



REPORTABLE/NON-REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA ON THE

20th DAY OF JANUARY, 2022

BEFORE

HON'BLE MR. JUSTICE SATYEN VAIDYA, JUDGE

CRIMINAL MISCELLANEOUS PETITION (MAIN) No. 119 of 2022

BETWEEN:

PRATEEK GARG, SON OF LATE SHRI PAWAN KUMAR GARG, RESIDENT OF HOUSE NO. B-454, GROUND FLOOR, MERA BAGH, PACHIM VIHAR, DELHI 110063, AGED 32 YEARS.

.....PETITIONER

(BY SHRI LOVENEESH KANWAR, ADVOCATE)

AND

INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE, CHANDIGARH ZONAL UNIT, REVENUE BUILDING, SECTOR-17, CHANDIGARH.

.....RESPONDENT

(BY SHRI VIJAY ARORA, ADVOCATE FOR THE RESPONDENT)

CRIMINAL MISCELLANEOUS PETITION (MAIN) No. 120 of 2022

BETWEEN:

AKSHIT BANSAL, SON OF SHRI PAWAN KUMAR BANSAL RESIDENT OF HOUSE NO. R.71-A, VANI VIHAR, UTTAM NAGAR, NEW DELHI AGED ABOUT 30 YEARS.

.....PETITIONER

(BY SHRI LOVENEESH KANWAR, ADVOCATE)



AND

**INTELLIGENCE OFFICER, DIRECTORATE
GENERAL OF GOODS AND SERVICE TAX
INTELLIGENCE, CHANDIGARH ZONAL UNIT,
REVENUE BUILDING, SECTOR-17, CHANDIGARH.**

.....RESPONDENT

**(BY SHRI. VIJAY ARORA, ADVOCATE FOR THE
RESPONDENT;**

**SHRI ANKUSH CHAUHAN, INTELLIGENCE
OFFICER IS PRESENT IN PERSON)**

These petitions coming on for orders this day, the Court
passed the following :-

ORDER

Both these petitions are being decided by a common
order as common questions of law are involved.

2. Petitioners have been booked for offences under
Section 132(1)(b)(i) of Central General Goods and Service Tax Act
2017 (for short CGST Act) and Section 20 (xv) of the Integrated
Goods and Services Tax Act, 2017 (for short IGST Act) by
Directorate General of Goods and Service Tax Intelligence,
Chandigarh Zonal Unit (DGGI) on the allegations that the
petitioners in connivance with each other facilitated M/s Mahesh
Trading Company, M/s Rajshree Trading Company and M/s Balaji



Trading Company and other Firms in issuing invoices only without actual supply of goods with the motive to earn benefits by fraudulent means and thereby have caused a loss of Rs. 14.33 Crores to the government revenue.

3. Petitioners were arrested on 21.07.2021. They are in custody since then. The complaint for commission of offences under Section 132(1)(b)(i) of CGST Act and Section 20 (xv) of the IGST Act, has been filed against the petitioners by DGGI on 19.09.2021 before learned Additional Chief Judicial Magistrate, Kasauli, District Solan, H.P., which is pending adjudication.

4. Petitioners have prayed for grant of bail under Section 439 of Cr.P.C in the above noted case on the grounds that they are in custody since 21.07.2021. The investigation qua them is already complete and complaint stands filed against them in the Court of Learned Additional Chief Judicial Magistrate, Kasauli. As per petitioners, the allegations leveled against them are not true and evidence has been created to implicate the petitioners at the instance of persons having inimical relations with them. It has further been submitted that the statements of the petitioners हानिकारक; अस्तित्व को संकट में डालना recorded under Section 70 of CGST Act were procured from them



under duress and are not voluntary. It has been contended on behalf of the petitioners that the case of the respondent is based upon documentary evidence which is already in their custody.

There is no possibility of petitioners tampering with the prosecution evidence. Petitioners are permanent residents of House respectively and have roots in the Society and there is no likelihood of absconding from the course of justice. They have no one else in the family to look after the parents, wife and children etc. Petitioners have undertaken to fully cooperate with the Investigating Agency and to appear in the Court for the purpose of trial on each and every date. Petitioners have further undertaken not to make any inducement, threat or promise to any person and are ready and willing to abide by all the conditions as may be imposed.

5. On notice, respondent has filed reply/status report. It has been averred that the petitioners are involved in a serious offence in passing of Input Tax Credit on the strength of invoices issued from fictitious/bogus firms based at Delhi. During



investigation, the respondent has collected sufficient material in the shape of legal evidence showing implication of petitioners in offences under Section 132(1)(b)(i) of CGST Act and Section 20 (xv) of the IGST Act. Incriminating evidence in the shape of documents, including electronic records have been seized from the premises of the petitioners. Petitioners have also made voluntarily statements under Sections 70 of CGST Act. It has been found against the petitioners that they in connivance with each other have been engaged in managing and operating various fictitious firms registered in the names of other persons for the sole purpose of issuing GST Invoices to facilitate passing of inadmissible Input Tax Credit. Further, it has been found that the petitioners have been issuing goods-less GST Invoices e-way bills only for various types of scrap dealers based at Delhi and Uttar-Pradesh for the last two years. Petitioners used to receive calls and messages from these traders of scrap from Delhi and Uttar-Pradesh regarding requirement of GST invoices and e-way bills for their scraps, which was to be supplied to various furnaces located in Himachal Pradesh and scrap brokers of Mandi-Gobindgarh, for which they used to get commission @ 1.5% to 2% of the basic value of the goods-less



invoices supplied by them. On the strength of evidence collected against the petitioners, the complaint for prosecution of petitioners has already been filed before learned Additional Chief Judicial Magistrate, Kasauli. The respondent has opposed the bail petitions of the petitioners on the ground that the investigation in respect of the beneficiary who received fake/goods-less invoices from the firms operated by the petitioners, is still underway and in case petitioners are released on bail, there is every likelihood that they may influence the key persons/witnesses/recipients of fake Input Tax Credit, which may affect the completion of investigation and realization of government revenue.

6. I have heard learned counsel for the petitioners as well as learned counsel for the respondent and have also gone through the status report.

7. Though, there are serious allegations against the petitioners, but the same are required to be proved against them, in accordance with law, in order to secure their conviction, which is likely to take sometime. The offences, for which the complaint has been filed against the petitioners, attract punishment of imprisonment for a term which may extend to five years with fine.



Petitioners are in custody since 21.7.2021. The investigation qua the petitioners has already been completed and, therefore, the complaint stands filed against them on 19.9.2021. **Pre-trial** **बंदीकरण, कैद** **prolonged incarceration cannot be allowed as a matter of rule.** No presumption of guilt can be attached against the petitioners as cardinal principle of criminal jurisprudence in our legal system is to presume innocence of accused till proved otherwise.

8. The respondent has already made necessary recoveries and seizures of documents, including electronic records from the petitioners. It is not the case of the respondent that some more recoveries are to be affected from the petitioners. **It is also not the case of the respondent, that petitioners had not cooperated with the investigation agency during investigation.** The only apprehension of the respondent that in case of release of petitioners on bail the investigation **underway in respect of the other persons may be hampered, can be taken care of by imposing appropriate and suitable conditions against the petitioners.**

9.

Petitioners are permanent residents of House No.



respectively and there is no likelihood of their absconding from the course of justice in view of the facts that they have their families to support. Even otherwise, such possibility, if any, shall be taken care of while imposing conditions on the petitioners. No previous criminal history of the petitioners has been shown to exist.

10. In view of the above discussions, both the petitions are allowed. Petitioners are ordered to be released on bail, in Complaint No.1/2021, registered by Directorate General of Goods and Service Tax Intelligence, Chandigarh Zonal Unit (DGGI) under Section 132(1)(b)(i) of CGST Act 2017 and Section 20 (xv) of the IGST Act, 2017, on furnishing personal bonds in the sum of Rs. 1,00,000/-each with one surety each in the like amount to the satisfaction of the learned trial Court. This order shall, however, be subject to the following conditions and in the event of breach of any of the condition, the respondent shall be at liberty to approach this Court for cancellation of the bail granted to the petitioners:-

- i) Petitioners shall make themselves available for investigation, as and when required and shall also appear on each and every date so fixed by learned trial Court during the course of trial of the complaint filed against them, save and except, when they are prevented from appearance on account of reasons beyond their control. In such event, the petitioners shall take appropriate steps seeking their exemption before learned trial Court.



- ii) Petitioners shall not tamper with the prosecution evidence and shall not also try to influence any prosecution witnesses or any other person acquainted with the facts of the case, so as to dissuade him from speaking the truth. They shall also not directly or indirectly make any inducement, threat or promise to the prosecution witnesses.
- iii) Petitioners shall surrender their passports before learned trial Court, if not so earlier surrendered before learned trial Court or any other authority.
- iv) Petitioners shall not leave India without prior permission of learned trial Court till completion of trial.

11. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of these petitions.

(Satyen Vaidya)
Vacation Judge

20th January, 2022
(sushma)