

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3804 of 2019

Ashish Jain	.. Petitioner
Versus	
Union of India and ors	.. Respondents

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Ms.Rashmi Deshpande with Mr.A.A. Rastogi with Mr.Pratyush Saha i/b Khaitan & Co. for the petitioner.
Mr.Anil C. Singh, ASG with Mr.J.B. Mishra for the respondent.
Mrs.A.S. Pai, APP for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 31st JULY 2019

P.C:-

1 The petitioner has approached this Court invoking the jurisdiction under Article 226 of the Constitution of India challenging the summons issued by the respondent no.3 under the Central Goods and Services Tax Act, 2017 (for short 'CGST Act'). The basic contention of the petitioners is that the respondent authority cannot commence investigation without following procedure under Section 154 or 155 of the Code of Criminal Procedure. In short, her submission is that if the offence is cognizable, then the respondent authority should first register an FIR and then investigate and in the case of non-

cognizable offence, respondent authority must take permission from the Magistrate. In the light of this contention, petitioner has approached this Court for relief from arrest.

2 Affidavit in reply is filed by one Mr.Bhupendra Singh, Assistant Commissioner of CGST & Central Excise, Preventive. It is alleged in the affidavit that petitioner has floated many fictitious companies and has defrauded the government by raising fake invoices and availing Input Tax Credit without any supply of goods. Mr.Singh, learned ASG also contended that petitioner's involvement in the subject case is very much there and the investigation is at a preliminary stage.

4 It is further contended that petitioner is a key beneficiary and mastermind behind perpetrating the fraud involving non-existent supply of goods of about 150 crore involving passing on of fraudulent credit of Rs.27 crore. Mr.Singh lastly contended that offence is cognizable and therefore, summons is rightly issued. Mr.Singh also relies upon recent order of the Apex Court dated 27th May 2019 in SLP (Cri) No.4430 of 2019.

5 The affidavit in reply filed by the respondent points out the involvement of the petitioner. The respondent authorities are investigating the cognizable offence under the CGST Act. The Hon'ble Apex Court in case of Union of India vs.

Sapna Jain, it was an appeal carried to the Apex Court from the judgment and order passed by this Court on 11th April 2017, though has refused to entertain the Special Leave Petition and showed its disinclination to interfere, it had observed that the High Courts while entertaining the request of pre-arrest bail will keep in mind that the Apex Court by order dated 27th May 2019 had dismissed the SLP filed against the judgment and order of Telangana High Court in a similar matter where the High Court of Telangana has taken a view contrary to the view of the Apex High Court. Since the said order is passed by the Apex Court on 29th May 2019, we are not inclined to grant any protection to the petitioner from his arrest since we are bound by the order passed by the Apex Court.

6 In the light of these observations, we are not inclined to entertain this petition. The same is dismissed accordingly.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)