



2023/KER/79824

BA 10492/23

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MOHAMMED NIAS C.P.

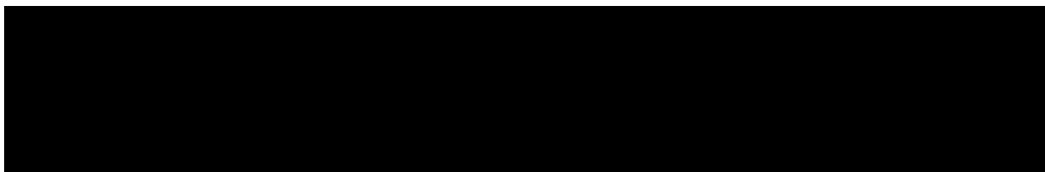
TUESDAY, THE 12TH DAY OF DECEMBER 2023 / 21ST AGRAHAYANA, 1945

BAIL APPL. NO. 10492 OF 2023

CRIME NO.7/2023 OF CONTROL ROOM, KTM, KOTTAYAM
(CRIME FILE NO.GST/INS-7/2023) AGAINST THE ORDER/JUDGMENT CMP 7164/2023
OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O), ERNAKULAM

PETITIONER/SOLE ACCUSED:

BADHA RAM,



BY ADVS.

C.S.MANILAL

S.NIDHEESH

RESPONDENTS/STATE & COMPLAINANT:

1 INTELLIGENCE OFFICER,
KERALA STATE GST DEPARTMENT, INTELLIGENCE UNIT, ALAPPUZHA.,
PIN - 688001

2 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN
- 682031

SRI.MOHAMED RAFIQ, SPL. GOVT. PLEADER, TAXES
PUBLIC PROSECUTOR SRI.M.C. ASHI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.12.2023,
THE COURT ON 12.12.2023 DELIVERED THE FOLLOWING:



“C.R.”

MOHAMMED NIAS C.P., J.

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B.A.No. 10492 of 2023

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Dated this the 12th day of December, 2023

ORDER

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

2. Petitioner is the sole accused in crime file No.GST/INS-7/2023 registered based on the complaint of the 1st respondent under Section 132(1) of the Kerala State Goods and Service Act, 2017.

3. The gist of the prosecution case is as follows:- Petitioner is the accused in the above crime registered based on the complaint of the 1st respondent under Section 132(1) of the Kerala State Goods and Service Act, 2017. The accused is a dealer under the GST Act. He has two offices, one at Pulimoodu Junction, Kottayam and the additional business place at Kochar Road, Pazhavangadi, Trivandrum. He is a wholesale distributor of mobile accessories and electronic items, which are taxable with 18% GST. It is alleged that he is supplying goods without issuing invoices, evading the tax payment due from 2018 onwards. The accused is involved



in tax evasion estimated at 6.14 crores. A raid was conducted in the office of the accused on 09.11.2023, and he was arrested on 13.11.2023.

4. The learned counsel for the petitioner, Sri. Manilal, submits that the petitioner is a registered dealer regularly paying returns from 2018 to 2023. The 1st respondent wrongly included the income of two other concerns conducted by the petitioner's brother's sons, who have separate GST registrations. The total income had been arrived at by wrongly taking the income of all three concerns. The 1st respondent has already seized documents, electronic records and other accompanying material, so further custodial interrogation is not necessary. The remand report does not state that continued custody of the petitioner is necessary. There is no scope for influencing the witnesses as they are officials. The petitioner is innocent and has not committed any offence. All the transactions are done based on invoices and bills, and all the transactions are recorded in the computer that was seized during the search. Hence, he prayed for the release of the petitioner on bail.

5. The learned counsel for the petitioner further argues that going by the provisions of GST, particularly Section 132, it has to be seen that the power of arrest can be invoked only after an assessment is made and not before. He relied on the judgment of the Madras High Court reported in **Jayachandran Alloys (P) Ltd. v. Superintendent of GST & C. Ex., Salem [MANU/TN/3348/2019]** and that of the Madhya Pradesh High Court reported in **Jagdish Arora and others v. Union of India [MANU/MP/1035/2020]** in this regard. It is also argued that custody of the petitioner was given for five days. After that, permission has been granted to



interrogate the petitioner in jail for four days. Under such circumstances, since the investigation has progressed, there is no necessity for continued detention. He also argues that the entire hard copies of the documents found on the computer were already taken.

6. The learned Special Government Pleader, Taxes, Sri. Mohamed Rafiq, opposing the bail application, filed a report with the following contentions. An extensive investigation in the field of mobile phone accessories and electronics in the search conducted has unearthed a significant case of tax evasion by the accused herein being the proprietor of M/s. Lakshmi Mobile Accessories. The enquiry revealed that he supplied goods without issuing invoices, evading tax due to the government exchequer. It was revealed that he was involved in large-scale tax evasion by suppressing his actual outward taxable supplies. Based on the permission of the Joint Commissioner, a search was conducted at the residence and place of business, which revealed huge tax evasion. Mr. Rafiq submitted that a search was conducted on 9.11.2023, and the primary materials revealed that there was an evasion of more than Rs.6 crores. Only after the investigation is completed can the exact liability be quantified. It is also pointed out that between his arrest and the search on 13.11.2023, his staff was dismissed from service, and the documents in the computer were removed and manipulated. It is also pointed out that he absconded after the search and that the investigation is only at the preliminary stage, and releasing the petitioner at this stage would certainly affect a proper investigation. The allegation that he supplied goods without issuing any



invoice is not answered even now. The contention that the arrest can be made only after the quantification cannot be accepted as it goes against the very section itself.

7. Heard both sides and perused the records.

8. The petitioner is a proprietor registered under the GST and a wholesale distributor of mobile accessories and electronic items coming under HSN code 8517, which is taxable at 18%. The department alleges that the petitioner was supplying goods without issuing invoices to his customers and was evading tax due to the Government. The transaction by the petitioner was with an intention to suppress his actual outward taxable supplies and thus was involved in large-scale tax evasion. Permission for the search was sought under Section 67(2) of the Act at the principal place of business and the additional place granted by the Joint Commissioner on 20.10.2023. In the search that followed, business transaction books of 480 pages from the business places of Lakshmi Mobile Accessories at Kottayam were seized. On verification, it was found that the petitioner had suppressed a total turnover of Rs.34,15,42,040/- for the years 2021-2022, 2022-2023 and 2023-2024 and has evaded tax approximately to the tune of Rs.6,14,77,567/- being 18% of the taxable turnover. It was also found that the petitioner was doing business even from the VAT regime, and therefore, the suppression for the years 2017-2018, 2018-2019, 2019-2020 and 2020-2021 had to be verified. Based on the above accusations, the petitioner had committed cognizable and non-bailable offences under Section 132(5) of the GST Act, 2017. The prosecution also alleges that on 19.11.2023, the petitioner had given a



statement that the software used at his business premises was changed immediately after the search and the Accountant of the firm was also dismissed from service. Therefore, they suspect that the accused is tampering with the evidence and influencing the witnesses in the case. It is on these grounds that the grant of bail is opposed. Considering the above grounds urged on the side of the prosecution and perusing their report, it appears that their apprehension is well founded. The investigation is only at a nascent stage.

9. As regards the contention of the learned counsel for the petitioner that there is no power to arrest and that the prosecution or the steps for arrest can be taken only after the completion of the assessment proceedings, the same has to be rejected for multiple reasons. The list of offences mentioned in sub-sections of Section 132 of the GST Act has no correlation to any assessment. Issue of invoices or bills without supply of goods and availing of the input tax credit by using such invoices or bills are made offences under clauses (b) and (c) of sub-section (1) of Section 132 of the CGST Act. The prosecution for these offences does not depend upon the completion of the assessment. The alternate argument that the petitioner can compound the offence under the CGST Act both before and after the institution of the prosecution also cannot be accepted as there is nothing on record to show that the petitioner has offered to compound the offence or has paid the tax payable on such compounding or has admitted the liability. Therefore, the argument that arrest can only be after the completion of the assessment has no legs to stand.



10. Of course, the power to arrest is one, and the exercise of the same is another. In the instant case, it has to be seen that for a proper investigation of the offence and to prevent the petitioner from causing the evidence of the offence to disappear or to tamper with the same, continued custody of the petitioner is warranted. The power to arrest under Section 69 can be invoked if the Commissioner has a reason to believe that the person has committed offences that are prescribed and which are punishable under Section 132 of the CGST Act, 2017. Thus, the reference to Section 132 in Section 69 is only to indicate the nature of the offences based on which reasonable belief is found and recorded by the Commissioner to pass an order for arrest. The contra view taken by the Madras High Court in **Jayachandran Alloys**'s case (supra) and also followed by the Madhya Pradesh High Court in **Jagdish Arora**'s case (supra) cannot be treated as good law. No doubt, before placing a person on arrest, which cannot be routinely or mechanically done, the conditions precedent to arrest for the alleged offences set out in Section 132 of the CGST Act must be fulfilled. But, once the ingredients of the offence are made out, the Commissioner or the competent authority can determine if the offender is to be arrested or not. If it is to ensure a proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing the witnesses, the power can certainly be exercised. However, in cases of alleged violation of a technical nature, like where a demand of tax is based on a difference of opinion regarding the interpretation of law or such analogous grounds, the power to arrest must be very carefully exercised, having regard to the provisions of S.41 Cr.P.C. that stipulated the situations requiring an arrest. It is also



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relevant to note that the expression 'any person' in Section 69 includes any person suspected or believed to be concerned with tax evasion for availing legal input tax credit.

Having considered the rival submissions, it has to be seen that there is an evasion of more than Rs.6.5 crores alleged against the petitioner. A serious allegation is made, which warrants a thorough investigation. Under such circumstances, when the investigation is going on, I am not inclined to grant bail to the petitioner at this stage. Accordingly, the bail application will stand dismissed.

Sd/-

MOHAMMED NIAS C.P.
JUDGE

okb



APPENDIX OF BAIL APPL. 10492/2023

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE OCCURRENCE REPORT
Annexure 2	TRUE COPY OF THE REMAND REPORT
Annexure 3	TRUE COPY OF THE APPLICATION
Annexure 4	TRUE COPY OF THE ORDER IN C.M.P 7164/2023 DATED 21-11-2023