that though the last date to file annual return of GST for the year 2017-18 is 30/11/2019 and for the year 2018-19 is 31/12/19. However, a taxpayer has to declare their tax liability for a month in GST return GSTR-1 by 10th day of the subsequent month and has to pay liability so declared in return GSTR-3 B and the due date for payment of GST liability of a month is the 20th day of the subsequent month. The annual return is an opportunity extended by the government to rectify inadvertent mistakes that may have crept in monthly Returns. While in the instant case even after knowing his tax liability the applicant has deliberately suppressed their turnover to evade the GST amount collected by him from his clients. Turnover of the applicant in respect of his company M/s Sai Sun Outsourcing Services Private Limited during the period July 2017 to March 2018 was Rs. 51,57,01,823/- but he disclosed only Rs. 10,80,11,848/- in his GST returns. Similarly, during the financial year, 2018-19 turnover of the applicant was Rs. 174,26,61,455/- but he has declared only Rs.79,01,25,667/- in his GST returns. Similarly, the applicant has

completely suppressed the turnover of his proprietary firm M/s Sai Sun and has neither filed any GST return nor made any payment. Applicant by way of suppressing turnover pocketed the GST amount collected by him from their clients. Total recoverable amount from the applicant and one of his firm M/s Sai Sun Outsourcing Services Private Limited is Rs. 62,08,48,907.

6. He further submitted that exact GST liability of the company M/s Sai Sun Outsourcing Services Private Limited and M/s Sai Sun Private Limited has to be determined for the period 2019-20. For that, investigation is going on. Some other companies namely M/s Seven Eye IT Solutions Private Limited, M/s Happiest Job Consultants Limited etc. were also found to be operated from the same premises. Liability of service tax, and GST of these firms, also needs to be determined. The applicant has the history of forgery and submission of fake documents to the public authorities. If the applicant is released on bail, he may affect the investigation. So, he should not be released on bail.

7. Looking to the alleged huge tax evasion by the applicant and the contention of the learned counsel of the respondent and keeping in view that the investigation is going on and apprehensions of applicant tampering with the evidence can not be ruled out. So, this Court is not inclined to grant bail to the applicant at this stage. Hence, the bail application of the applicant is rejected.

(Rajeev Kumar Dubey)
Judge

m/-