

Addl Sessions Judge  
New Delhi District N D

Bail matter No. 104/22, 105/22 & 106/22  
GST Vs. Krishna Kant Pandey, Laxmi Kant Pandey & Shashi Kant  
Pandey

18.02.2022

Matter taken up through hybrid hearing as per the directions of Hon'ble High Court of Delhi vide order no.67/RG/DHC/2022 dated 11.02.2022.

Present: Sh. Harpreet Singh, Ld. Senior Standing Counsel for GST.  
Sh. Dushyant Nayak, Ld. Counsel for applicants/accused  
through VC.  
IO in person.

Ld. Counsel for the applicant/accused has submitted that the statements of the accused/applicant have already been recorded on various occasions, although, he has stated that the statements were recorded under such conditions, where the application/accused had no option but to sign the statements or to face immediate arrest. He has further relied upon the decision in *Tarun Jain Vs. Directorate General of GST Intelligence DGGI*, Bail Appln. 3771/2021 & CRL. M.A. 16552/2021 dated on 26.11.2021 to contend that in case where GST evasion is there, anticipatory bail should be liberally granted, inasmuch as, there is no provision for custodial remand for the purposes of investigation in the statute and ultimately, the detention is only in Judicial Custody.

Ld. Counsel for the Department, on the other hand, pointed out that initially when the searches and seizures were carried out, only applicant/accused Krishna Kant Pandey appeared on 07.01.2022 and 08.01.2022, whereas the applicant/accused Laxmi Kant Pandey and



Shashi Kant Pandey had not appeared despite repeated summons for 09.01.2022 and 13.01.2022 and in case of Laxmi Kant even on 20.01.2022. It was only after the protection was granted by the Ld. Predecessor Roster Judge that statements of accused persons have been recorded in the month of February 2022.

Ld. Counsel for the Department has pointed out that no matter what the counsel for applicants/accused contended today in court, there is no retraction on any of the statements already recorded. He has also shown me relevant portions of the statements so recorded, more specifically, the statements of Sh. Krishan Kant Pandey, Sh. Laxmi Kant Pandey, Sh. Shashi Kant Pandey and Sh. Mukesh Dwivedi besides few other statements.

Ld. Counsel for Department has pointed out that the Agency is facing difficulty in conducting investigation in the present case as despite repeated notices, the employees, agents and the Directors of the accused company are not appearing or co-operating with the investigation. He has pointed out that the accused persons have admitted that the Directors on record are only dummy Directors and it was the accused persons who were running the business of the company. Even the statement of Sh. Mukesh Dwevedi points out that all the business was being carried out on the instructions of the accused persons and money collected from the clandestine sale was paid to the accused persons directly. Ld. Counsel has also pointed out that there is a web of small firms, which are also dealing with similar goods and articles and they are all owned by the applicants/accused persons and the whole



network is used for clandestine manufacturing and supply of goods without there being any bill or invoice in this regard.

Ld. Counsel for Department has also pointed out that from the Mobile of Mukesh Dwivedi, certain photographs of diary pages have been retrieved, which have been deciphered with the help of the statement of Sh. Mukesh Dwivedi, who has admitted that each name corresponds with a Salesman. The next figure is the dealer number and the two figures after that indicates the number of sacks supplied. Each sack contains 6 bags. Each bag contains 21 packets and each packets contains 62 pouch of the product and therefore, each sack contains around 7812 pouches of product with value ranging between 50 paisa to Rs.2/-.

Similarly, codes are used for receiving payments and accounting, inasmuch as, the sale is clandestine and no paper trail is maintained.

Ld. Counsel for Department has also pointed out that even on an earlier occasion in the year 2018, the accused persons were similarly summoned by DGGI, Lucknow learning about their evasion of GST. Ultimately, the proceedings culminated in deposit of penalty of Rs.2 crores by the accused persons and only then the matter was closed. Therefore, he has stated that the accused persons are habitual of avoiding generating bills and invoices with GST and of clandestine manufacture and supply of dutiable goods.

Ld. Counsel for Department has also taken me through some of the statements which indicate that the factory premises are



being shifted from time to time and are established in village areas, as also that the manufacturing and dispatch is at a large scale, considering that the statement indicates that the factory was being run in two shifts of eight hours.

Ld. Counsel for the Department has relied upon the decision in *P.V. Ramana Reddy Vs. Union of India*, 2019 (25) G.S.T.L. 185 (Telangana), *Vimal Yashwantgiri Goswami Vs. State of Gujarat*, C/SCA/13679/2019 decided on 20.10.2020, *Union of India Vs. Sapna Jain*, SLP Nos. 4322-4324/2019 decided on 29.05.2019.

In *Union of India (supra)*, it has been observed by the Hon'ble Supreme Court of India:

*As the accused-Respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court in P.V. Ramana Reddy v. Union of India by order dated 27.5.2019 passed in [SLP(Crl.) No. 4430/2019] had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.*

Therefore, it seems that the real thrust or argument as far as department is concerned is that the interim protection granted to the accused is seriously hampering the investigation.

I may note here that the decision in *Tarun Jain (Supra)*



pertains to a case under Section 132 (1) (b) & (c) which reads as follows:

*(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

*(c) "avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;"*

Whereas, the present case is of clandestine manufacturing and sale which is covered by Section 132 (1) (a). Although, the punishment and the status of the case has cognizable and non bailable is the same, the evidence of both category of cases would necessarily be different. In case of offence under sub Section (1) (b) & (c), the evidence would necessarily be documentary and also available in the form of returns submitted as they involve an element of filing of return. Whereas, Section 132 (1) (a), pertains to a situation where there may not be any bills or invoices and evidence would have to be mostly ocular. Considering that such evidence would have to be given by the employees and persons involved in the production, transportation and sale, in cases, it may be possible for the accused persons to yield influence which may hamper the investigation.

In the present case, as has been pointed out, initially, at least, two of the applicants did not respond to summons and now, neither the Directors on record nor several employees are not responding to the

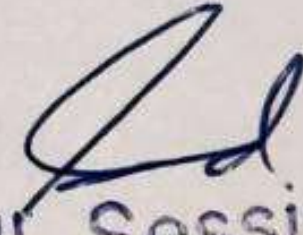


summons of the Department. The possibility of investigation being influenced or thwarted cannot therefore, be ruled out. Needless to say, that the alleged evasion of duty has been calculated in several crores.

In these circumstances, this is not a fit case for grant of anticipatory bail to the accused persons.

Anticipatory bail applications are accordingly dismissed.

Order dasti.

  
Addl Sessions Judge  
(Harjyot Singh Bhalla)  
ADJ/ASJ/PO MACT, PHC, ND  
(Roster Judge)  
18.02.2022

