

HIGH COURT OF BOMBAY

Bench : Justices Revati Mohite Dere & Manjusha Deshpande

Date of Decision: 10th May 2024

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 938 OF 2024

MAHESH DEVCHAND GALA ...PETITIONER

VERSUS

UNION OF INDIA

CENTRAL GOODS AND SERVICE TAX, MUMBAI ZONE

PAPPU KUMAR, INSPECTOR, CGST & CENTRAL EXCISE, MUMBAI

WEST COMMISSIONERATE

STATE OF MAHARASHTRA ...RESPONDENTS

Legislation:

Article 226 of the Constitution of India

Subject: Challenge to the legality of arrest by CGST officials and subsequent detention beyond the statutory period without proper documentation and procedure, claiming violation of fundamental rights.

Headnotes:

Criminal Law – Unlawful Detention and Bail - Illegal Detention – Detention beyond 24 hours without justification – Petitioner detained for 13 hours beyond statutory limit – Contradictory affidavits from respondents explaining delay – Justifications for delay found to be prima facie unconvincing and an afterthought – Court emphasized the importance of prompt production before a magistrate to avoid misuse of detention powers – Petitioner’s cooperation and prior compliance with investigations noted – Interim bail granted pending final hearing [Paras 1-7].

Procedural Irregularities – Delay in production before magistrate – Respondents' affidavits reveal process took excessive time – Court criticized overnight detention under guise of recording statements – Detention deemed arbitrary and high-handed – Detention practices condemned as they impact individual liberty and reputation [Paras 3, 5].

Decision – Interim Bail Granted – Petitioner granted interim bail on a cash bond of Rs.25,000 for six weeks – Requirement to furnish PR Bond and sureties within six weeks – Next hearing scheduled for 24th June 2024 – Court emphasized the necessity for judicial oversight to prevent misuse of detention by authorities [Paras 7-9].

Referred Cases:

- Arnab Manoranjan Goswami v. State of Maharashtra [Para 68 cited]

Representing Advocates:

For the Petitioner: Mr. Aabad Ponda, Sr. Advocate with Mr. Hrishikesh Mundargi, Ms. Komal Joshi, Mr. Pushkraj Deshpande, Mr. Piyush Pandhare and Mr. Rohan Marathe instructed by ALMT Legal

For the Respondents: Mr. Devang Vyas, A.S.G with Mr. Jitendra B. Mishra, Spl. P.P, Mr. Shilong Shah, Mr. Satyaprakash Sharma, Mr. Ashutosh Mishra and Mr. Rupesh Dubey for Respondent Nos.1 to 3, and Mrs. P. P. Shinde, A.P.P for the State.

ORDER (Per Revati Mohite Dere, J.) :

1 By this petition preferred under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of his arrest by the respondent No.3-Inspector, CGST and Central Excise, Mumbai (West Commissionerate) and for a declaration that the said arrest is illegal and contrary to law. Other

prayers are also sought, including the prayer for interim cash bail / regular bail.

2Mr. Ponda, learned senior counsel for the petitioner submitted that the investigation carried out by the respondent No. 2 i.e. CGST relates to an old case of 2021. He submitted that in the case of 2021, summons were issued to Om Sai Nityanand Management Pvt. Ltd. in October 2021, asking the Company to produce records and attend the office of the respondent No. 2 for tendering oral evidence as well as for production of documents. He submitted that the petitioner appeared on behalf of the Company and as such, the respondent No. 2 Officers were well aware of the GST liability of the Company and had crystallized the same. It is submitted that the Company was also called upon to pay the GST liability, pursuant to which, the Company paid Rs.23.61 lakh and secured Rs.2.93 crores by way of blocking of the Input Tax Credit of that amount by the Department, which was undertaken to be reversed by the Company upon unblocking. He further submitted that the Company audit was carried out in September 2022 by the respondent No. 2 and the copy of the audit report was generated and furnished to the investigating wing, Mumbai (West), as is evident from the last page of the audit report i.e. Exhibit `B' to the petition. Thus, according to Mr. Ponda, all the CGST returns for the period from 2017 to 2020 were available with the respondent No. 2, pursuant to which, they noted certain violations, which were quantified at approximately Rs.4.48 crores, out of which, Rs.2.93 crores were frozen, Rs.23.61 lakh was paid in cash and Input Tax Credit of Rs.1.32 crores was reversed.

3 Mr. Ponda, learned senior counsel submitted that it is necessary to know the aforesaid facts/background, having regard to the respondent No. 2's claim that in 2024, they did not have ready copies of the GST returns and had to download it for 4 hours. He submitted that the mention of the said fact in the affidavit of the respondent No.2 is nothing but an endeavour to explain the delay for non production of the petitioner within 24 hours. He further submitted that if the timeline as set out in the affidavit is seen, there is a delay of 13 hours, which delay was not mentioned by the respondent No. 2 in their reply filed to the application preferred by the petitioner opposing the petitioner's remand before the learned Metropolitan Magistrate on 15th April 2024. Mr. Ponda pointed out to the contradictions in the reply filed by the respondent No. 2 before the learned Magistrate and the reply filed in this Court and the contrary stand taken by the respondent No. 2 in the said

replies. He submitted that the delay explained by the affidavit is completely an after-thought, done with the sole endeavour to get over the non-production of the petitioner within 24 hours. He submitted that the explanation offered by the respondent No.2 that the petitioner came without informing and therefore, the respondent No. 2 did not have the CGST returns detail, is nothing but an eye-wash and an afterthought. He further submitted that the petitioner arrived at the CGST office at 1:30 pm on 13th March 2024; was kept overnight; and was arrested on the next day i.e. 14th March 2024 at 7:30 pm; that thereafter, the petitioner was detained with the Santacruz Police Station, Mumbai, and thereafter, produced before the learned Magistrate on 15th March 2024 at 3:30 pm. He submitted that the actions of the respondent No. 2 are highly questionable, the detention of the petitioner high-handed and thus illegal, warranting petitioner's immediate release. Mr. Ponda submitted that there was no reason for the petitioner to be detained overnight and if the respondent No. 2 did not have the documents, the petitioner could have well been called on some other day or even on the next day, instead of keeping him overnight. He submitted that infact, the petitioner's wife was even constrained to call `100', considering the illegal detention of the petitioner by the respondent No.2, pursuant to which, the police visited the respondent No. 2's office. He submitted that the case in which the petitioner is arrested, is an old case and that the petitioner was arrested, despite paying taxes and as such, the arrest smacks of arbitrariness and high-handedness. Learned counsel relied on the judgment of the Apex Court in the case of Arnab Manoranjan Goswami v. State of Maharashtra¹, in particular, paragraph 68 thereof.

4 Learned ASG, opposed the petition and submitted that the arrest was legal and there is no merit in the submission of the petitioner that he was illegally detained by the respondent No.2. Learned ASG relied on the affidavit filed by the respondent No. 2, setting out the timeline from the time, the petitioner entered the office of the respondent No. 2 till he was produced before the Magistrate. He submitted that even the delay has been well explained by the respondent No. 2 in their affidavit.

5 Having heard learned counsel for the respective parties, prima facie, we are in agreement with the submissions advanced by Mr. Ponda i.e. that the

¹ (2021) 2 SCC 427

petitioner appears to have been detained for more than 24 hours. Prima facie, the justification given by the respondent No. 2 explaining the detention of the petitioner, does not appear to reason, considering the conflicting stand taken by the respondent No. 2 in their affidavit filed in this Court and their reply filed before the trial Court. It is also pertinent to note that the GST investigation of the Company was done, sometime in 2021 and that the petitioner had appeared before the authorities on behalf of the said Company. It also appears that a full-fledged inquiry was done in 2021 and the authorities had audited the accounts of the years 2017 to 2020. The time span mentioned by the respondent Nos. 1 to 3 for generating the GST returns and getting the Document Identification Number (DIN), prima facie appears to be an eyewash and appears to have been done to show, that the petitioner was produced within 24 hours. As admitted in the affidavit, the process of generating the relevant GST returns took around 3 to 4 hours, process of verification took 3 to 4 hours and the generation of arrest memo along with DIN took another 4 hours. Prima facie, we do not find, in the facts, that there was any reason for the respondent No. 2 to keep the petitioner overnight, when he came on 13th March 2023, more particularly, if the respondent No. 2 did not have documents to question the petitioner. It is not as if, the petitioner had not cooperated with the authorities and as such, it was well within the powers of the respondent No. 2 to call him on some other day or even on the next day. We deprecate the practice of keeping a person overnight under the guise of recording of his statement, irrespective of whether the person volunteered or not. Arrest is a serious matter and cannot be made in a routine manner on a mere allegation of commission of an offence, inasmuch as, an arrest can cause incalculable harm to the reputation and self esteem of a person.

6 The Apex Court in Arnab Manoranjan Goswami (supra), in para 68, has observed as under :

“68. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many.”

(emphasis supplied)

7 Thus, for the reasons as stated aforesaid, we deem it appropriate to grant interim bail to the petitioner, pending the hearing and final disposal of the aforesaid petition, on the following terms and conditions :

ORDER

i) The petitioner be released on cash bail in the sum of Rs.25,000/-, for a period of six weeks;

ii) The petitioner shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

8 Petition be listed on 24th June 2024 for admission.

9 All concerned to act on the authenticated copy of this order.

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