


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No. 13823/2022

Khem Chand Thathera S/o Shri Nanagram Thathera, Aged About
46 Years, R/o 1710, Tahtheron Ka Rasta, Jaipur 302003 (At
Present In J.C. and Confined in Central Jail Since 02.08.2022)

----Accused/Petitioner

Versus

State Of Rajasthan, Office Of State Goods And Service Tax
Department, Circle-A, Enforcement Wing-I, Rajasthan, Jaipur
Through Special P.p.

----Respondent

For Petitioner(s)	:	Mr. Siddharth Ranka assisted by Mr. M. Iqbal Mr. Saurav Harsh Ms. Apeksha Bapna Mr. Rohan Chatter
For Respondent(s)	:	Mr. Punit Singhvi assisted by Mr. Ayush Singh

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Order

03/01/2023

The present bail application has been filed under Section 439 Cr.P.C. The petitioner has been arrested in connection with Case No. EW-I, Rajasthan/INS-01/27 registered at Office of Assistant Commissioner, State Tax, Ward-I, Circle A, Enforcement Wing-1, Rajasthan, Jaipur for the offence(s) under Section(s) 132(1)(B) (C) of the Rajasthan Goods and Services Tax Act, 2017 (for brevity "the Act of 2017").

It is contended by learned counsel for the petitioner that he has falsely been implicated in this case. Learned counsel submitted that there has been violation of mandatory provisions

while effecting his arrest and its continuation as contained in the Act of 2017. Learned counsel submits that till date, no notice for adjudication of the tax liability as stipulated under Section 73 & 74 of the Act of 2017 has been served upon him. Learned counsel submitted that the petitioner is in custody since 01.08.2022, after conclusion of the investigation, charge-sheet has been filed on 30.09.2022, he has already deposited 10 per cent of the alleged evaded tax amount, the maximum punishment which can be awarded is five years, the offences are compoundable, he has no criminal antecedents and prayed for his release on bail. Learned counsel for the petitioner, in support of his submissions, relied upon a judgment of Hon'ble Supreme Court of India dated 05.12.2022 passed in **Special Leave to Appeal (Crl.) No.10319/2022: Ratnambar Kaushik versus Union of India.**

Per contra, learned counsel for the respondent would submit that there is grave allegation against the petitioner of evasion of tax amount to the tune of ₹20.83 Cr. He, therefore, prayed for dismissal of the bail application. He, in support of his submissions, relied upon judgment of Hon'ble Supreme Court of India in case of Y.S. Jagan Mohan Reddy versus Central Bureau of Investigation: (2013) 7 Supreme Court Cases 439 and the judgment dated 05.07.2021 in case of **Ashok Kumar Sihotiya versus Union of India: 2021 SCC OnLine Raj 2795** passed by a Coordinate Bench of this Court and another judgment dated 07.09.2021 passed in **SB Criminal Miscellaneous Bail Application No.13042/2021: Lalit Goyal versus Union of India & Anr.** which was upheld by the Hon'ble Supreme Court of India vide its

judgment dated 26.08.2022 in **Petition for Special Leave to Appeal (Crl.) No.3509/2022.**

Heard. Considered.

Recently, the Hon'ble Supreme Court of India has, in case of **Ratnambar Kaushik** (supra), held as under:-

"5. Though allegations and counter allegations are made, at this stage, it would not be necessary for us to advert to the details of the rival contentions, since the matter in any event is at large before the trial court and any observations on merits herein would prejudice the case of the parties, therein. However, for the limited purpose of answering the prayer for the grant of bail, the contentions are taken note of. It is no doubt true, that an allegation is made with regard to the transportation of unmanufactured tobacco and it is alleged that such procurement of unmanufactured tobacco is for clandestine manufacture and supply of zarda without payment of leviable duties and taxes. Though it is further contended that in the process of the investigation, the transportation of a larger quantity of unmanufactured tobacco weighing about 35,57,450 kgs. is detected, these are all matters to be established based on the evidence, in the trial.

6. In considering the application for bail, it is noted that the petitioner was arrested on 21.07.2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under [Section 132\(1\)\(l\)\(i\)](#), the punishment provided

is, imprisonment which may extend to 5 years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.

7. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial Court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial Court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial Court forthwith, to ensure compliance of this order.”

In present case, the petitioner is in custody since 01.08.2022, charge-sheet has been filed on 30.09.2022 and he has already deposited about 10 per cent of the amount of alleged evaded tax duty. In view thereof; but, without expressing any

opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail.

Accordingly, the bail application is allowed and it is directed that accused-**petitioner Khem Chand Thathera S/o Shri Nanagram Thathera** shall be released on bail under Section 439 Cr.P.C. in connection with afore-mentioned FIR registered at concerned Police Station, provided he furnishes a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) together with two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial court with the stipulation that he shall comply with all the conditions laid down under Section 437(3) Cr.P.C.

The petitioner is further directed to deposit his passport, if any, with the learned trial Court and not to travel abroad without its prior permission.

(MAHENDAR KUMAR GOYAL),J

