

GAHC010036802023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/562/2023

ANUJ KUMAR YADAV
S/O JAI PRAKASH YADAV
RESIDENT OF 62A, 2ND FLOOR,
BYE LANE NO. 2,
BENGALI BASTI, BASISTHA CHARALI,
GUWAHATI-781029 IN THE DISTRICT OF KAMRUP (M).

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. B S GOYAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 20-04-2023

- 1.** Heard Mr. B.S. Goyal, learned counsel for the petitioner and Mr. K.K. Das, learned Addl. P.P. for the State.
- 2.** By this application under Section 438 of the Code of Criminal Procedure, 1973 [Cr.PC],

the petitioner Anuj Kumar Yadav has been granted interim protection vide order dated 22.02.2023 in connection with BI(EO) P.S. Case No. 5/2023 under Sections 120B/468/471/420 IPC. Earlier this case was registered as Basistha P.S. Case No. 210/2022 under aforesaid sections of law.

3. Heard Mr. K.K. Das, learned Addl. P.P. for Respondent State of Assam.

4. The allegation against the petitioner is that he has defaulted in payment of tax under the provision of Goods & Services Tax Act, 2017.

5. The learned Addl. P.P. has raised serious objection stating that transactions were carried on by the petitioner through paper but in reality no transactions were completed and in this manner the petitioner has been evading payment of taxes to the tune of crores of rupees causing loss to the exchequer of the State. A written FIR was lodged by the Assistant Commissioner of State Taxes alleging that the petitioner created fake invoices without actual sale of goods just to pass on the benefit of ITC to the receiving parties. The M/s An-Di Enterprises has been making fake bills to pass on wrongful tax credit to M/s Sanju Enterprises, M/s. Bahubali Enterprises, M/s Navkar Enterprises and M/s Chanda Prabhu Coal without actual purchase of coal. According to the purchase record of tax payer from records of GSTR-2A it is found that M/s An-Di Enterprises run by Sri Anuj Kumar Yadav had purchased coal for Rs. 51.88 crores, whereas, as per E-way bill records, he made a purchase of Rs. 62.18 crores. This huge mismatch between GSTR-2A and E-way bills clearly indicates that the party has obtained fake invoice involving Input Tax Credit (ITC) without there being any actual purchase of coal just for the wrongful benefit of tax credit to evade payment of tax to the government through ITC. It is also alleged that the firm M/s An-Di Enterprises purchased coal from M/s Bahubali Enterprises worth Rs. 50.17 lacs and at the same time sold the goods of Ms. Bahubali at Rs. 4.17 lacs. It is apparent that there was ulterior motive behind such transaction which was made only through paper. There are other allegations also against the petitioner of having evaded payment of tax.

6. The learned Addl. P.P. has raised serious objection stating that tax evasion amounting to crores of rupees is an economic offence. It is submitted that there are incriminating materials in the Case Diary against the petitioner. The petitioner has appeared before the IO.

7. It is true that there are indeed incriminating materials against the petitioner. The FIR has been lodged by the Assistant Commissioner of State Tax with direct allegations against the petitioner. A notice under Section 91 was issued against the petitioner and the petitioner has further pressed for bail as he is apprehending that if he is to be present with the relevant documents, he will be taken into custody.

7. I have considered the offence alleged against the petitioner and the import of the Section under which he is booked. The petitioner is alleged to have evaded tax by alleged transaction of goods only through paper transaction. The petitioner is booked under a grave offence which does not entitle him to anticipatory bail under Section 438 Cr.PC at this stage. Provisions of Section 438 Cr.PC cannot be exercised in an untrammelled manner. Alleged evasion of taxes is a grave offence. It appears that investigation may be adversely affected if the petitioner is insulated by pre-arrest bail.

8. In view of my foregoing discussion petition is rejected at this stage.

Send back the Case Diary.

JUDGE

Comparing Assistant