

Court No. - 86

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 6863 of 2024

Applicant :- Anant Bansal And Another

Opposite Party :- Union Of India And 2 Others

Counsel for Applicant :- Rishabh Agarwal, Tarun Agrawal

Counsel for Opposite Party :- Dhananjay Awasthi, Parv Agarwal

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants, learned AGA and perused the material available on record.
2. The instant application for grant of anticipatory bail has been moved by applicants- **1. Anant Bansal** and **2. Nikhil Bansal** who happen to be the son and father in the matter of summons dated 15.3.2024 and 20.6.2024 issued against them by DGGI, Lucknow Zonal Unit (LZU), Lucknow under Section 70 of the CGST Act, 2017 in the matter of M/s Meenakshi Re-rollers Pvt. Ltd. & M/s Meenakshi Metal Industries LLP, Jhansi.
3. It has been submitted by the learned counsel for the applicants that applicant no.1 is one of the directors of M/s Meenakshi Re-rollers Pvt. Ltd. and the partner in M/s Meenakshi Metal Industries LLP, Jhansi and is a reputed business man dealing in the manufacturing of TMT bars under the aegis of M/s Meenakshi Metal Industries LLP. Pursuant to a search warrant dated 12.3.2024 issued by respondent no.2 under Section 67 CGST Act, 2017, a team of officers of respondent no.1 made a search/ inspection in the business premises of M/s Meenakshi Re-rollers Pvt. Ltd. & M/s Meenakshi Metal Industries LLP, Jhansi on 13.3.2024 and total quantity of unfinished goods/ stocks detained of 1680 tons and the finished goods of 3775 tons bearing the total quantity of the detained

goods 5455 tons weighing by the committee within a span of 22 hours as disclosed in the panchnama as the search commenced on 13.3.2024 at 12:20 pm and concluded on 14.3.2024 at 10:15 pm.

4. The applicants received summons under Section 70 of the CGST Act, 2017.

5. It is submitted by the learned counsel for the applicants that in pursuant to the aforesaid panchnama, a request was made to the respondent no.2 for the physical re-verification of the stocks alleging the so called weighing made by the search team to be only at eye-estimation and in response to the letter dated 20.6.2024 which was sent by respondent no.2 to applicant no.1 to provide dates for physical verification a reply dated 24.6.2024 was sent by applicant no.1 whereupon by letter dated 29.6.2024 respondent no.2 fixed 8th to 10th July, 2024 for physical re-verification of the stocks.

6. It is further submitted that even during the aforesaid communications respondent nos. 2 and 3 kept on issuing repeated summons upon the applicants seeking their personal presence whereby a reasonable apprehension arises to the applicants for any coercive steps or even the arrest of the applicants to be made by respondent nos. 2 and 3. It is further questioned that to make a weight of a quantity of 5455 tons of material physically only in a span of 22 hours is not possible even by any stretch of imagination, hence, the panchnama which is the basis of all the proceedings is a sham document. The applicants have been cooperative to the department throughout the proceedings. They are having no criminal antecedents to their credit but the conduct of the CGST department by sending summons for their personal appearance is no doubt creates a reasonable apprehension in the mind of the applicants for their arrest in this matter. Hence, the anticipatory bail has been sought for in the instant matter.

7. Reliance has been placed on **Mahdoom Bava Vs. Central Bureau of Investigation. 2023 SCC OnLine SC 299** and **Priya Indoria Vs. State of Karnataka and Ors (2024) 4 Supreme Court Cases 749.**

8. Per contra, learned counsel appearing on behalf of the Directorate General of Goods and Services Tax Intelligence (DGGI), Lucknow Zonal Unit (LZU), Lucknow vehemently opposed the anticipatory bail application and defended the proceedings of search and inspection in respect of the seizure of the goods in the business premisses of the applicants but at the very outset a preliminary objection has been raised by the learned counsel appearing by the DGGI that since only summons have been issued under Section 70 of CGST Act, 2017 to the applicants the application for anticipatory bail in itself is not maintainable.

9. Reliance has been placed upon **State of Gujrat etc. Vs. Choodamani Parmeshwaran Iyer & Anr etc, 2023 SCC Online SC 1043**, **P.V. Ramana Reddy Vs. Union of India and Ors, (2021) 2 SCC 784**, **Directorate General of GST Intelligence Vs. Chaman Goel and Ors. (2024) 1 High Court Cases (Del) 277**, and the judgement passed by the co-ordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application No. 1337 of 2020 Govind Agarwal Vs. State of U.P. and Anr.

10. It is trite law that when the maintainability of a particular proceeding is challenged before a Court of law apart from the merits of the case the Court at the first sight is under obligation to make an assurance in itself that the matter which is going to be taken up by it is legally maintainable and it is only after ensuring about the maintainability of the said proceedings the Court has to take any further steps in this matter.

11. The factual scenario which reveals from the record is that at this juncture summons under Section 70 of CGST Act, 2017 have been issued against the present applicants.

12. To deal with the issue of maintainability of the present anticipatory bail application first of all it is necessary to note the relevant provisions of the CGST Act, 2017 provided under Section 69 and Section 70 of the said Act, which are extracted herein below:

Power to Arrest

“69. (1) Where the Commissioner has reasons to believe that arrest under Section 69(1) of the CGST Act, 2017 is invoked and in such circumstances, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. The only way a person summoned can seek protection against the pre-trial arrest is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India at a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (1) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours. (3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate,

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Power to summon person to give evidence and produce documents.

70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

13. (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860)."

14. The aforesaid provisions reflect that the CGST department is empowered to summon any person to give evidence and produce documents whose attendance for the said purpose is considered necessary by the proper officer of the department and every such inquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the I.P.C. as provided under Section 70 of the said Act and on the other hand if reasons to believe exist there to the commissioner that a person has committed any offence specified in clause (a) or (b) or (c) or (d) of sub Section 1 of Section 132 which is punishable under clause (i) or (ii) of sub Section (1), or sub Section (2) of the said Section, he has an authority to authorise any officer of the Central Tax to arrest such person. The grounds of arrest shall be disclosed to such person and within 24 hours he will be produced before a Magistrate and Section 69 further provides that subject to the provisions of Cr.P.C. the person arrested under sub Section (1) for any offence specified under sub Section (4) of Section 132 shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate and if the offence is non-cognizable or bailable the Deputy Commissioner or the Assistant Commissioner shall have the power to release him on bail.

15. Now the legal position for the maintainability of an application for grant of anticipatory bail is to be determined on the touchstone of law promulgated by the Hon'ble Apex Court in the State of Gujrat Vs. Choodamani Parmeshwaran Iyer & Anr (supra) wherein another law laid down in P.V. Ramana Reddy Vs. Union of India and Ors (supra) has been considered and the Hon'ble Apex Court expressed full agreement to the judgment passed in Writ Petition No. 4764 of 2019 and allied petitions decided on 18th april, 2019 by a Division Bench of Telangana High Court in a similar matter and resultantly affirmed the decision in P.V. Ramana Reddy case (supra). The legal position with regard to the admissibility of the anticipatory bail application in case summons is issued to a person under the CGST Act, 2017 has been summarized by the Hon'ble Supreme Court like this:

“16. Thus, the position of law is that if any person is summoned under Section 69 of the CGST Act, 2017 for the purpose of recording of his statement, the provisions of Section 438 of Criminal Procedure Code, 1908 cannot be invoked. We say so as no First Information Report gets registered before the power of arrest under Section 69(1) of the CGST Act, 2017 is invoked and in such circumstances, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. The only way a person summoned can seek protection against the pre-trial arrest is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India”.

16. In a recent decision the High Court of **Delhi in Directorate General of GST Intelligence Vs. Chaman Goel and Ors. (2024) 1 High Court Cases Del 277** whiling dealing with the applicability of Section 438 of Criminal Procedure Code i.e. Section 482 of Nagrik Suraksha Sahinta, 2023 relied upon the judgement of Hon'ble Apex Court in State of Gujrat etc. Vs. Choodamani Parmeshwaran Iyer & Anr (supra) and proceeded to cancel the anticipatory bail granted to the respondents. In the said case following the decision of Hon'ble Apex Court in

Choodamani Parmeshwaran Iyer & Anr case (supra) it was categorically held that provisions of Section 438 Cr.P.C. for grant of anticipatory bail are not applicable to cases involving offence under the CGST Act but however, the power of High Court to exercise writ jurisdiction vested in it to grant pre-arrest protection was recognized.

17. On the other hand the law laid down by the Hon'ble Apex Court in Priya Indoria case (supra) relied upon by the learned counsel for the applicant travels in a different sphere. In the said case the issue which was to be settled was relating to extra territorial jurisdiction and the question of grant of extra territorial transit or interim anticipatory bail for an offence committed outside the territorial jurisdiction of a High Court or Court of Session was under consideration and the Hon'ble Apex Court held that the same was permissible considering the facts and circumstances of the case, nature and extent of such vague inquiry to be made and pre-condition to be specified and however with a caution that the Court must exercise due vigilance against abuse of process of Court/forum shopping. The Hon'ble Apex Court dealing with the various aspects of the law relating to anticipatory bail permitted for grant of extra territorial transit or interim anticipatory bail, which is certainly not the subject matter of the issue relating to the case in hand.

18. Since in the present matter no issue for grant of transit anticipatory bail is involved, the law cited by the learned counsel for the applicants is of no help for them.

19. In the same manner another decision of the Hon'ble Apex Court given in the case of Mahdoom Bava (supra) also not helpful at all to the applicants as from the face of it the said case is not concerned in any way with the provisions of CGST Act, which is a special enactment.

20. One fact which draws attention of this court is that the law laid down by the Hon'ble Apex Court in the Choodamani Parmeshwaran Iyer & Anr case (supra) pronounces that if the summons are issued under

Section 69 of the CGST Act, 2017 to any person for the purpose of recording his statement, the provisions of Section 438 of Cr.P.C. cannot be invoked, but however in the case in hand summons have been issued not under Section 69 of the CGST Act but under Section 70 of the CGST Act. This Court finds hardly any difference between the two. It has been clarified above by quoting the provisions of Section 69 and Section 70 of CGST Act that Section 70 deals with the power of appropriate officer to summon any person to give evidence or to produce documents or any other thing only in any inquiry whereas Section 69 deals with the power of commissioner to authorize any officer of the Central Tax to arrest a delinquent person as explained under Section 69 (1) CGST Act, 2017. Hence if the law forbids to move an application for grant of anticipatory bail in case summons is issued to a person under Section 69 of the CGST Act obviously the same principle shall apply to a case where a person is summoned under Section 70 of the CGST Act to give evidence or to produce a document or any other thing in any inquiry and the analogy would be the same.

21. Hence, this Court is not hesitant to hold that the present application for grant of anticipatory bail moved by the applicants is not maintainable under Section 438 of the Criminal Procedure Code (Section 482 of of Nagrik Suraksha Sahinta, 2023). The applicants are at liberty to move a writ petition under Section 226 of the Constitution of India and in these circumstances, the present application for grant of anticipatory bail being not maintainable is liable to be rejected and is hereby **rejected**.

Order Date :- 7.8.2024

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