(2023) 10 KL CK 0032

In the High Court Of Kerala

Case No : Bail Application No. 8124 Of 2023

Kattungal Aliar Ashraf — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 05-10-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Kerala State Goods and Service Tax Act, 2017 — Section 132(1)(i), 132(5)

Citation : (2023) 10 KL CK 0032

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : K.M.Firoz, P.G.Manu

Final Decision : Dismissed

Judgement

Mohammed Nias C.P.J

1. This is an application filed under Section 439 of the Code of Criminal Procedure, seeking regular bail.

2. The petitioner is the second accused in IU KHD/INT 07/2023-2024 for having committed offences punishable under Sections 132(1)(i) r/w Section 132(5) of the Kerala State Goods and Service Tax Act, 2017.

3. The prosecution case is that the petitioner abetted the commission of the above offence by colluding with one Sathar, Shoukath and others by creating GST Registration in the name of dummy individuals and also abetted for extracting money by issuing fake GST invoices and generation of bogus E-way bills for facilitating to transport the goods.

4. The petitioner would contend that all the allegations against him are for abetting the offences and that the allegations are false. The alleged offence is bailable as contemplated by Section 132(4) of the Kerala SGST Act since the department does not have any material to show that the offence amount of tax

allegedly evaded exceeds five hundred lakh rupee (5 crores). Mere allegations without any material are insufficient to categorize the offence as non-bailable.

5. The learned counsel appearing for the petitioner and the learned Public Prosecutor, who opposed the bail application, were heard.

6. The learned counsel for the petitioner submits that the 4th accused has already been released on bail for the same crime. He also submitted that the provisions of Section 132 of the Kerala SGST Act, 2017, and that the alleged offence is bailable since there is no material to show that the amounts allegedly evaded exceed five crores. Further, there is no allegation that the amount of input tax credit was wrongly availed or utilized or the amount of refund was wrongly taken. It is also submitted that the petitioner was arrested on 27.7.2023, and further incarceration is not warranted.

7. On a direction from this Court, a report was filed by the investigating officer stating that the Intelligence Unit, Kanhangad, noticed the presence of a cartel in the trade of areca nuts with 43 fake tax prayers spread over the states of Tamil Nadu, Kerala, Karnataka, Karnataka, Madhya Pradesh, Maharashtra, Gujarat and Delhi, which operate with an intention to support the fake invoices fabricated E-way bills to transport to intent to transport the arecanut to unknown traders who do not supply their invoices. This cartel also arranges fake registrations in the supply and destination points to supply and receive areca nuts fictitiously. The petitioner and three others are the persons working behind this cartel who had issued invoices for the supply of goods and fraudulently evaded input tax credit and thus committed such an offence. Since the amount of tax evaded is approximately Rs.9.5 crores as of the date of arrest., the same is a cognizable and a non-bailable offence as per Section 132(5) of the Kerala SGST Act/CGST Act, 2017. It is alleged that the petitioner has created more than 43 fake registrations, producing fake documents, fake accounts and falsified financial records, which are used by making fake invoices.

8. Having considered the rival submissions, though the allegations are very serious, having regard to the fact that the petitioner has been detained since 27.7.2023 and thus completed 68 days in custody, the fact that the 4th accused has been granted bail by the court below, the maximum period for which he can be remanded at this stage is 60 days, as the final report is not filed (which is not disputed), I am inclined to grant bail to the petitioner.

Accordingly, the petition stands allowed, and the petitioner can be enlarged on bail on the following conditions:

1. The petitioner shall be released on bail on executing separate bonds for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.

2. The petitioner shall deposit a sum of Rs.5,00,000/- (Rupees Five lakhs only) as security before the Intelligence Officer, Kerala SGST, Intelligence Unit,

Kanhangad, Kasaragod.

3. He shall appear before the Investigating Officer on all Mondays and Saturdays at 11 a.m. for three months or until the filing of the complaint, whichever is earlier.

4. He shall not attempt to interfere with the investigation, influence the witnesses, or intimidate any witness in proceedings No. IU KHD/INT 07/2023-2024

5. He shall not commit any offence while on bail;

6. The petitioner shall surrender his passport, if any, within seven days from the date of his release before the Court concerned, and if the release of the passport is required at a later period, the petitioner shall be at liberty to move an appropriate application for the same before the court having jurisdiction. If he has no passport, he shall file an affidavit to that effect before the court concerned within seven days of the date of execution of the bond or within three days thereafter.

7. The petitioner shall furnish his residential address, including mobile phone number, to the investigating officer as well as to the court.

8. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail and pass appropriate orders in accordance with law.