

Smt. Chhaya Devi vs Union Of India And Another on 13 April, 2021

Author: Subhash Chand

Bench: Subhash Chand

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 08.04.2021

Delivered on 13.04.2021

In Chamber

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15190 of 2021

Applicant :- Smt. Chhaya Devi

Opposite Party :- Union Of India And Another

Counsel for Applicant :- Desh Ratan Chaudhary, Abhinav Prasad, Niraj Kumar Singh

Counsel for Opposite Party :- Ramesh Chandra Shukla

Hon'ble Subhash Chand, J.

Heard Sri G.S. Chaturvedi, Senior Advocate, assisted by Abhinav Prasad, learned counsel for applicant(s), learned A.G.A. as well as Sri Ramesh Chandra Shukla, learned counsel appearing for opposite party and perused the record.

1. This bail application has been preferred by the accused-applicant(s), Smt. Chhaya Devi, who is involved in Case Crime No. 167 of 2021, under Sections 132(1)(1) and 132(1)(b) r/w 132(1)(i) of CGST Act, P.S.- CGST Noida, District- Meerut.

2. Learned counsel for the applicant in support of his prayer for bail submits that the applicant is innocent and he has been falsely implicated in the present case. It is further submitted that the alleged offence is punishable with imprisonment of five years. The applicant is the proprietor of the firm while business of the firm is being managed by the Manager and is in effective control of the manager. The applicant cannot be made vicariously liable. Only duty which was payable was about Rs.3.85 crore. If the figure of Rs.9.39 crore and Rs.43.10 crore are removed, then, out of alleged figure Rs.56.43 crore, only a duty of about Rs.3.85 crores are due to be payable. Before arresting the applicant no proper assessment of the duty was made and no opportunity of hearing was given to the applicant, during investigation whether the alleged duty was due on her part or not. The applicant was arrested on 19.01.2021 on the basis of order dated 15.01.2021 passed by Principal Commissioner, CGST, Noida. The applicant had always been cooperating with the investigation and enquiry of the case and never tried to abscond. The principal Commissioner, CGST, Noida had not made any endorsement regarding necessity of the arrest. Out of the alleged seized goods, the admitted duty which was payable by the applicant's firm Rs.3.53 crores. The rest figures are imaginary and assumptive. Apart from applicant's firm there are three other concerns with the name of Prabhat Zarda India Private Ltd., Prabhat Zarda International and Prabhat Zarda factory, which all run in the market and have common suppliers and transporters and as such to bring the entire burden of any documents or slips or register in the name of Prabhat Zarda cannot be attributed to be applicant or her firm.

In support of his submissions learned counsel for the applicant relied upon the following case laws i.e. Sanjay Kumar Bhuvalka Vs. Union of India, 2018 SCC Online Cal 4674, Sanjay Chandra Vs. CBI (2012) 1 SCC 40, P. Chidambaram Vs. CBI, 2019 SCC Online SC 1380, Flevel International Vs. Excise, 2016 (332) ELT 416 (Del) & Daulat Samirmal Mehta Vs. UOI though the Secretary and others, 2021 SCC Online Bom 200.

3. Per contra learned counsel appearing on behalf of Union of India opposed the contentions raised on behalf of learned counsel for the applicant and contended that proper investigation and enquiry was made by the officials of the GST Department and after assessment the complaint was filed before the Court of Special Chief Judicial Magistrate, Meerut. All the relevant provisions of CGST Act, 2017 were complied with. The alleged offence is economic offence. Keeping in view the gravity of the offence and also the heavy loss to the Government Exchequer prayed to reject the bail of the applicant and in support of his submissions relied on the following case laws i.e. Union of India (UOI) Vs. Padam Narain Aggarwal Etc., 2008 LawSuit (SC) 2067, Nimmagadda Prasad Vs. Central Bureau of Investigation, 2013 LawSuit (SC) 416 & Serious Fraud Investigation Office Vs. Nittin Johari & another, 2019 0 Supreme (SC) 1010.

3-A. As per allegation of the complaint Smt. Chhaya Devi, proprietor of M/s Prabhat Jarda Factory Overseas, E-37, Sector-8, Noida. The search was conducted on 28.10.2020 at the various premises connecting with M/s Prabhat Jarda Factory Overseas, E-37, Sector-8, Noida and on subsequent dates by the officers/officials of CGST, Noida. During course of search on 28.10.2020 incriminating documents/furnished goods were seized.

In view of search conducted by the officials of GST Department, which establishes that Smt. Chhaya Devi, proprietor of M/s Prabhat Jarda Factory Overseas, E-37, Sector-8, Noida has violated the provisions of Section 132(1)(a) to (h) of CGST Act, 2017 and therefore, M/s Prabhat Jarda Factory Overseas, E-37, Sector-8, Noida, on account of clandestine removal of finished goods without issuance of any invoice, without payment of any applicable duties, have evaded duties amounting Rs.62,10,28,165/- which is more than Rs.5,00,00,000/-

4. Under Section 69(1) of CGST Act, 2017, the Commissioner has power to order the arrest, if he has reasons to believe that a person has committed any offence specified in clause-(a), (b), (c), (d), of sub-section (1) of Section 132 of CGST Act, 2017. The offence specified in clause-(a) to (d) of sub-section (1) of Section 132 are cognizable and non-bailable in view of Section 132(5) of CGST Act, 2017.

As the evasion of the duty is more than Rs.5 crores, therefore, the offence alleged against the applicant is cognizable and non-bailable.

5. Since in Section 69(1) of CGST Act, 2017 the specific words used is the reasons to believe in context of reasons to be recorded appears in Section 41(1)(3) of Cr.P.C., therefore, it is sufficient if the reasons are found in the file though not disclosed in the order authorizing arrest.

6. The prosecution can be launched after completion of assessment and also acts contrary to the provisions of sub-section(1) of Section 132 of CGST Act, 2017. The list of offences under Section 132(1) have no co-relation to the assessment, issuance of any invoice or bills without supply of goods and service tax or both in violation of provisions of this Act and avails input tax credit without any invoice or bill or made offence under sub-section (b) and (c) of sub-section (1) of Section 132 of the Act, 2017. The prosecution of these offences do not depend upon completion of assessment.

7. In view of sub-section (1) of Section 138 of CGST Act, 2017 any offence under CGST Act, 2017 is compoundable, both before or after the institution of the prosecution.

8. In the present case, no effort is made on behalf of the applicant to compound the offence either before the institution of the prosecution or at post prosecution stage.

9. The submission of learned counsel for the applicant that applicant cannot be made liable vicariously is not sustainable in view of sub-section (1) of Section 137 of CGST Act, 2017.

The Hon'ble Apex Court held in K.K. Ahuja Vs. V.K. Vora and another (2009) 10, SCC 48, the vicariously liability are fulfilled the legal requirement of being a person in law (under Statute Governing Companies) responsible to the company for the conduct of the business of company and also fulfilled the factual requirement of being a person In-charge of business of the company.

10. Admittedly in the case in hand the applicant is the proprietor of the company and is responsible to the company for conduct of the business of the company, even if the business is being managed by the so-called manager.

In Sanjay Chandra Vs. CBI (Supra) as relied by the learned counsel for the applicant, the Hon'ble Apex Court laid down guidelines in paras 21, 22, 23 and 24. The relevant considerations in granting bail are gravity of the alleged offence and severity of the punishment prescribed by law. Both parameters are taken to be consideration simultaneously. Constitutionally protected liberty must be respected unless the detention becomes a necessity. Bail is a rule and jail is an exception. It would be unnecessary burden on the State to keep a person in jail, who is yet to be proved guilty. The balance approach is to grant bail subject to certain conditions rather than to keep the individual under detention for indefinite period.

11. The Hon'ble Apex Court in Siddharam Satlingappa Mhetra Vs. State of Maharashtra and others (2011) 1 SCC 694 in paras 84 and 116 held just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.

Personal liberty is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

12. The Hon'ble Apex Court culled out the following principles while granting bail in Prahlad Singh Bhati Vs. NCT of Delhi (2001) 4 SCC 280 in para-8, while granting bail the Court has to keep in mind the nature of accusation, nature of evidence in support thereof, severity of punishment, which the conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations....."

13. The Hon'ble Apex Court in Kalyan chandra Sarkar Vs. Rajesh Ranjan (2004) 7 SCC 528 in para-11 held that the Court should exercise its discretion judiciously while granting bail. The detailed examination of the evidence and the documents need not to be undertaken. There is need to indicate the reasons for prima-facie concluding why the bail is granted.

14. The offence alleged against the applicant is economic offence in which the evasion of duty amounting Rs.62,10,28,165/- is made against the applicant. Although the offence is punishable with imprisonment of five years yet the evasion of huge amount of duty is a great loss to the Government Exchequer. As such the alleged offence is economic.

15. The Hon'ble Apex Court in State of Gujrat Vs. Mohanlal Jitmalji porwal and others (1987) 2 SCC 364 in para-5 held : the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest....."

16. The Hon'ble Apex Court in Y.S. Jagan Mohan reddy Vs. CBI (2013) 7 SCC 439 held : the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country....."

17. In view of the facts and circumstances of the case and the submissions made by learned counsel for both sides and going through the record, without commenting on the merits of the case, I do not find it a fit case for bail.

18. Accordingly, the bail application of applicant-Smt. Chhaya Devi, is hereby rejected.

(Subhash Chand,J.) Order Date :- April 13th, 2021 Prajapati