

(2015) 03 DEL CK 0218

Delhi High Court

Case No: Bail Appln. 401/2014

Vijay Verma

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: March 11, 2015

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 14
- Companies Act, 1956 - Section 397, 398, 402
- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Customs Act, 1962 - Section 108
- Finance Act, 1994 - Section 87

Citation: (2016) 333 ELT 25 : (2015) 2 JCC 1443

Hon'ble Judges: Sunita Gupta, J.

Bench: Single Bench

Advocate: Ashim Vachar, for the Appellant; O.P. Saxena, APP, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Sunita Gupta, J.

This application under Section 438 of Cr.P.C. has been filed by the petitioner/applicant seeking directions to release him on bail in the event of his arrest in the proceedings initiated by the Office of the Commissioner of Service Tax, IAEA House, 17-B, IP Estate, New Delhi under Section 14 of the Central Excise Act, 1944.

2. The application has been filed by the applicant inter alia on the allegation that he is one of the directors of the company - M/s. Sun Nirman Infrastructure Pvt. Ltd. The company was incorporated in the year 2007. However, the applicant was not involved in its incorporation and was not connected with the said company in any manner whatsoever. The applicant purchased certain shareholding in the company

and became one of the directors of the company since December, 2011/ January, 2012. It was only after January, 2012 that he stated looking into the affairs of the company. During his tenure, it was always the endeavour of the company to pay service tax on time. However, on account of earlier defaults and on account of business losses suffered by the company, there had been some delay in making payments towards service tax. The applicant received a notice dated 01.10.2013 from the Superintendent Service Tax (Anti-Evasion) from the office of respondent no.2 pursuant to which he appeared and submitted all the documents. His statement was duly recorded and it was informed that there are some alleged outstanding dues towards the service tax to the tune of Rs. 2.54 crores. Pursuant to another notice dated 26.11.2013, the applicant supplied most of the information including all the documents. In the month from March to June, 2013, the company paid a total sum of Rs. 3 crores towards service tax dues to the department. Further, from September, 2013, approximately a sum of Rs. 87 lac has been deposited. While the company was endeavouring to clear all the outstanding service tax dues, the respondent no.2 issue a notice to all the debtors of the company directing them not to make any payment to the company and instead deposit the same with the Service Tax Department. Not only that a notice was also issued to all the banks freezing the bank account of the company which resulted in virtual collapse of the business of the company. The officials of the respondent no.2 threatened the AR of the applicant that they would initiate action to arrest the applicant under the provisions of Central Excise Act, 1944 in case the entire outstanding dues are not cleared by the applicant as such apprehending arrest, the application in hand has been filed.

3. It is submitted by learned counsel for the applicant that the applicant has all the intention to pay all the outstanding dues which is reflected from the fact that initially a payment of Rs. 3 crores was deposited and thereafter a sum of Rs. 87 lac was deposited. Pursuant to the directions of this court, a sum of Rs. 1 crore was deposited. Moreover, the applicant has resigned from the company with effect from 24.02.2014 and requisite Form No. 32 was submitted before the Registrar of Companies and, therefore, the liability, if any, is of the company. In any case, the company has assets which are in excess of the amount liability which the respondent no.2 has claimed. Moreover, pursuant to the proceedings under Sections 397 and 398 read with Section 402 of the Companies Act, 1956, a retired Justice has been appointed as Chairman-cum-Director of the company. Under the circumstances, it was submitted that protection be granted to the applicant.

4. The application is vehemently opposed by learned counsel for the respondent no.2 by submitting that the application is neither maintainable in law nor on facts. An investigation against M/s. Sun Nirman Infrastructure Pvt. Ltd. registered with Service Tax for providing work contract service and construction service was initiated under Section 14 of the Central Excise Act, 1944. The applicant and the company remained non- cooperative during the investigation and also did not provide the requisite documents/details to ascertain the correct outstanding service

tax liability. There is a prima facie case of non-payment of service tax amounting to Rs. 2 crore which the applicant had already collected from the customers but did not deposit the same. Mr. H.L. Sharma, director of the company and Mr. Jatinder Proothi, head finance of the company in their statements under Section 14 of Central Excise Act stated that the applicant is the overall in-charge of the finance and responsible for not depositing the dues towards service tax. The applicant in his statement accepted the contents of the statements made by the aforesaid persons. The action to recover the government dues under Section 87 of the Finance Act, 1994 has been initiated against the company. It was further submitted that the applicant is not cooperating in the investigation. He did not appear in compliance to the summons on various dates. An affidavit of Mr. R.R. Mittal, Superintendent was filed wherein it was submitted that in compliance of the court's order, a sum of Rs. 1 crore was deposited by the company. On 05.04.2014, they submitted part details and there was outstanding service liability of Rs. 90,83,067/- for the year up to 2013 - 2014. As on date i.e. 13.05.2014, the amount of service tax liability is Rs. 1,01,53,662/-. Another affidavit was filed by Mr. R.R. Mittal, Superintendent stating therein that pursuant to the letter of the applicant regarding his resignation, the other director was summoned who informed that the applicant filed his resignation with Registrar of Companies without approval of Board of Directors. He is holding the designation of chairman-cum-director of the company and he is the only working director of the company and still holds all the records and documents of the company. All the directors are passing their responsibility on one and another and neither paying dues towards service tax nor providing requisite details to the department. In the subsequent affidavit filed by Mr. Deepak Kumar, Superintendent stating therein that the applicant did not join investigation, pursuant to which a show cause notice has been issued. For the period up to 31.03.2014, a total amount of Rs. 19,17,74,309/- along with cess and interest is due and out of which the company has paid a sum of Rs. 5,04,83,070/-.

5. It was submitted by learned counsel for the respondent no.2 that the applicant has committed crime against the country. He has collected taxes from the customers but not deposited the same with the government. This is glaring and striking instance of misappropriation of government money. Reference was made to number of authorities for submitting that economic offences are placed at higher pedestal than murder. Moreover, the application is pre-mature as even no order for arrest of the applicant has been passed by the competent authority. That being so, there is no apprehension of arrest of the applicant. It was further submitted that in view of law laid down by the Hon'ble Supreme Court in *Union of India and another v. Ashwani Aggarwal* [Crl. Appeal No. 555/2000] and followed by this court even no notice for service of notice to the arrest of the applicant can be passed. As such, it was submitted that the application is liable to be dismissed.

6. Needless to say, the allegations against the applicant are grave and serious in nature regarding misappropriation of government money. In *Ram Narain Popli v.*

CBI 2003 1 AD (Crl.) SC 253 it was observed as under:

"The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage; done to the National Economy and National Interest, as was aptly stated in [State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another](#), "

7. Furthermore, a circular bearing number 974/08/2000-CX has been placed on record regarding the arrest and bail under Central Excise Act, 1944. As per this circular, the power to arrest a person needs to be exercised with utmost caution. Before arresting a person requisite permission from the competent authority is required. In the instant case so far no such permission has been granted by the competent authority. That being so, the applicant has no apprehension of arrest, as such, the application is premature.

8. Moreover, no direction for issuing notice to the applicant in case of his arrest can be given in view of the observations of the Supreme Court in Union of India v. Padam Narayan etc. [Crl. Appeal No. 1575/2008] wherein it was observed and held as under:

"Bail applications - anticipatory - respondents summoned under section 108 of the Customs Act - certain directions issued by the High Court to the Customs Authorities that in case the custom authorities find that any non-bailable offence has been committed by the respondents, they shall not be arrested without ten days prior notice - neither of the directions can be said to be legal, valid or in consonance with law. Firstly, the order passed by the High Court is a blanket one as held by the Constitution Bench of this Court in Gurbaksh Singh and seeks to grant protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructs, interferes and curtails the authority of Custom Officers from exercising statutory power of arrest a person said to have committed a non-bailable offence by imposing a condition of giving ten days prior notice, a condition not warranted by law. The order passed by the High Court to the extent of directions issued to the Custom Authorities is, therefore, liable to be set aside and is hereby set aside."

9. This view was reiterated in Union of India and another v. Ashwani Aggarwal (supra) and followed by this Court in Department of Customs v. Arvinder Singh [Crl.

Misc. (M) No. 1710/2002].

10. Under the circumstances, the application being premature is dismissed.

The interim protection granted to the applicant vide order dated 05.03.2014 stands vacated.

The application stands disposed of accordingly.