

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 12440/2019

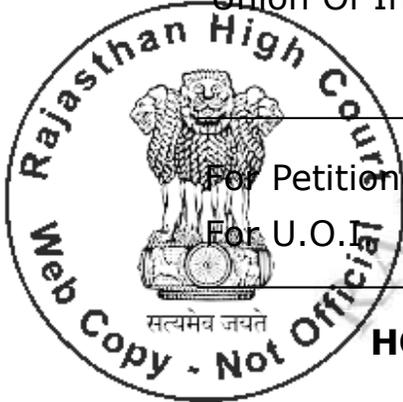
Rakesh Kumar Khandelwal S/o Shri Ramesh Kumar Khandelwal
B/c Khandelwal, Aged About 39 Years, R/o 11-B Udai Nagar
Jaipur (At Present Lodged In Central Jail Jaipur)

----Petitioner

Versus

Union Of India, Through Pp

----Respondent



For Petitioner(s)

: Mr. Vivek Raj Singh Bajwa

For U.O.I

: Mr. Siddharth Ranka

HON'BLE MR. JUSTICE PANKAJ BHANDARI
Judgment / Order

14/10/2019

1. Petitioner has filed this bail application under Section 439 of Cr.P.C.
2. Case No. iv(6)118/AE/JPR/2019/PART-1 relating to offence under Section 132(1)(e) of Central Goods & Service Tax Act, 2017 regarding which bail application has been rejected by Sessions Judge, Jaipur Metropolitan, Jaipur.
3. It is contended by counsel for the petitioner that petitioner was the Manager and Authorized signatory of Padmavati Industries. The partners of the firm were Namrata Jain and Santosh Kumar Jain. Department conducted an investigation and came to the conclusion that Rs. 7.12 Crore Input Tax Credit has been wrongly claimed by Padmavati Industries.
4. It is contended that all transactions were carried out through Bank transactions and the Industries from whom purchases were made were all active, as per the record of the Department.

5. It is also contended that an amount of Rs.3.33 Crore was deposited with the Department, thus bringing the total disputed tax credit amount to below Rs.5 Crore and if the tax credit amount is below five crores the offence is bailable.

6. It is also contended that the owners of Padmavati Industries have obtained a stay on their arrest by the Hon'ble Apex Court.

Petitioner had appeared four times before the Departmental Authorities and had co-operated with the investigation. Petitioner is in custody from 28.08.2019.

Counsel for the petitioner has placed reliance on "**C. Pradeep vs. The Commissioner of GST & Central Excise**

Selam & Anr." (Special Leave to Appeal Criminal No.6834/2019)

vide order dated 06.08.2019, whereby, the Apex Court had restrained the Department from taking coercive action against the petitioner. And order dated 30.09.2019, whereby, Apex Court has restrained the Department from taking coercive action against Namrata Jain and Santosh Kumar Jain who are partners of Padmavati Industries.

8. It is also contended that no determination has been done by the Authorities and in the reply filed by the Union of India, they have not mentioned that any fake invoices were prepared for claiming tax credit.

9. Counsel for the Union of India has vehemently opposed the bail application. It is contended that the annual turn over of Padmavati Industries was just to the tune of Rs.1 Crore which within a year rose to more than Rs.100 Crore. A refund of Rs.23 Crore was claimed and a refund of Rs.18 Crore was granted.



Seven entities from whom firm claimed to have purchased material, were not in existence and Input Tax to the tune of Rs.7.12 Crore was wrongly claimed.

10. It is further contended that petitioner is not merely a Manager but he is also having 40% share in the profit of the firm and his capacity is that of a partner.

11. It is also contended that merely because Rs.3.33 Crore was deposited, offence cannot be termed as a bailable offence.

12. Counsel for the Union of India has placed reliance on judgment of Hon'ble Apex Court "**P.V. Ramana Reddy vs. Union of India & Ors.**" (Special Leave to Appeal (Crl.) No.4430/2019) and judgments passed by this Court in "**Bharat Raj Punj & Anr. vs. Commissioner of Central Goods And Service Tax Department & Ors.**" (S.B. Criminal Writ Petition No.76/2019) decided on 12.03.2019, "**Sandeep Kumar Agrawal vs. Union of India**" (S.B. Criminal Misc. Bail Application No.7499/2018) connected with "**Shri Ram Kumar Singh vs. Union of India**" (S.B. Criminal Misc. Bail Application No.7656/2018) decided on 05.07.2018 also on judgments passed by Co-ordinate Bench of this Court in "**Mukat Behari Sharma vs. Union of India**" (S.B. Criminal Misc. Bail Application No.1238/2019) decided on 25.02.2019, "**Smt. Himani Munjal vs. Union of India**" (S.B. Criminal Misc. Bail No.10350/2018) decided on 10.09.2018 & "**Sandeep Goyal & Anr. vs. Union of India**" (S.B. Criminal Misc. Bail Application No.1405/2019) decided on 27.02.2019, wherein bail applications were rejected.

13. I have considered the contentions.

14. Petitioner has placed before the Court various Tax Invoices and e-Way Bills through which purchases have been made by the firm and the record of the Department from which it is revealed that Firms were in existence. As per Rules 25 of the GST Rules, it is incumbent upon the Department to verify that the Firms/Companies which are registered are actually in existence.



15. Considering the contentions put forth by counsel for the petitioner also taking note of the fact that the partners of the firm have been granted protection by the Apex Court and petitioner is in custody from 28.08.2019; the total amount which as per Department is wrongly claimed after deposit of Rs.3.33 Crores is less than Rs.5 Crore, I deem it proper to allow the bail application.

16. This bail application is accordingly allowed and it is directed that accused petitioner shall be released on bail provided he furnishes a personal bond in the sum of Rs.10,00,000/- (Rupees Ten Lac Only) together with two sureties in the sum of Rs.5,00,000/- (Rupees Five Lac Only) each to the satisfaction of the learned court below with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

17. Petitioner is also directed to deposit the passport with the learned Court below and will not leave the country without seeking prior permission of the Trial Court.

(PANKAJ BHANDARI),J

AMIT KUMAR /128