REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (Crl.) No.10319 of 2022

Ratnambar Kaushik ..... Petitioner

Versus

Union of India ` ..... Respondent

O R D E R

1. The petitioner is before this Court, assailing the order dated 21.10.2022, passed by the High Court of Judicature at Rajasthan, Bench at Jaipur in S.B. Criminal Miscellaneous Bail Application No.12475 of 2022. Through the said order the High Court has dismissed the application filed by the petitioner hereunder under Section 439 of Code of Criminal Procedure[1] seeking bail in the proceedings for the offence alleged against him under Section 132(1)(a),(h),(k) and (l) read with Section 132(5) of the Central Goods and Services Tax Act, 2017[2] .

2. Heard Shri Mukul Rohatgi, Shri C.S. Vaidyanathan, Shri Maninder Singh learned senior counsel for the petitioner and Shri Balbir Singh learned Additional

Signature Not Verified
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Date: 2022.12.05 17:04:55 IST
Reason:

1 For short “Cr.P.C.”
2 For short “GST”

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Solicitor General for the respondent. In that light, we have perused the petition papers as also the counter affidavit filed on behalf of the respondent.

3. The gist of the allegations against the petitioner in the prosecution initiated against him is that the petitioner had clandestinely transported raw unmanufactured tobacco brought from Gujarat by 7 trucks weighing 90,520 kgs. It is alleged that raw tobacco was cleared in the name of M/s Maa Ambey Enterprises, Bakoli from M/s Arihant Traders, Kheda, Gujarat but the said trucks went to Patparganj Area to M/s Galaxy Tobacco in Delhi. It is further alleged that the said quantity of unmanufactured tobacco has been apparently used in the clandestine manufacture and supply of chewing tobacco without payment of leviable duties and tax. The petitioner contends that even if the tax is levied at 28%, the value would be around ₹10,30,824/-. However, as per the case of the respondent, the total tax/duty and cess involved would be ₹15,57,28,345/-. The said contention has been raised on the basis of the projected manufacture of zarda pouches from the said quantity of unmanufactured tobacco. Thus on the projected number of pouches, the tax amount if taken into consideration, would be to that extent. It is further contended on behalf of the respondent that in the course of the investigation it has also come to light, apart from the 7 trucks, 287 more trucks loaded with raw unmanufactured tobacco has been transported as per the details obtained from the Toll/RFID data of NHAI, which shows the movement of the trucks.

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4. Insofar as the allegations made against the petitioner are concerned, learned senior counsel for the petitioner while rebutting the same would contend that at this juncture, such allegations made by the respondent against the petitioner are far-fetched. Even if one accepts as correct, the allegation on which the proceedings is predicated, wherein 90,520 kgs. of raw/unmanufactured tobacco in 7 trucks is taken note of, the GST, if reckoned, comes to only ₹1,93,26,020/-. It is contended that the sum of ₹11,04,34,400/- shown as cess by the respondent is even without the proof of manufacture of zarda and it has been done only to indicate the projected value of more than ₹15 Crores. Learned senior counsel for the petitioner therefore disputed the allegations and contended that such allegations have been made only to allege cognizable and non-bailable offence against the petitioner so as to deny bail and take him into custody.

5. Though allegations and counter allegations are made, at this stage, it would not be necessary for us to advert to the details of the rival contentions, since the matter in any event is at large before the trial court and any observations on merits herein would prejudice the case of the parties, therein. However, for the limited purpose of answering the prayer for the grant of bail, the contentions are taken note of. It is no doubt true, that an allegation is made with regard to the transportation of unmanufactured tobacco and it is alleged that such procurement of unmanufactured tobacco is for clandestine manufacture and supply of zarda without payment of leviable duties and taxes. Though it is further contended that in the process of the investigation, the transportation of a larger quantity of unmanufactured tobacco

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weighing about 35,57,450 kgs. is detected, these are all matters to be established based on the evidence, in the trial.

6. In considering the application for bail, it is noted that the petitioner was arrested on 21.07.2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under Section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to 5 years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.

7. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial Court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial Court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial Court forthwith, to ensure compliance of this order.

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8. The special leave petition is allowed accordingly.

9. Pending applications, if any, shall stand disposed of.

.....J.
[A.S. BOPANNA]

.....J.
[HIMA KOHLI]

New Delhi;
December 05, 2022

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ITEM NO.1501 COURT NO.4 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 10319/2022

(Arising out of impugned final judgment and order dated 21-10-2022 in SBCRMBA No. 12475/2022 passed by the High Court of Judicature for Rajasthan at Jaipur)

RATNAMBAR KAUSHIK **Petitioner(s)**

VERSUS

UNION OF INDIA **Respondent(s)**

[HEARD BY: HON. A.S. BOPANNA AND HON. HIMA KOHLI, JJ.]

(With IA No. 164055/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 164054/2022 - EXEMPTION FROM FILING O.T.)

Date : 05-12-2022
This matter was called on for pronouncement of order today.

For Petitioner(s)
Mr. Anirban Bhattacharya, AOR

For Respondent(s)
Mr. Balbir Singh, ASG.
Mr. Arijit Prasad, Sr. Adv.
Mr. Rupender Sinhmar, Adv.
Mr. Naman Tandon, Adv.
Mr. Samarvir Singh, Adv.
Mr. Prasenjit Mohpatra, Adv.
Mr. Shyam Gopal, Adv.
Mr. Prahlad Singh, Adv.
Mr. Mukesh Kumar Maroria, AOR

Hon’ble Ms. Justice Hima Kohli pronounced the order of the Bench comprising Hon’ble Mr. Justice A. S. Bopanna

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and Her Ladyship.

The special leave petition is allowed in terms of the signed reportable order concluding as follows:

> **"7. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial Court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial Court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial Court forthwith, to ensure compliance of this order.**
>
> **8. The special leave petition is allowed accordingly.**
>
> **9. Pending applications, if any, shall stand disposed of."**

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
ASSISTANT REGISTRAR

[Signed reportable order is placed on the file.]

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