IN THE HIGH COURT OF JHARKHAND AT RANCHI

A.B.A. No. 4782 of 2018

Mahaveer Prasad @ Mahaveer Pd ... Petitioner

Versus

1. The State of Jharkhand
2. Shri Prem Arsen Kujur ... Opposite Parties

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Sumeet Gadodia, Advocate
: Mr. Ranjeet Kushwaha, Advocate
For the State : Mr. Gouri S. Prasad, Addl. P.P.

Order No.07 Dated- 17.08.2019

Apprehending his arrest, the petitioner has moved this Court for grant of privilege of anticipatory bail in connection with Jugsalai P.S. Case No.75 of 2018 (G.R. No. 1845 of 2018) registered under sections 120(B)/415/420/425/464/468/471 of the Indian Penal Code read with section 132(1)(b)/132(1)(c)/132(1)(e) and 132(1)(1) of the Jharkhand Goods and Services Tax Act, 2017.

Heard the learned counsel for the petitioner and learned Addl. P.P. for the State.

The Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner being the proprietor of M/s. Kanchan Alloys and Steels claimed to be situated at the address Lokenath Complex, Aditi -1A, Station Road, Jugsalai, Jamshedpur transacted from there though in fact he did not transacted any business. It is further alleged that the petitioner at the time of obtaining registration certificate produced an agreement dated 01.04.2017 before the department purported to have been entered into between the petitioner and one Sanjeev Kumar but the said agreement was forged one which was entered into between the petitioner and the said Sanjeev Kumar in respect of a non-existent property and on the basis of the said forged agreement, registration certificate has been procured by the petitioner and the petitioner without any sale or purchase availed input tax credit on the basis of forged Invoice to the tune of Rs.8,57,30,051.00/- in violation of Section 132 of the Jharkhand Goods and Services Tax Act, 2017. It is further alleged that without actual supply, on the basis of forged Invoice, Input Tax Credit SGST/CGST to the tune of RS.4,69,04,942/- and IGST credit of Rs.3,88,25,115/- was availed under the Jharkhand Goods and Services Tax Act, 2017 in violation of Section 132 of the said Act. The further allegation against the petitioner is that he was engaged in circular trading and through different Mobile numbers he was in contact with different businessmen. The learned counsel for the petitioner further submits that the allegation that on the basis of forged rent agreement in respect of a non-existent premises is false, in view of the fact that the petitioner had already vacated the premises in question by the time petitioner was contacted by the Revenue Officials during the course of inspection of the premises and the same was intimated by the petitioner to the concerned inspecting authority and as at the time of vacating the said flat by the petitioner there was dispute regarding illegal demand of excess amount by the flat owner-landlord from the petitioner, so the flat owner has falsely made statement that the petitioner never took the said flat on rent. It is next submitted that the petitioner closed down his business on April, 2018 and shifted himself permanently to the State of Rajasthan and the petitioner was in the process of making online application for cancellation of his Registration Certificate but before the said exercise was undertaken by the petitioner, inspection was already carried out in the business premises of the petitioner, which the petitioner has already left and vacated. It is next submitted that in view of the Special Act in the shape of Jharkhand Goods and Services Tax Act, 2017 the offence punishable under the penal provisions of the Indian Penal Code is not attracted to the present case. It is then submitted by the learned counsel for the petitioner that the prosecution has been initiated against the petitioner with oblique and mala fide motive just to harass the petitioner and also to restrain the petitioner from participating in the proceeding initiated against the petitioner under section 73 and 74 of the Jharkhand Goods and Services Tax Act, 2017 pursuant to the inspection carried out by officials of the State Tax Department.

The learned counsel for the petitioner further relied upon the **unreported Judgment of Hon'ble Madras High Court dated 04.04.2019, passed in Writ Petition No. 5501 of 2019 & WMP No. 6251 of 2019 in the case of M/s. Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others** and submitted that the power to punish and set out offence under Section 132 of the Jharkhand Goods and Services Tax Act, 2017 can only be set in motion after it is established that an assessee has committed an offence which can be arrived at only after determination of the demand due from the assessee. In this respect, the learned counsel for the petitioner refers to paragraph no.40 of the aforesaid Judgment wherein the Hon'ble Madras High Court has observed as under:-

> *"In the present case, the Department does not dispute that action was intended or envisaged in the light of Section 132 of the CGST Act, the counter fairly stating that the provisions of Section 132 of the CGST Act were 'shown' to the Assessee. <u>There is thus no doubt in my mind that the Department intended to intimidate the petitioner with the possibility of punishment under 132 and this action is contrary to the scheme of the Act</u>. While the activities of an assessee contrary to the scheme of the Act are liable to be addressed swiftly and effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the statute. <u>I am of the considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established than an assessee has 'committed' an offence that has to necessarily be post-determination of the demand due from an assessee, that itself has to</u>*

necessarily follow the process of an assessment."(Emphasis Supplied)

The learned counsel for the petitioner next relied upon the **unreported order of the Division Bench of Hon'ble Gujarat High Court dated 07.08.2019 in R/Special Civil Application No. 13679 of 2019, in the case of Vimal Yashwantgiri Goswami Vs. State of Gujarat** wherein the Hon'ble Gujarat High Court has observed that prosecution under section 132 of the Goods and Services Tax Act should normally be launched only after the adjudication is completed in terms of 73 and 74 of the Goods and Services Tax Act. In this connection learned counsel for the petitioner drew attention of this Court to paragraph no.35 of Judgment of **M/s. Jayachandran Alloys (P) Ltd. Vs. The Superintendent of GST and Central Excise & Others (Supra)** wherein the decision of the Hon'ble Supreme Court of India in **C.A. No. 8081 of 2018 & C.A. No. 8082 of 2018 dated 23.01.2019** has been quoted while considering the provisions of Finance Act, 1994 which are similar to the provision of section 69,73 and 74 of the Jharkhand Goods and Services Tax Act, 2017 which is as under:-

"Heard learned counsel for the parties at length.

The issue is as to whether the power of arrest under Section 91 of the Finance Act, 1994 ('the said Act') can be exercised without following the procedure as set out in Section 73 A(3) and (4) of the said Act. The High Court has decided, after detailed discussion, that it is mandatory to follow the procedure contained in Section 73 A(3) and (4) of the said Act before going ahead with the arrest of a person under Sections 90 and 91. We are in agreement with the aforesaid conclusion and see no reason to deviate from it.

Accordingly, these appeals are dismissed." (Emphasis Supplied)

And submitted that in view of the ratio of the said Judgment it was mandatory that in the instant case the informant must have followed the procedure contained in Section 72 of 73 of the Jharkhand Goods and Services Tax Act,2017 before going ahead with arrest of a person under section 69 of the said Act. It is next submitted by the learned counsel for the petitioner that the petitioner in the meanwhile has voluntarily reversed Rs.8,57,54,552.00/- from his electronic ledger to set right the alleged illegal and fraudulent Input Tax Credit of Rs.8,57,30,051.00/- for which this F.I.R. has been lodged. It is next submitted by the learned counsel for the petitioner that the petitioner is ready and willing to furnish sufficient security including cash security and undertakes to cooperate with the investigation of the case. Hence, it is submitted that the petitioner be given the privilege of anticipatory bail.

Learned Addl. P.P. opposes the prayer for grant of anticipatory bail.

Considering the submissions of the counsels and the fact as discussed above, I am of the opinion that it is a fit case where the above named petitioner be given the privilege of anticipatory bail. Hence, in the event of his arrest or surrender within a period of four weeks from the date of this order, he shall be released on bail on depositing cash security of Rs.1,00,000/- and on furnishing bail bond of Rs. 2,00,000/- (Rupees Two Lakh) with two sureties of the like amount each to the satisfaction of learned S.D.J.M., Jamshedpur, in connection with Jugsalai P.S. Case No.75 of 2018 (G.R. No. 1845 of 2018) with the condition that the petitioner will cooperate with the investigation of the case and appear before the Investigating Officer as and when noticed by him and will furnish his mobile number and a copy of his Aadhar Card in the court below with the undertaking that he will not change his mobile number during the pendency of the case and other conditions laid down under section 438 (2) Cr. P.C.

(Anil Kumar Choudhary, J.)

A.F.R –Sonu/-