IN THE HIGH COURT AT CALCUTTA
CRIMINALREVISIONAL JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Shivakant Prasad

CRM10075 of 2019

Arvind Kumar Munka

–Vs.—

The Union of India

For the Petitioner	:	Mr. Sekhar Basu Mr. Rajdeep Mazumder Mr. Mayukh Mukherjee
For the U.O.I.	:	Mr. K.K. Maiti
Heard On	:	16.12.2019
Judgment On	**:**	**24.12.2019**

This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the petitioner who has prayed for his enlargement on bail on any conditions. The petitioner has been arraigned as an accused along with other accused persons in connection with the Case No. C 3179 of 2019 arising out of V(12) 75/AE/CGST/GR-VII/KOL-NORTH/2019 under Sections 69 read with Section 132(1) of the Central Goods and Services Tax Act, 2017, now pending before the learned Chief Judicial Magistrate, Alipore.

The petitioner case is that he is a Chartered Accountant and his office is situated at Room 2H, 56 Metcalfe Street, Kolkata-700012 and is no way connected with the instant case and has been falsely arraigned as an accused on the allegation that the petitioner in connivance with the other accused persons,

namely, Sanjay Kumar Pandit, Nagendra Kumar Dubey alias Sandip Dubey, and Mr. Vijay Rajpuriya along with other persons had allegedly issued GST invoices without any supply of the goods to the buyers on commission basis causing loss of more than 98 crores approximately.

It is submitted that the petitioner was arrested and produced on 6.06.2019 before the Learned Chief Judicial Magistrate, Alipore, who vide order dated 6.06.2019 rejected his prayer for bail remanding him to judicial custody, although, he was rendering his cooperation with the investigating agency prior to his arrest. Then the petitioner moved an application under Section 439 Cr.P.C. for his release on bail before learned Sessions Judge Alipore, but by order dated 20.08.2019 the bail prayer was rejected on considering the nature and magnanimity of unlawful act done by the accused persons including the petitioner as revealed from the final report of the investigating agency and on consideration that there shall have every possibility to influence the witness to destroy the evidence or evade the process of further investigation and trial.

Being aggrieved by the order of rejection of application under Section 439 Cr.P.C., the petitioner has prayed for enlarging him on bail on the grounds, *inter alia*, that the learned Courts below have committed an error by not granting bail on 61st day in terms of Section 167 of the Criminal Procedure Code; the learned Chief Judicial Magistrate has recorded order of detention of the petitioner without adhering to the directives of the Hon'ble Supreme Court in the case of ***Arnesh Kumar –Vs- State of Bihar & Anrs***, reported in ***2014 (8) SCC 273*** as well as the observation in the case of ***Rini Johar & Anrs – Vs- State of Madhyapradesh & Ors***, reported in ***2016 (11) SCC 703***; that the offence under Section 132 of CGST Act, 2017 is bailable; and that without previous sanction by the Commissioner for filing charge sheet the proceeding as a whole is rendered otiose.

Mr. Sekhar Basu learned Senior Advocate appearing for the petitioner submitted that the purpose of arrest, when the petitioner was cooperating, poses a question regarding the malicious intent of the prosecuting authority because while rendering his cooperation, the petitioner was coerced into signing several blank documents by the investigating agency. It is pointed out that offences under Section 132 (1) (a), (b) and (c) of the CGST Act, 2017 provides for a maximum punishment for 5 years and is triable by the learned Magistrate of First Class. The petitioner is in custody since 06.08.2019 and no further detention is warranted. He is not a responsible person either as a proprietor or a person responsible for the running of any proprietary concern and no notice was issued under Section 73 of the CGST Act, 2017 and has been falsely entangled in this case.

Mr. Basu further submitted that the instant prosecution has been lodged without the sanction of the Commissioner contrary to mandate provided under Section 134 of CGST Act. The Commissioner has only authorized the Investigating Officer to arrest under Section 69 read with Section 132(1) of the CGST Act but has not granted Sanction under Section 134 of the CGST Act and as such the instant prosecution is not maintainable and precisely raised the following points germane to the application for bail:-

1) Whether the learned Trial Court has committed an error by not granting bail on 61st day in terms of Section 167 of the Criminal Procedure Code?

2) Whether the direction made in the case of ***Arnesh Kumar –Vs- State of Bihar & Anrs***, reported in ***2014 (8) SCC 273*** as well as the observation in the case of ***Rini Johar & Anrs – Vs- State of Madhyapradesh & Ors***, reported in ***2016 (11) SCC 703*** is required to be complied with?

3) Whether the offences mentioned under Section 132 of the CGST Act, 2017 is bailable?

4) Whether the Commissioner can issue the order for arrest on the basis of commitment of offence by the petitioner?

5) Whether any previous sanction has been issued by the Commissioner for filing Charge Sheet has not been disclosed?

On the point no. 1, it is argued that the learned Magistrate has failed to comprehend the significance and purport of Section 167 (2) of the Code of Criminal Procedure, thereby acting in a manner which annuls the rudimentary requirements stipulated in Section 167(2) of the Code of Criminal Procedure which provides that the Magistrate to whom an accused 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.

Plain reading of the provision allows that a person may be held in custody of the police for a period of 15 days on the orders of a Magistrate and the learned Magistrate is empowered to authorize detention of the accused in custody pending investigation for an aggregate period of 90 days in cases where the investigation relate to offence punishable with death, imprisonment for life or imprisonment for not less than 10 years or more and in other cases the period of 60 days has been kept.

Mr. Basu relied on a decision in case of ***Hussainara Khatoon and Ors.*** reported in ***(1980)1 SCC 108*** to argue that in the landmark judgement Supreme

Court has cast a bounden duty upon the Magistrate to point out to an under trial about his indefeasible right being accrued, provided the investigation is not concluded within the stipulated period and that an accused is entitled of being released on bail if he is ready to furnish the bail. Reliance to observation in para 21 of a decision in case of ***U.O.I. through C.B.I. vs Nirala Yadav @ Raja Ram*** reported in ***AIR 2014 SC 3036*** has been placed to submit that the accused acquires statutory right of his release on bail in default of submission of charge sheet by the Investigating Officer on 60 days of judicial custody. It has been precisely held that if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused, then that right would not stand frustrated or extinguished and, therefore, if an accused is entitled to be released on bail by application of the proviso to sub-section (2) of Section 167 Cr.P.C., makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail.

In case of ***Rajnikant Jivanlal Patel & Anr. vs Intelligence Officer Narcotic Control Bureau New Delhi*** reported in ***(1989)3 SCC 532*** it has been observed that the right to bail under Section 167(2) proviso (a) is absolute. It is a legislative command and not Court's discretion. If the investing agency fails to file charge sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. At that stage, merits of the case are not to be examined. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.

A Full Bench decision in case of ***Uday Mohanlal Acharya vs State Of Maharashtra*** reported in ***(2001) 5 SCC 453*** has been referred and reliance is placed on majority view of the Hon'ble Apex to urge that the accused is entitled to statutory bail and as long as the majority view occupies the field it is a binding precedent. That apart, it has been followed by a three-Judge Bench in ***Sayed Mohd. Ahmad Kazmi case [(2012) 12 SCC (Cri) 488]*** which is based on three-Judge Bench decision in ***Uday Mohanlal Acharya case [(2001) 5 SCC 453: 2001SCC(Cri) 760]*** and contended that the principle laid in case of ***Pragyna Singh Thakur case [(2011) 10 SCC 445: (2012) 1 SCC (Cri) 311]*** does not state the correct principle of law.

In rebuttal Mr. K.K. Maity submitted that the right of an accused to be released on bail after expiry of the maximum period of detention is provided under Section 167 of the Code of Criminal Procedure. Section 167 deals with power of the police to investigate in criminal offence which starts with lodging of information in cognizable cases under Section 154 of Cr.P.C. and ultimately culminate in submission of report on completion of investigation under Section 173 of Cr.P.C. The learned Magistrate is empowered to take cognizance of the offence on the basis of final report/charge sheet filed before the Magistrate but when final report is submitted, the custody of the accused is no longer required to be dealt with under Section 167 of the Cr.P.C. It is argued that the dispute regarding default bail has been dealt with by the Hon'ble Supreme Court in the case of ***Uday Mohan Lal Acharya –Vs- State of Maharashtra*** reported in ***(2001) AIR (SCW) 1500*** wherein the case of Sanjay Dutt reported in 1994 AIR (SCW) 3857 was considered and it was observed that the indefeasible right for grant of bail on the expiry of the initial period of 180 days for completing the investigation or the extended period prescribed by Section 20(4)(bb) of TADA as held in Hitendra Vishnu Thakur is a right of the accused which is enforceable only up to the filing of the Challan and

does not survive for enforcement on the Challan being filed in the Court against him. In this context it is submitted that admittedly the petitioner was arrested on 06.06.2019 and on the same date the petitioner was produced before the learned Chief Judicial Magistrate but after considering the gravity of the case, remanded the petitioner to Judicial Custody. On 61st day from the date of arrest a bail application was moved on 06.08.2019 and the very date the prosecution had filed the charge sheet. So the learned CJM by its order dated 06.08.2019 rejected prayer for bail holding that the default bail does not arise and an application under section 439 of the Code was also rejected by the learned Session Judge by the impugned order.

In respect of point no 2, Mr. Basu relied in case of ***Union Of India vs Arviva Industries (I) Ltd.*** reported in ***(2014) 3 SCC 159*** to contend that the petitioner should not be deprived of his liberty and be released on bail on any condition in drawing my attention to the observation that arrest involves deprivation of liberty of a person arrested and therefore infringes the basic human right of liberty. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution and further submitted that in the instant case , even though the offence stipulates a maximum term of imprisonment upto five years, yet, none of directions enshrined in para 11 of the decision in case of ***Arnesh Kumar vs State of Bihar*** (supra) has been adhered thereto which reads thus:

> *"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:*
>
> *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A of the IPC is*

registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.

All police officers be provided with a check list containing specified sub-clauses under Section 41 (1)(b)(ii).

The police officer shall forward the check list duty filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention.

The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing.

Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing.

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.

Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

Thus it is contended that the petitioner was neither served with a notice under section 41A of the Code nor did the learned Magistrate record his satisfaction with regard to the arrest while remanding the petitioner to custody which is evident from the order dated 06.06.2019 and further placed reliance in case of ***Rini Johar & Anr.*** (supra) to submit that the Hon'ble Apex Court has taken a stern view with regard to non-compliance to the directions in case of ***Arnish Kumar*** (supra).

It is pointed out that on the scrutiny of the complaint, it would be apparent that the petitioner on the 29th of May, 2019, had joined the investigation, and cooperated with the investigating agency, which is why after his interrogation, the petitioner was allowed to leave. However, once again the investigating agency

summoned the petitioner and accordingly the petitioner went to the Investigating Officer on 06.06.2019 on which date he was arrested in a mechanical manner, without having any regard to the law laid down by the Hon'ble Apex Court. It is further submitted that in spite of the petitioner joining the investigation, and rendering his cooperation to the investigating agency yet he was arrested and such conduct manifest the malicious determination of the investigating agency. A reference to a decision in case of ***Sidhharam Satlingappa Mhetre Vs. State Of Maharashtra*** reported in ***(2011) 1 SCC 694*** has been relied on to argue that the conduct of the Investigating Officer speaks a volume so far as the malicious intention of the investigating agency. It has been held that in cases where the Court is of the considered view that the accused has joined investigation and he is fully cooperating with investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. In the said judgment the direction has been laid down to the following effects –

> *"In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive.*
>
> *1) Direct the accused to join investigating agency, then only the accused be arrested.*
>
> *2) Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused.*
>
> *3) Direct the accused to execute bonds.*

4) *The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.*

5) *The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.*

6) *Bank accounts be frozen for small duration during investigation."*

Thus, it is argued that the Hon'ble Apex Court has loathed the arrest of the person when he has joined the investigation.

Contradicting the submission the said contention, Mr. Maity referred to a decision of the Hon'ble Supreme Court in the case of ***P.V. Ramana Reddy –Vs- Union of India*** reported in ***2019 (26) GSTL J(175) SC*** wherein it has been categorically held that though Section 69(1) of CGST Act, 2017 which confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguard incorporated in Section 41 and 41A of the Code of Criminal Procedure, 1973 in view of provision of Section 70(1) of the said Act same must be kept in mind before arresting a person. However, Section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest.

The High Court held that the enquiry by the GST Commissioner under Central Goods and Services Tax Act, 2017 is a judicial proceedings and not a criminal proceedings. It was held that if the reasons to believe that a person committed any offence under clauses (a), (b), (c) or (d) of Section 132(1) of CGST Act, 2017 warranting his arrest thought found in the file but not disclosed in the

order authorising the arrest, the same is enough and is not required to be recorded in order of authorization.

Accordingly Mr. Maity contended that Section 41 and 41A of Cr.P.C. has been complied with by obtaining statements from the petitioner on 22.05.2019, 30.05.2019 and 31.05.2019 in terms of said provision of the CGST Act which is axiomatic from the Charge Sheet. The arguments of the petitioner is that Section 70 is not *pari materia* with Section 41A of Cr.P.C. but *pari materia* with section 91 of the Cr.P.C. The provision of Section 91 of Cr.P.C. provides for summons to produce document or other thing whereas Section 70 of the CGST Act provides power to summon persons to give evidence and produce documents. Therefore, the said Section 70 of the CGST Act, 2017 is not *pari materia* with Section 91 of Cr.P.C.

In reply Mr. Basu invited my attention to term *pari materia* as per Blacks Law Dictionary 6th edition which means, *of the same matter, on the same subject; as laws pari materia must be construed with reference to each other and argued that* on a reading of the aforesaid definition of *pari materia* it becomes evident that Section 41A of the Code of Criminal Procedure can by no stretch of imagination be treated as *pari materia* to Section 70 of the CGST Act and further submitted that on a bare reading of the aforesaid sections it would become absolutely clear that the subject matter envisaged in the respective sections are not the same and the structural edifice of the aforesaid sections are completely different from one another. Instead Section 70 of the CGST Act is *pari materia* to Section 91 of the Code of Criminal Procedure as the subject matter in Section 70 of the CGST Act and Section 90 of the Code of Criminal Procedure are the same.

I am of the view that Mr. Basu reply as to *pari materia* provision has been answered in case of ***P.V. Ramana Reddy*** (supra). Moreover, the case of ***Rini Jhoar*** is in point of violation of Article 21 of the Constitution of India. In the present case

violation of Article 21 does not and cannot arise as the petitioner has lost his default right of bail on 06.08.2019 as on the same date the prosecution had filed the charge sheet and the learned Court considering the merits of the case rejected the bail.

Mr. Maity learned Advocate appearing for Union of India submitted inviting my attention to the Final Report which reveals that Shri Sandip Dubey @ Nagendra Kumar Dubey in connivance with the petitioner is operating several trading units and the petitioner is also operating two companies under the name and style M/S Alvina Suppliers Pvt. Ltd., and M/S Vaidika Impex Pvt. Ltd. in connivance with Shri Bijay Kumar Agarwal and Shri Ramesh Giri. In the voluntary statement Shri Nagendra Dubey informed that he has provided assistance of various business persons under the GST Laws and provided their registration details to the petitioner and the petitioner used to pay the persons for the same. He also stated that the petitioner was engaged in issuing bills or invoices in the name of the business concerns or persons and payment against invoices are being taken care of by the petitioner. This work related to movement of goods is supervised by petitioner and one Sanjay Pandit and as per Nagendra Dubey's knowledge there was no movement of goods against the invoice issued and the petitioner filed the GST Returns of the Firms. Pursuant to his statement, the business premises of the petitioner was searched and on search various incriminating documents were recovered including PAN Cards of numerous people, Bank Cheque Books of different Banks, Banks Statements, Digital Signature Keys, Stamp, seal, pen drives, mobile handset, ATM cards of various Banks, invoices, mobile SIM cards with the names of various Firms, Laptops, Kaccha Bills etc. It also revealed on investigation that another person namely, Sanjay Kumar Pandit has issued bills to various parties from M/s. Alvina Suppliers Pvt. Ltd., and M/s. Vaidika Impex Pvt. Ltd. and filed the GST Returns on the direction of the petitioner. He also admitted

that there was no supply of goods or service in cases of bills issued by him and he just printed the bills and placed the stamp of the parties and signed and issued the bills and also admitted about receipt of huge cash related to fake invoice transaction and they used cash counting machine to count the cash. The cash is paid after deducting the commission by the petitioner to various parties.

The petitioner on 29.05.2019 appeared in terms of summons under Section 70 of CGST Act, and tendered his statement. He admitted that audit file, PAN Card, Digital Signature for filing documents, Cheque Books of parties, GST Invoices of the parties are kept in his office and that he had issued bills to various parties from M/s. Alvina and M/s. Vaidika. In this two companies GST Bills for ITC (Input Tax Credit) has been given from various firm. He also admitted that he did not register any parties as mentioned in the Charge Sheet and invoices were issued for goods and service but there was no movement/supply of goods or services in cases of Bills issued by him without movement of goods or service. The manner of payment against invoices is RTGS. RTGS given by parties goes to another account and against RTGS they received cash which was returned to parties after deducting the commission. They kept about 1% of the commission because they had made arrangements of the parties to take bills from M/s. Alvina and M/s. Vaidika. Therefore, prima facie on the basis of documentary evidence the petitioner along with other persons have caused a huge loss to the Government Exchequer amounting to Rs. 141,76,46,639/-. So obviously, the Commissioner has reason to believe that the petitioner has committed offence under Section 132 of the CGST Act, 2017 and as such authorized the concerned officer to arrest the petitioner under Section 69 of the CGST Act.

I have respectfully gone through the Full Bench decision in case of ***Uday Mohan Acharya*** (supra) in respect of indefeasible right for being released on bail in

default in filing challan/final report/charge sheet within prescribed time. In the cited decision, the accused was remanded to judicial custody by order of the Magistrate on 17.6.2000 in a case instituted against him under Sections 406 and 420 of the Indian Penal Code read with MPID Act. So the period of 60 days for filing of charge sheet was completed on 16.8.2000. On the next day on 17.8.2000, an application for being released on bail was filed alleging that non filing of challan within 60 days entitles the accused to be released on bail under proviso to Section 167(2) of the Code of Criminal Procedure but the Magistrate had rejected the bail concluding that the said provision was not applicable to cases pertaining to MPID Act. In the cited case the charge-sheet was filed on 30th August, 2000.

In my humble opinion, ratio of decision is not well nigh within the facts and circumstances of the instant case as the accused petitioner was remanded in custody after his arrest on 6.6.2019 and bail application was filed on 6.8.20019, i.e., on the same day of submission of Final report, ergo, indefeasible right under proviso to Section 167(2) of the Code of Criminal Procedure for release of the petitioner in default in filing challan within prescribed time does arise in view of the Constitution Bench decision of the Hon'ble Supreme Court to the effect that the indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and does not survive or remain enforceable on the challan being filed, if already not availed of.

As regards point nos. 3, 4 and 5, Mr. Basu adverted to the provision of Section 132 of the CGST Act, 2017 contending that offence alleged is bailable in nature for the reason that *prima facie* there is allegation of attempt to issue fake invoices without the supply of goods or services as the petitioner is by profession a Chartered Accountant who only works for the companies as his clients. It is pointed out that preceding the application of Section 134 of the CGST Act, is the provisions of

law contained in Section 132(6) of the Act, which enjoins that a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

The legislative intent as stemming from the aforesaid section is clear, distinct and leaves nothing to supposition except that the authority who is empowered to interfere with the liberty of a person by issuing an order of arrest on reasonable belief about necessity of arrest under Section 69(1) of the CGST Act, is also statutory obligated to decide, albeit on logical assessment of facts, that the person concerned is to be 'prosecuted'. Such requirement of 'sanction' must be evident from the records and as the indispensable procedure of law mandates, must be backed by reasons which are prima facie intelligently acceptable. Thus, it is contended that no document reflecting compliance with Section 132(6) and Section 134 of the CGST Act has been placed before this Hon'ble Court to show the Sanction of the commissioner to prosecute the petitioner. So the learned Magistrate Court is barred from taking cognizance of the offence in a case where no valid sanction has been obtained under Section 132(6) of the CGST Act.

Mr. Maity, on the contrary , submitted that the offence committed by the petitioner is cognizable and non-bailable and relied on a decision of the Hon'ble Punjab and Haryana High Court in the case of ***Vikas Goel –Vs- Deputy Director, Directorate General of GST Intelligence, Gurugram***, reported in ***2019 (28) GSTL (590)*** wherein it has been held that issuance of bogus invoices/bills without actual sale/transportation of goods and deriving wrong benefit of more than 80/- crores on account of such paper transaction being economic offence of huge magnitude and serious in nature, the petitioner, who was the main accused was not entitled to regular bail.

In the present case loss caused to Government Exchequer amounts to Rs. 141,76,46,639/-. Therefore in such a huge economic offence he should not be enlarged on bail.

Mr. Basu referred to a decision in case of ***Sanjay Kumar Bhuwalka vs Union of India*** reported in ***2018(362) ELT 568(Cal)*** and submitted that this Hon'ble Court had enlarged the petitioners on bail on condition on the principle of law that grant of bail is a rule and rejection is an exception and in respectful consideration of the principles laid down in the cited decision and further in view of latest decision of the Hon'ble Apex Court that the courts cannot extend investigation period under Section 167 of the Code of Criminal Procedure. Accordingly, this Court was pleased to relax the conditions of bail imposed by this Court's order dated July 12, 2018 so as to enable their release on bail as they have statutory right to be released and further bearing in mind the principles as to presumption of innocence and the right of liberty guaranteed under Article 21 of the Constitution of India.

The cited decision was authored by this Court holding that in regard to Section 134 and 138 of CGST Act, the object and reason of this Act is obviously to realize the revenue to the government exchequer and bearing in mind the provision of compounding nature of the offence under Section 138 of the Act, this Court relaxed the bail condition to deposit Rs. 39 Crore to the Government Exchequer but, in particular, on the finding that the prosecuting agency had failed and neglected to submit final report/charge sheet against the petitioners and even no extension of time to complete the investigation was sought for by them. Therefore, the bail privilege was granted in favour of the petitioners in the cited case adhering to the principles laid down by the Hon'ble Apex Court in respect of proviso to Section 167(2) of the Code of Criminal Procedure. Thus, I find that the judgment in

case of ***Sanjay Kumar Bhuwalka*** (supra) is distinguishable from the facts and circumstances of the instant case.

For the reasons stated above and in consideration of the gravity of the economic offence and bearing in mind the principle laid down in case of ***P.V. Ramanna Reddy*** (supra), the petitioner is not entitled to be enlarged on bail, however, the petitioner is at liberty to approach the authority for compounding of the offence under Section 138 of CGST Act.

Accordingly, the CRM 10075 of 2019 is hereby dismissed.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)