

GAHC010210652023



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

Case No. : AB/3210/2023

VIVEK KUMAR GUPTA
S/O SHRI BHAULI PRASAD GUPTA
R/O E SECTOR, KENNA TOWER NAHARLAGUN, ARUNACHAL PRADESH-
791110

VERSUS

THE STATE OF ASSAM ANR
REP. BY THE PP, ASSAM

2:ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI
UNIT-D
NEW KAR BHAWAN
DISPUR-06

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

26.09.2023

Heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. A.

Barkataki, learned counsel for the applicant and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **BI [EO] P.S. Case No. 14/2023**, under Sections 120[B]/419/420/468/471 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Vivek Kumar Gupta** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by Sonaram Langthasa, Assistant Commissioner of State Tax, Guwahati, on 19.06.2023. The essence of allegations made in the FIR is that M/s Amit Traders said to have purchased taxable good from M/s Shree Ram Enterprises registered in Arunachal Pradesh, amounting to Rs. 32.35 Cr. with tax implication amounting to Rs. 5.91 Cr. and entire purchase was made by M/s Amit Traders from the said tax payer of Arunachal Pradesh on 31.03.2023, in 216 numbers of invoices and M/s Amit Traders have declared to have sold the goods, so purchased from Arunachal Pradesh on the same date to some other taxpayers registered in Arunachal Pradesh and during inquiry it has been found that M/s Amit Traders located at OYO Hoter, Athgaon, Subhash Road, Guwahati, is a non-existent dealer and whereabouts of the proprietor, Shri Amit Sharma is not known and it is also known from further inquiry that M/s Shree Ram Enterprise has wrongfully claimed input Tax Credit [ITC] of amounting to Rs. 116 Cr. out of which Rs. 5.91 Cr. has been passed on to M/s Amit Traders, who in turn, has passed on ITC to other firms located in Arunachal Pradesh and the M/s Amit Traders has obtained GST registration by furnishing false/fabricated documents with criminal intent to defraud the Government of its legitimate revenue.

4. Mr. Choudhury, learned Senior Counsel for the applicant submits that

the name of the applicant is not mentioned in the FIR and he has been implicated by one Atish Kumar Tiwari, who has been arrested herein this case and that entire matter relates to documents and that the relevant documents have already been collected by the IO as reflected in the order dated 01.09.2023, in BA No. 3029/2023, by which this Court was pleased to grant bail to the accused, Atish Kumar Tiwari. Mr. Choudhury further submits that the applicant has received notice from the IO for production of the documents and he had already furnished the same. Mr. Choudhury also submits that the allegation relates to defrauding of GST and as per Section 122 of the GST Act the offences below five crore is bailable offence and only to make the offences non-bailable the case has been registered under the IPC and that he is ready to cooperate with the investigating agency, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor, has produced the case diary before this court and vehemently opposed the petition on the ground that the applicant has not been absconding and custodial interrogation of the applicant is very much necessary to unearth the conspiracy and that the IO has collected sufficient incriminating materials against the applicant and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition as well as the documents placed on the record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

7. It appears from the case diary that that the IO has achieved substantial progress in the investigation and that the entire matter relates to

documents, which have already been collected and seized by the IO of this case. The applicant also sent the documents to the Io as asked for. Moreover, the allegation relates to defrauding of GST, but the case has not been registered under the GST Act, rather the case is registered under the IPC.

8. Having regards to above and also having regards to the materials collected so far in the case diary as well as the progress of investigation, custodial interrogation of the applicant seems to be unwarranted herein this case.

9. Accordingly, it is provided that in the event of arrest of the applicant, in connection with **BI [EO] P.S. Case No. 14/2023**, under Sections 120[B]/419/420/468/471 of the IPC, he shall be enlarged on pre-arrest bail on his executing a bond of Rs. 50,000/- only with one surety of like amount to the satisfaction of the arresting authority.

9. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make **himself** available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade **him** from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned **CJM, Kamrup [M] at Guwahati**, without prior permission.

10. In terms of above, this AB stands disposed of.

11. The case diary be returned.

JUDGE

Comparing Assistant