Indore, dated : 26.02.2019

Shri Vivek Dalal, learned counsel for the petitioner.

Shri Prasanna Prasad, learned counsel for respondent, Commissioner, CGST & Central Excise, Indore.

O R D E R

This is a **first** application under Section 439 Cr.P.C. by petitioner- **Jagdish Kanani**, who has been arrested by the respondent on **31.5.2018** 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, Jagdish Kanani, proprietor of Gurukripa Traders, Thane (Maharashtra) has collected address proof viz-a-viz electricity bill, Adhar Card, etc. of innocent persons for registration of the firm under the GST Act and defrauded the Government Exchequer. The present petitioner came in the contact with Mehul Kheria. Present petitioner along with Mehul Kheria 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, the petitioner 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 Mehul since 1994.

4. The petitioner was formally arrested on 5.1.2019 and produced before the Judicial Magistrate, First Class on 8.1.2019. 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 M/s. R.S. Company V/s. Commissioner of Central Excise (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.

(VIVEK RUSIA)
JUDGE

Alok/-

Digitally signed by Alok Gargav
Date: 2019.03.05 17:27:57 +05'30'