CGST v. Kabir Kumar

22.12.2021
at 04:00PM

Present: None.

ORDER

On behalf of DGGI, Gurugram herein after referred to as (The Department), the instant application has been filed seeking cancellation of regular bail granted to respondent Kabir Kumar vide order dated 05.12.2020 by this Court. It is submitted that intelligence was gathered by the department that M/s Himanshu Enterprises was indulging in issuance of fake invoices without actual supply of goods and the said Enterprise also did not discharge its GST liability and issued fake invoices to another fictitious firm namely M/s Gariox Enterprise which further issued fake invoices to other 13 firms which were found non-existent at the principle place of business. The searches were conducted and statement of Gaurav Gupta was recorded on 04.09.2020 wherein he named respondent as owner / controller and creator of many fake firms including Paul Overseas. Statement of the accused was also recorded and thereafter, Kabir Kumar was arrested on 29.10.2020 and he was granted bail on 05.12.2020.

Pursuant there to while the department was taking forward its investigation, two persons namely Manish and Vikash came to be arrested on 09.03.2021 for having committed the offence under section 132 (1) (b) of CGST Act, 2017 and in their statement the name of respondent Kabir Kumar surfaced indicating that he is still engaging himself in issuance of paper invoices and thereby passing of fake / ineligible ITC thereby committing the offence under section 132 (1)(b) of the CGST Act, 2017.

While the statement of respondent Kabir Kumar was being recorded, he interalia stated that Vikash is his employee who generate fake bills and E-way bill in all fake firms, however, on perusal of documents, it was revealed that Vikash is his associate and aggregator in the whole fraud of passing of ineligible ITC. It is submitted that Vikash and Manish were continuing in the issuance of fake bills on the directions of Kabir Kumar. In their statement under section 70 of CGST Act, Vikas interalia stated in his statement on 06.03.2021 and 08.03.2021 that he works for Kabir Kumar and on his directions, he had been issuing fake bills and Eway bills for last two years for salary paid by Kabir Kumar. After release on bail, Kabir Kumar contacted Vikash and Manish and asked them to go to Nepal and on 05.01.2021, Vikash and Manish went to Kathmandu rented a flat there and started issuing fake bills on the directions of Kabir Kumar and were communicating with Kabir Kumar through anydesk software which facilitates mirror screening at the same time where different persons residing at different places can access the contents. The equipments were provided by respondent Kabir Kumar to Vikash. It is submitted that respondent had issued fake bills and passed on ITC to the tune of Rs. 4.28 crore after his release.

It is submitted that one of the condition of the bail was that he would not indulge himself again in similar offence in future, however, after release, respondent continue to issue fake bills from his fake firms to the tune of Rs. 4.28 crore thereby defying the condition of the bail and also passing on ineligible ITC on commission. It is submitted that accused is continuing with his well established network of defrauding the ex-chequer and persistent in destroying the frame work of nation economy. It is prayed on behalf of the department that his bail may be canceled for the violation of the main condition of order dated 05.12.2020.

In reply, the respondent has submitted that the instant petition seeking cancellation of the bail has been filed by the department on the basis of statement of co-accused Manish and Vikash alleging that after being granted bail respondent has passed on ineligible ITC to the tune of Rs. 4.85 crore and also got co-accused Manish and Vikash to be moved to Kathmandu. It is submitted that the said statements of co-accused Manish and Vikash has been retracted vide statement dated 16.04.2021. It is submitted that except the said statement there is no evidence against the respondent indicating that he is indulging in similar offence. It is submitted that the allegation of the department are false as in the said firms, respondent is neither a Director nor Promoter nor shareholder nor Proprietor nor authorized signatory. It is submitted that respondent was never a member of any whatsapp group "Wahe Guru". It is submitted that respondent has responded to each and every summon issued by the department. It is submitted that no supervening circumstances exist warranting the cancellation of bail.

Heard. Perused.

Vide order dated 05.12.2020, respondent was admitted to bail subject to following conditions :

1. That the accused shall join the investigation as and when directed by the investigating agency.
2. The accused shall not tamper with the evidence or influence the witnesses which will be examined by the department during investigation.
3. That accused shall not leave the country without the permission of the Court .
4. That accused shall not indulge in similar offence in future.
5. That accused shall appear before the Court on each and every date of hearing.

One of the core condition for grant of bail was that respondent shall not indulge in similar offence in future. However, it is apparent from the facts presented by the department on the basis of statement recorded under section 70 of CGST Act of two co-accused persons namely Vikas and Manish, that respondent is indulged in similar offence after release on bail, as such the said condition has been defied with impunity.

It is noteworthy that the conduct of the accused has been unsatisfactory and defiant as despite specific directions he failed to appear before Court which is also violation of the condition of bail whereby he is obligated to appear before the Court as and when directed. Rather baseless and untenable grounds are taken to avoid Court appearance which speaks volumes of his conduct.

Infact, two important conditions of the bail has been continuously and deliberately violated by the respondent with impunity. The very object of grant of bail has been defeated by the accused by indulging in the similar crime again and defying the Court orders. If the respondent is defiant to Court directions then it can be easily assumed that how little he would have cared of department proceedings. In the garb of bail order, accused cannot be permitted to continue with similar offence which has the tendency to harm the nation's economy. Accused is apparently showing indolent attitude towards the judicial process. In the considered view of this Court, the aforesaid facts provide very cogent and overwhelming circumstances for exercise of power for cancellation of bail. Accordingly, for the violation of two basic condition of the bail order dated 05.12.2020 respondent's bail is hereby canceled. He is directed to immediately surrender before the Court. In case, accused fails to surrender by tomorrow i.e. 23.12.2021, the department to take necessary steps for his arrest. Application disposed of. Copy be sent to all concerned for information and compliance.

(Dr. Pankaj Sharma)
CMM/ND/Patiala House Courts
New Delhi/22.12.2021

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