

Anticipatory Bail can be granted to the accused who acted on the instructions of the main accused

The Hon'ble Delhi High Court in the case of *Directorate General of GST Intelligence v. Jitendra Kumar [Criminal Miscellaneous Case No. 4528 of 2023 and others. dated January 19, 2024]* held the Respondent was not the main accused, he was acting on the instructions of the main accused. Further, the Petitioner's antecedents were clear and were co-operating. Therefore, the grant of anticipatory bail was sustained.

Facts:

The Director General of GST Intelligence ("**the Petitioner**") and the Directorate of Revenue Intelligence ("**the DRI**") intercepted 21 containers carrying smoking mixtures on October 03, 2022. The samples were sent to the Central Revenues Control Laboratory ("**the CRCL**"), wherein it was revealed that the aforesaid smoking mixture was a spurious product and not fit for human consumption. Investigation was started and summons were issued to the M/s. Harsha International ("**the Exporter**"). However, the proprietor of Exporter, Jitender Kumar ("**the Respondent**"), did not comply with the aforesaid summons.

During the search of the registered premises of the Exporter, it was revealed that no business activity relating to export was being carried out and a kirana store was being operated by the father of the Respondent, from the registered place of business. It was also found that M/s Radiant Traders, the manufacturers of smoking mixtures, had supplied the smoking mixture to the Exporter. However, no business activity was being conducted on the registered premises of M/s Radiant Traders and no goods or plant or machinery were found at their premises.

Subsequently, the statement of the proprietor of M/s. Radiant Traders, Manish Goyal, was recorded under section 70 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), wherein he stated that no smoking mixtures have been supplied by his firm to the Exporter.

The co-accused Manish Goyal was arrested on November 25, 2022 under the allegations of having committed offences under Section 132(1)(b) and (c) of the CGST Act and preferred a bail application before the Additional Sessions Judge which was allowed vide Order dated December 21, 2022 and was released on regular bail. The Petitioner preferred an anticipatory bail, which was granted vide Order dated February 25, 2023.

The Petitioners moved an application seeking cancellation of the aforesaid anticipatory bail before Sessions Court on the grounds of violation of the conditions mentioned therein, which was dismissed vide Order dated April 24, 2023 (“**the Impugned Order**”).

Hence, aggrieved by the Impugned Order, the present petition was filed by the Petitioners.

Issue:

Whether Anticipatory Bail can be granted to the accused who acted on the instructions of the main accused?

Held:

The Hon’ble Delhi High Court ***Criminal Miscellaneous Case No. 4528 of 2023 and others.*** in held as under:

- Observed that, the Respondent was not the main player involved in the GST fraud and was acting on instructions from the main accused Chirag Goel and Chaman Goel. It is the case of the Petitioner itself that out of the receipt of GST refund of INR 198 crores by the Exporter, INR 195 crores were transferred to M/s. Radiant Traders. Even otherwise, the Respondent has clean antecedents has been cooperating in the investigation and has given his statement under Section 70 of the CGST Act.
- Relied on the case of ***State of Gujarat v. Choodamani Parmeshwaran Iyer (SLP (Crl.) No. 4212-4213 of 2019)*** where the Supreme Court held that if any person is summoned under section 69 of the CGST Act for the purpose of recording his statement, provisions

of Section 438 of the Criminal Procedure Code, 1908 cannot be invoked. Hence, the order in Choodamani Parmeshwaran Iyer (supra) was delivered on July 17, 2023, which is subsequent to the order dated February 2, 2023 passed by the learned ASJ granting anticipatory bail to Jitender Kumar. Therefore, the case of Choodamani Parmeshwaran Iyer (supra) cannot have retrospective operation. Thus, the Respondent was granted anticipatory bail.

- Held that, if the Respondent does not appear pursuant to the summons issued by the Petitioner, his anticipatory bail would be liable to be cancelled. However, the Petitioner shall give notice of at least 48 hours to appear pursuant to the issuance of summons.

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