



2024:DHC:6696



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 30th August, 2024***

+ **CRL.M.C. 2824/2019**
THE COMMISSIONER OF CENTRAL TAX, GST,
DELHI(WEST)Petitioner
Through: Mr. Harpreet Singh, Sr.
Standing Counsel with Ms.
Suhani Mathur & Mr. Jatin
Kumar Gaur, Advs.

versus

ADESH JAINRespondent
Through: Mr. Nagender Deswal, Mr.
Vishal Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed challenging the order dated 05.02.2019 (hereafter '**impugned order**'), passed by the learned Chief Metropolitan Magistrate ('**CMM**'), Patiala House Courts, New Delhi, in *Commissioner of Central Tax, GST Delhi (West) v. Adarsh Jain*, whereby the respondent was admitted on bail.

2. It is the case of the prosecution that the respondent and the co-accused Rajesh Jindal were involved in generation of fake invoices by dummy entities, which they had floated by luring poor people into becoming proprietors of such bogus firms, and passing on the undue advantage of Input Tax Credit to various



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companies/ firms without actual supply of goods. It was alleged that the accused persons had faked fictitious sales of more than ₹200 crores and they had evaded tax of ₹27,54,45,679/-. The respondent was arrested along with co-accused Rajesh Jindal on 31.07.2018.

3. The respondent was granted bail on 20.08.2018, by the learned CMM, on furnishing a personal bond in the sum of ₹1,00,000/- with one surety of the like amount. On a challenge by the petitioner department, the order dated 20.08.2018 was set aside by order dated 22.12.2018, passed by the learned Additional Sessions Judge ('ASJ'), Patiala House Courts, New Delhi.

4. Concededly, the investigation was not completed and the complaint was not filed by the petitioner department despite respondent having spent sixty days in custody. This led to the respondent filing an application under Section 167(2) of the Code of Criminal Procedure, 1973 ('CrPC') seeking statutory bail. Thereafter, by the impugned order, the respondent's application was allowed and he was admitted on bail.

5. The petitioner department has challenged the impugned order raising only one ground. It is contended that once the bail had been cancelled by the learned ASJ by order dated 22.12.2018, no benefit under Section 167(2) of the CrPC could have been given to the respondent.

6. The argument is meritless.

7. Section 167(2) of the CrPC reads as under:



“Section 167(2) in The Code of Criminal Procedure, 1973

(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that –

- (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,*
 - (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;*
 - (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;*
- (b) no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.*
- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”*

8. Section 167(2)(a)(ii) of the CrPC is a beneficial provision



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granting relief to the accused where the investigating agency is not able to complete the investigation within a period of sixty or ninety days as the case may be. It categorically provides that once the prosecuting agency is unable to complete the investigation within the time provided, the benefit cannot be denied to the accused. The right to apply for statutory bail under Section 167(2)(a)(ii) has been recognized by the Hon'ble Apex Court as a Constitutional right.

9. It is not disputed that the complaint in the present case was not filed when the application under Section 167(2) of the CrPC was taken up for hearing and the respondent had already spent sixty days in custody.

10. On being pointedly asked, as to the status of the complaint, the learned Senior Standing Counsel for the petitioner department states that the same has still not been filed.

11. It appears that in the initial stages, serious allegations were made regarding tax evasion of a huge amount of money and the respondent having employed unscrupulous means to pass on the undue advantage of the Input Tax Credit generated by bogus entities on the basis of fictitious invoices and sales to various companies. However, it is peculiar that no complaint has still been filed till date. It is unclear as to why the petitioner department has been contesting the present case for such a long period of time in regard to the custody of the respondent, when the department is obviously not concerned with taking the case to its logical conclusion.



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12. It is not the case of the petitioner department that the respondent has misused the liberty pursuant to being admitted on bail. It is apparent that the only interest of the department is in the custody of the accused respondent and not in the trial of the case. Filing of proceedings in such circumstances, is an abuse of process of the Court.

13. This Court fails to understand why despite more than five years having elapsed, no complaint is filed in the present case, even though, at the time of opposing the bail of the respondent, serious allegations were made that the case involves a large amount of public money.

14. In view of the aforesaid discussion, I find no merit in the present petition.

15. The petition is, therefore, dismissed.

AMIT MAHAJAN, J

AUGUST 30, 2024/“SK”