



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

S.B. Criminal Miscellaneous Second Bail Application No.
15418/2019

Atul Chopra S/o Ashok Chopra, Aged About 44 Years, R/o S-222
Greater Kailash Part-1 New Delhi (Presently Confined At Central
Jail Jaipur)

----Petitioner

Versus

State Of Rajasthan, through PP

----Respondent



For Petitioner(s) : Mr. Kamlakar Sharma, Sr. Adv.
assisted by Ms. Alankrita Sharma, Mr.
Madhusudan Singh Rajpurohit.
For Department of : Mr. R.B. Mathur with Mr. Prateek
Commercial Tax : Kedawat, Mr. Hitesh Mishra, Mr. Vikas
Jakhar.
For State : Mr. F.R. Meena, PP

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Order

22/11/2019

1. Petitioner has filed this second bail application under Section 439 of Cr.P.C.
2. Criminal Case No.143/2019, pending before the Chief Metropolitan Magistrate, Jaipur (Economic Offence Court) having case No.J/C (ADM.)/Alwar,2018-19/379 for offence under Sections 132(1)(a) read with Section 132(1)(h), (j) and (k) of the Rajasthan Goods and Services Act, 2017 (RGST).
3. It is contended by counsel for the petitioner that petitioner imported goods worth Rs.108 crores in the year 2018. The first import was on 24.05.2018. Goods were exempted from tax



subject to the condition that the products made from the goods were to be exported within a period of eighteen months. It is contended that the period of eighteen months have not expired till date. It is also contended that on special reasons being shown the period of export was extended by a period of six months and after period of six months to be extended on special conditions. It is

contended that no notice for assessment was even issued by the authorities. A fire took place in the factory of the petitioner on 03.09.2018 which was reported to the police and fire brigade.

It is also contended that petitioner was arrested on 07.06.2019. Charge-sheet has been filed. In the charge-sheet

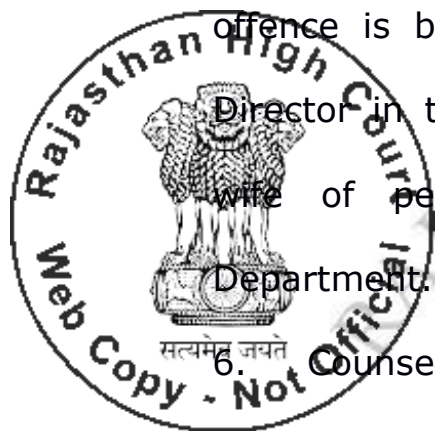
details of E-way bills and Outward E-way bills are given from which it is revealed that total Inward supplies were to the tune of Rs.133 crores and the Outward supplies were to the tune of Rs.32 crores. It is contended that charge-sheet discloses different hands. At one place, the E-way supply is shown as Rs.143 crores, whereas at a different paragraph, the E-way supply is shown as Rs.133 crores. It is contended that Department has shown two Inward supplies to E-way bills and has come to the conclusion that there is an evasion of tax of about Rs.25 crores, whereas from the E-way bills generated, it is revealed that only Inward supply was to the tune of Rs.133 crores out of which Rs.108 crores goods were imported by the petitioner which was exempted and for which a bond was executed by the petitioner. The said bond as per the Foreign Trade Policy and the exemptions given, the period of export was to expire in November, 2019. It is contended that petitioner is a status holder as per Para-3.20 of the Foreign Trade Policy and he falls in the status category of One-Star Export





House.

5. It is also contended that the factory of the petitioner is attached by the Department and Bankruptcy proceedings have been initiated and Resolution Professional has been nominated and he has taken over the charge of the factory. It is also contended that where tax evaded is less than Rs.5 crores the offence is bailable. It is also contended that petitioner was a Director in the Company and the other Co-Directors-father and wife of petitioner have not been charge-sheeted by the Department.



6. Counsel for the petitioner has placed reliance on "***M/S. Jayachand Alloys (P) Ltd. vs. Commissioner of Gst, Writ Petition No.5501/2019, decided by Madras High Court on 04.04.2019.***"

7. Reliance has also been placed on "***Gaurav Kumar Aanchaliya vs. Union of India decided by Rajasthan High Court in S.B. Criminal Misc. Bail Application No.3624/2019 on 13.05.2019***" and "***Pradeep vs. Commissioner of GST & Central Excise Selam & Anr., Special Leave to Appeal (Crl.) No(s).6834/2019, decided by Apex Court on 06.08.2019.***"

8. Learned counsel appearing on behalf of Commercial Tax Department has vehemently opposed the second bail application. It is contended that at the premises of the factory, the stock was found and physical verification was only worth about Rs.2 crores. There was thus a deficit of stock to the tune of Rs.101 crores. It is contended that petitioner has sold the goods without generating the Outward supply invoice and has thus evaded tax to the tune of Rs.18 crores.



9. It is also contended that the total evasion of tax is to the tune of Rs.25 crores, hence, petitioner is not entitled to grant of bail. It is also contended that petitioner has imported the goods but has not exported the goods, hence, he has evaded the tax and customs duty. It is argued that the import was worth Rs.108 crores and export was only to the tune of rupees three crore fifty five lac, thus petitioner has evaded tax.

10. I have considered the contentions.

11. The offence as alleged in the FIR is under Sections 132(1)(a) read with Section 132(1)(h), (j) and (k) of the Rajasthan Goods and Services Act, 2017, the maximum sentence provided under Section 132(a)(i) is five years. From the E-way bills produced with the charge-sheet, it is revealed that the total Inward supply was to the tune of Rs.133 crores which included the import of Rs.108 crores made by the petitioner. The total Outward supply was to the tune of Rs.32 crores. Since the total Outward supply other than the goods imported by the petitioner is concerned is only to the tune of Rs.25 crore. Tax on the import would become payable only after the expiry of 18 months. Tax on the remaining amount is fall below Rs.5 crore. Deposit of Rs.2.5 crore is already lying with the Authorities.

12. In the charge-sheet itself, the report of fire made to the police and the fire brigade is also available which goes to show that fire took place in the factory premises of the petitioner. Petitioner has already furnished the bond with regard to import of Rs.108 crores and in case the export is not made within eighteen months, he is liable to pay in accordance with bond executed by



him. Petitioner has remained in custody for a period of more than five months. No notice with regard to tax outstanding has ever been issued to the petitioner.

13. In view of the same and judgments cited by counsel for the petitioner, I deem it proper to allow the second bail application.

14. This second 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 trial court 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.

15. Petitioner is directed to deposit the Passport with the trial Court and will not be entitled to leave the country without seeking prior permission of the trial Court.

(PANKAJ BHANDARI),J

CHANDAN /15