

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 21.03.2022****Judgment delivered on : 22.04.2022****Writ Appeal No. 348 of 2021**

1. Paritosh Kumar Singh alias Diwakar Choudhary aged about 39 years, S/o Smt. Kamla Devi, resident of House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG) in Jail acting in the premises through Manish Singh, S/o Akhilesh Kumar Singh, A/a 30 Years (Brother of petitioner No. 1) resident of House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG)
2. Ravi Kumar Tiwari alias Bablu Mishra, son of Shri Umashankar Tiwari, aged about 36 Years, resident of House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG) In Jail acting in the premises through Manish Singh, S/o Akhilesh Kumar Singh, A/a 30 Years (Brother of petitioner No. 1) resident of House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG)
3. Munna Tiwari alias Bablu Mishra, son of Shri Umashankar Tiwari, aged about 38 Years, R/o Village Belwasa, Mathiya, P.S & Post Aadar, District- Siwan, Bihar. In Jail acting in the premises through Manish Singh, S/o Akhilesh Kumar Singh, A/a 30 Years (Brother of petitioner No. 1), R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG)
4. Kaushal Tiwari alias Bablu Mishra, son of Shri Umashankar Tiwari, aged about 40 Years, R/o Village Belwasa, Mathiya, P.S & Post Aadar, District- Siwan, Bihar. In Jail acting in the premises through Manish Singh, S/o Akhilesh Kumar Singh, A/a 30 Years (Brother of petitioner No. 1), resident of House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur (CG)

---- Appellants/Petitioners

Versus

1. State Of Chhattisgarh through the District Magistrate, Raipur (CG)
2. Senior Intelligence Officer, Director General Of GST, 4th Floor Complex, Lalapur, Opposite Fruit Market, Raipur, District- Raipur (CG)

---- Respondents

For Appellants	:	Shri B.P. Sharma, Advocate.
For Respondent No.1/State	:	Smt. Meena Shastri, Addl. A.G.
For Respondent No.2	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Gautam Chourdiya, Judge

C A V JUDGMENT

Per Gautam Chourdiya, J

Challenge in this writ appeal is to the legality, validity and propriety of the order dated 1.10.2021 passed by the learned Single Judge in WPCR No.469/2021 dismissing the said writ petition filed against the order dated 26.6.2021 passed by the 5th Additional Sessions Judge, Raipur in Criminal Revision No.62/2021 by which the revisional Court affirmed the order dated 12.5.2021 of the Chief Judicial Magistrate, Raipur rejecting the application filed by the appellants/petitioners under Section 167 of CrPC for grant of default bail.

02. Facts of the case, in brief, are that the appellants created several fictitious and physically non-existent trading company firms in Chhattisgarh, Jharkhand, Madhya Pradesh, West Bengal and

Maharashtra, got them registered in GSTN portal online using identity credential of several persons using forged PAN and issued fake bills to transmit fake Income Tax Credit (ITC) to several other traders. For the said purpose, the appellants had fraudulently shown in their GST returns to have procured several kinds of goods from within and across the State. The Directorate General of Goods and Service Tax Intelligence, Raipur Zonal Unit, Raipur cracked this racket on the basis of intelligence against a taxpayer, namely, M/s Manoj Enterprises, who during the month of July, 2020 and August, 2020, claimed Rs.44.72 crores from ITC by way of trading activities even when their statutory returns did not indicate purchase of any such goods for trade. On the basis of information gathered, the appellants No.1 & 2 were arrested for the offence under Section 132(1)(b) & (c) of the Central Goods and Service Tax Act, 2017 (in short "the Act of 2017") on 25.1.2021 from Raipur and produced before the Chief Judicial Magistrate, Raipur on the same day whereas appellants No. 3 & 4 were arrested for commission of the said offence from Siwan, Bihar on 25.1.2021 and produced before the Chief Judicial Magistrate, Siwan, who granted transit remand upto Raipur and accordingly, they were produced before the Chief Judicial Magistrate, Raipur on 28.1.2021.

03. The appellants/writ petitioners filed an application under Section 167(2) of CrPC for granting them default bail as despite lapse of 60 days from the date of their judicial custody, no charge sheet was filed by the respondent/GST authority against them. The said application was rejected by the Chief Judicial Magistrate, Raipur vide order dated 12.5.2021, which was subsequently affirmed by the revisional Court vide order dated 26.6.2021 and the writ petition filed against the said

order was also dismissed by the learned Single Judge.

04. Learned counsel for the appellants/writ petitioners has submitted that, admittedly, the appellants were arrested on 25.1.2021 in connection with Crime (DGGI Case) No. 124/2020-21 for offence under Section 132(1)(b) & (c) of the the Act of 2017 and produced before the Judicial Magistrate, who granted their judicial custody but no charge sheet within 60 days from their judicial custody was filed and only a complaint was filed on 25.3.2021 by respondent No.2/Senior Intelligence Officer, DGGI, Zonal Unit, Raipur. Therefore, the learned Single Judge was not justified in dismissing the writ petition and the appellants are entitled to be released on bail by virtue of Section 167(2) of CrPC.

05. Learned counsel for the appellants submitted that as per the Act of 2017, offence under Section 132 is a cognizable offence. There is no provision to file any complaint instead of charge sheet. No FIR was lodged against the appellants, no investigation was conducted by the concerned police station, no charge sheet was filed against them under Section 173 of CrPC, as such, the learned Single Judge was in error in not enlarging the appellants on default bail.

06. Referring to the complaint (Annexure P/3 in the writ petition), it is contended that as per para 26 of the said complaint, the complainant expressed desire to examine the witnesses listed in appended Annexure-A and sought to rely upon the documents as listed in appended Annexure-B. It was also mentioned in the said para that investigation in the matter is under process, the complainant may file supplementary report after further investigation and the complainant

also reserves its right to examine more witnesses and also to adduce more documentary evidences in the matter, if need so arises. Therefore, it cannot be said that the complaint filed by respondent No.2 was after complete investigation, he submits.

07. On the other hand, learned counsel appearing for the respondents supported the impugned order. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of ***Directorate of Enforcement Vs. Deepak Mahajan and another***, reported in ***AIR 1994 SC 1775***.

08. Heard learned counsel for the parties and perused the material available on record.

09. It is not in dispute that the accused is entitled to an indefeasible right of default bail or statutory bail if the accused is prepared to furnish bail in case the charge sheet being not filed in the Court within 90 days of custody in cases punishable with death, life imprisonment, and imprisonment not less than 10 years, and after 60 days of custody for any other offence. Section 167 (2) of CrPC reads as under:

“167. Procedure when investigation cannot be completed in twenty-four hours. - (1) xxx xxx

xxx

(2) The Magistrate to whom an accused person 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:

Provided that -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

10. Section 190 of CrPC provides for taking of cognizance of offences by the Magistrates, which reads as under:

“190. Cognizance of offences by Magistrates: - (1)

Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.”

11. Section 134 of the Act of 2017 reads as under:

“134. Cognizance of offences. - No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.”

12. True it is that in this case, there is no FIR lodged by the GST authority and the Magistrate has not taken cognizance of the offence on his own but the cognizance has been taken on the complaint filed by the GST authority/respondent No.2 along with the list of witnesses and relevant documents. Under the Act of 2017, power of inspection, search and seizure is prescribed under Section 67; Section 68 deals

with power of inspection of goods in movement; Section 69 relates to power of arrest; Section 70 prescribes the power to summon persons to give evidence and produce documents and Section 71 deals with the power to access to business premises.

Likewise, Sections 100 to 110A under Chapter-XIII of the Customs Act, 1962 also prescribe the power to search, arrest, inspection, examination of persons, recording of evidence, penalty for failure to furnish information return, etc. Similarly, Sections 35 to 40 of the Foreign Exchange Regulation Act, 1973 also deal with power to arrest, stop and search conveyances; search premises; seize documents, etc; power to examine persons and summon persons to give evidence and produce documents.

13. The Act of 2017 has been enacted for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. It is a special Act for economic offences.

14. In the matter of **Deepak Mahajan** (supra), the Hon'ble Supreme Court has held that to invoke Section 167(1) of CrPC, it is not an indispensable pre-requisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered to arrest (notwithstanding the fact that he is not a police officer in its stricto sensu) on a reasonable belief that the arrestee "has been guilty of an offence punishable" under the provisions of the

special Act is sufficient for the Magistrate to take that person into his custody on his being satisfied of the three preliminary conditions, namely (1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code.

It has been further observed that the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency, whether he be a police officer or empowered or authorized officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

15. As regards the contention of the appellants that the complaint filed by the GST authority is not after completion of investigation in view of para 26 of the complaint, the said argument is not acceptable for the reason that the offence allegedly committed by the appellants is an economic offence; if on further investigation any new relevant fact or document comes within the knowledge of the investigating officer, he can file the supplementary report. So far as the appellants are concerned, the material collected against them during investigation as filed with the complaint are sufficient for establishing a prima facie case against them under Section 132(1)(b) & (c) of the Act of 2017 and therefore, on filing of such complaint, the Magistrate has taken

cognizance of the offence against them.

16. Thus, considering the entire facts and circumstances of the case, and keeping in view the judgment of the Hon'ble Supreme Court in ***Deepak Mahajan*** (supra), this Court is of the opinion that though the complaint filed by respondent No.2 cannot be said to have been filed under Section 173 of CrPC but for the purpose of default bail, it can be said that respondent No.2, who is an authorized officer under the Act of 2017 to carry out investigation/enquiry, filed the complaint within the prescribed time limit which satisfies the requirement under Section 167 of CrPC and as such, no right accrues to the appellants to seek default bail under Section 167(2) of CrPC.

17. For the aforesaid reasons, this Court finds no illegality or infirmity in the impugned judgment of the learned Single Judge. Accordingly, the writ appeal being without any substance is hereby dismissed at the admission stage itself.

Sd/
(Arup Kumar Goswami)
Chief Justice

Sd/
(Gautam Chourdiya)
Judge