HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2956 of 2019

ORDER :

1. The present Criminal Petition is filed under Section 438 Cr.P.C. seeking to grant anticipatory bail in C.NO.HQAE/V/227/2019-Hyd.GST(AE), office of the Principal Commissioner of Central Tax, Hyderabad G.S.T. Commissionerate, G.S.T.Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad and consequently, direct the respondents 2 and 3 to release the petitioner on bail in the event of his arrest.

2. Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State.

3. It is submitted by the petitioner that the petitioner is the Managing Director of M/s. Infinity Metal Products India Limited, Hyderabad. The business premises of the petitioner was searched on 27.02.2019 by the officials of respondents 2 and 3 and seized 56 records of the company under a cover of panchanama. It is submitted that in the meanwhile the petitioner came to know that several persons have been arrested and they were remanded under the GST Act. Therefore, the petitioner filed W.P.No.4764 of 2019 on 07.03.2019 challenging the validity of the summons dated 05.03.2019 issued to him. During pendency of the protection orders, the petitioner was summoned to the office of respondent No.2 by series of summoning orders issued in C.No.HQAE/V/227/2019-HYD, GST (AE). The petitioner has complied with the same and appeared before the authorities on 11.03.2019, 12.03.2019, 13.03.2019, 14.03.2019, 15.03.2019, 18.03.2019, 20.03.2019 and 25.03.2019 and furnished the

information. His evidence was also recorded on 13.03.2019. Vide order dated 18.04.2019, this Court dismissed the writ petition filed by the petitioner. It is further submitted that on 18.04.2019 at 15.20 hours again summons under Section 70 of the CGST Act were sent to the residence of the petitioner, directing the petitioner to appear at 14.00 hours at Room No.401, 3rd Floor, GST Bhavan, Basheerbagh, Hyderabad on the same day 'to tender evidence'. It is submitted that on the face of it, compliance of the said summons was impossible as the summons directing him to appear in-person at 14.00 hours on 18.04.2019 was actually served on the wife of the petitioner at 15.20 hours on the same day. On receiving the said information, the petitioner has submitted his reply through his counsel on 19.04.2019. The petitioner submitted that he has filed Crl.P.No.2293 of 2019 seeking anticipatory bail, the same was dismissed on 30.04.2019 in view of the order of the Division Bench in W.P.No.4764 of 2019. Challenging the said order, SLP Nos. 4430/2019 and SLP No.4571 of 2019 were filed before the Apex Court and the same were dismissed on 27.05.2019 and 29.05.2019.

4. It is further submitted that there is no piece of paper or show-cause notice or orders as contemplated under Section 73-A and the respondents are not even holding the orders contemplated under Sections 59 (Self-Assessment Order), 60 (Provisional Assessment Order), 61 (Scrutiny of Returns), 62 (Assessment of the persons who did not filed returns), 63 (Assessment of the persons not registered under the GST Act, 64 (Summary Assessment in Special Cases) and conducting of audit under Section 65 and 66 of the GST Act,

therefore, the respondents cannot arrest the petitioner on the purported premise that he committed the cognizable offence. It is further submitted that on 29.05.2019 the respondents again issued another summons calling the petitioner to furnish the information of the sale transactions of the petitioner company pertaining to the years 2010 onwards, which in clear terms not germane to the issue on hand, besides the fact that the GST Act came into existence with effect from 01.07.2017. It is further submitted that the petitioner is innocent of the allegations levelled against him and the same is evident from his statement. No notice determining the tax liability of the petitioner's company was issued, and no explanation is called from him by the respondents. No opportunity was given to the petitioner to explain the alleged evasion of tax or incurring any loss to the government. The entire investigation is solely basing on the documents, which were already seized by the respondents and the balance documents, as required, were already submitted. The very issuing of series of summons to the petitioner 12 times and that too without giving any reasonable time to comply with the same, is contrary to law and procedure. The petitioner is a law abiding citizen and he never involved in any criminal case earlier. He is having permanent residence and there is no apprehension of his absconding. The petitioner will abide by all the conditions imposed by the Court and he will cooperate with the authorities in the enquiry.

5. Per contra, Sri B.Narasimha Sharma, learned Special Public Prosecutor, appearing for respondents 2 and 3, contended that the present petitioner had earlier filed Criminal Petition No.2293 of 2019

under Section 438 Cr.P.C. and the said petition along with other criminal petitions was dismissed by a common order, dated 01.05.2019. Similarly, the petitioner also filed W.P.No.4764 of 2019, which was also dismissed by this Court vide common order, dated 18.04.2019, wherein a specific observation had been made by this Court in para No.61 of the order. Challenging the orders in W.P.No.4764 of 2019 and Crl.P.No.2293 of 2019 filed under Section 438 Cr.P.C., the petitioner filed S.L.P.(Crl.) Nos.4571 and 4530 of 2019 respectively, before the Apex Court. The same were also dismissed by the Hon'ble Apex Court. Thus, it has been contended that since the issue which has been raised by the petitioner in the present petition has already been decided by the Hon'ble Apex Court, the petitioner cannot re-agitate the matter at this stage.

6. A perusal of the material on record would show that a Division Bench of this Court in its order, dated 18.04.2019 in W.P.No.4764 of 2019 and other batch of writ petitions, observed in para Nos.52, 54 (2) 58 and 61 as under:

> *"52. But, to say that a prosecution can be launched only after the completion of the assessment, goes contrary to Section 132 of the CGST Act, 2017. The list of offences included in sub-Section (1) of Section 132 of CGST Act, 2017 have no co-relation to assessment. Issue of invoices or bills without supply of goods and the availing of ITC by using such invoices or bills, are made offences under clauses (b) and (c) of sub-Section (1) of Section 132 of the CGST Act. The prosecutions for these offences do not depend upon the completion of assessment. Therefore, the argument that there cannot be an arrest even before adjudication or assessment, does not appeal to us.*
> *54. (2) Under the third proviso to sub-Section (1) of 138, compounding can be allowed only after making payment of tax,*

interest and penalty involved in such cases. Today, the wrongful ITC allegedly passed on by the petitioners, according to the Department is to the tune of Rs.225 Crores. Therefore, we do not think that even if we allow the petitioners to apply for compounding, they may have a meeting point with the Department as the liability arising out of the alleged actions on the part of the petitioners is so huge. Therefore, the argument that there cannot be any arrest as long as the offences are compoundable, is an argument of convenience and cannot be accepted in cases of this nature.

58. Therefore, all the technical objections raised by the petitioners, to the entitlement as well as the necessity for the respondents to arrest them are liable to rejected. Once this is done, we will have to examine whether, in the facts and circumstances of these cases, the petitioners are entitled to protection against arrest. It must be remembered that the petitioners cannot be placed in a higher pedestal than those seeking anticipatory bail. On the other hand, the jurisdiction under Article 226 has to be sparingly used, as cautioned by the Supreme Court in Km.Hema Misra (cited supra).

61. In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances which we have indicated above.

7. Subsequently, the petitioner filed Criminal Petition No.2293 of 2019 for grant of anticipatory bail. While dismissing the said Criminal Petition, a learned Single Judge of this Court observed in para Nos.3 and 4 as under:

"3. Answering the question, the Division Bench observed that as no FIR would be registered before exercise of the power of arrest under Section 69 (1) of the Act of 2017, the Writ

Petitioners could not invoke Section 438 Cr.P.C. for anticipatory bail and therefore, the only way they could seek protection against pre-trial arrest (actually, pre-prosecution arrest) was to invoke the jurisdiction of this Court under Article 226 of the Constitution. The Division Bench further observed that the petitioners could invoke the jurisdiction of the High Court or the Sessions Court under Section 438 Cr.P.C. only if the enquiry initiated by the Commissioner was actually a criminal proceeding but as such an enquiry would not be a criminal proceeding even if it was a judicial proceeding, the only recourse available to such persons to protect their personal liberties would be to invoke Article 226 of the Constitution. It is on the strength of this reasoning that the Division Bench held that the Writ Petitions were maintainable and that the protection under Sections 41 and 41-A Cr.P.C. would also be available. On facts, however, the Division Bench held that it did not wish to grant relief to the petitioners against arrest in view of the special circumstances of the case, which had been indicated in the body of the order. The Writ Petitions were accordingly dismissed.

4. Given the afore stated observations of the Division Bench, as set out supra, the finding which emerges is that the Writ Petitions were held to be maintainable inasmuch as Section 438 Cr.P.C. was not available to the petitioners. Having suffered such a finding, it is not open to the petitioners to invoke Section 438 Cr.P.C. and again renew their request for pre-arrest bail."

8. Both the orders were challenged by the petitioner before the Hon'ble Apex Court vide S.L.P.Nos.4430 and 4571 of 2019. By an order dated 27.05.2019 the Apex Court passed the following order in S.L.P.No.4430 of 2019.

"Having heard learned counsel for the petitioner and upon perusing the relevant material, we are not inclined to interfere. The special leave petition is accordingly dismissed."

9. While disposing of S.L.P.(Crl.) No.4322-4324 of 2019, the Apex Court also made the following observations.

> "*As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.05.2019 passed in SLP (Crl.) No.4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.*
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> *Beyond the above, we do not consider it necessary to observe anything further.*"

10. By an order, dated 29.05.2019 the Apex Court also passed the following order in S.L.P.No.4571 of 2019.

> "*Having heard learned counsel for the petitioner and upon perusing the relevant material, we are not inclined to interfere. The special leave petition is accordingly dismissed.*"

11. In view of the observations made by this Court as well as Hon'ble Apex Court, the petitioner could not make out any special ground for grant of anticipatory bail and the Criminal Petition is liable to be dismissed.

12. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

20.06.2019
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