HONOURABLE JUSTICE G. SRI DEVI

<u>CRIMINAL PETITION No. 5324 of 2019</u>

<u>ORDER</u> :

1. The present Criminal Petition is filed under Section 438 Cr.P.C. seeking to enlarge the petitioners/A-1 to A-3 on bail, in the event of their arrest, in connection with the proceedings in F.No.INV/DGGI/HZU/GST/50/2019-20/Legal (P.F.) on the file of the Special Judge for Economic Offences, Nampally, Hyderabad.

2. Heard Sri Vinod Kumar Deshpandey, for Sri Parsa Anantha Nageswara Rao, learned Counsel appearing for the petitioners and Sri P.Dharmesh, learned Special Public Prosecutor, appearing for the respondent.

3. The case of the prosecution is that M/s. Aaria Projects Limited, represented by its Director and authorized signatory Akella Sai Kumar, situated at Flat No.1-205 and 1-206, Divya Shakthi Apartments, Greenlands, Ameerpet, Hyderabad, was registered vide GSTIN No.36AADCV7695Q1Z7 for rendering taxable supply of goods/services. M/s. Aaria Projects Limited is engaged in the activity of receiving and issuing fake invoices without supply of goods and services. M/s. Aaria Projects Limited also issued invoices without supply of goods/services involving GST to an extent of Rs.10.98 Crores and received invoices without receiving goods/services involving Input Tax Credit (ITC) to an extent of Rs.18.81 Crores, resulting in utilization of the same towards GST liability. The intelligence

developed by the officers of the Directorate General of GST Intelligence, Hyderabad Zonal Unit, revealed that M/s. Aaria Projects Limited issued fake GST invoices without any physical movement of the goods/services to different companies leading to wrongful availment of the input tax credit by the companies based on the strength of such GST invoices issued by M/s. Aaria Projects Limited and it also availed input tax credit without actual receipt of goods/services which is an offence under clause (b) and (c) of sub-section (1) of Section 132 of the Central Goods and Services Act, 2017 (for short "the Act"). M/s. Aaria Projects Limited are engaged in these kinds of transactions where only invoices are issued without any actual supply of goods and services, leading to wrongful availment of input tax credit and allowing the beneficiary companies to pay the taxes from the said wrongfully availed input tax credit and routing the money by not accounting, consequently leading to huge loss to the exchequer of the Government of India. Accordingly, investigation was initiated against M/s. Aaria Projects Limited and some incriminating documents were recovered under panchanama, dated 22.08.2019. Statement of Akella Sai Kumar, who is one of the Directors and Authorised signatory of M/s. Aaria Projects Limited was recorded on 22.08.2019, wherein he admitted his role in issuing fake GST invoices leading to wrongful availment of input tax credit by various companies such as M/s. DNC Infrastructure Private Limited, M/s. Avexa Corporation Private Limited, M/s. Shresht Industries Private Limited, and M/s. Megha Engineering and Infrastructure Private Limited etc., which proves beyond doubt that he is one of the key persons behind M/s. Aaria Projects Limited. Further, M/s. Aaria Projects Limited has received fake GST invoices from M/s. Allways Town Planners Private Limited, M/s. Suave Corporation India Private Limited, etc., leading to wrongful availment of input tax credit by M/s. Aaria Projects Limited. The above act of issuing and receiving invoices by M/s. Aaria Projects Limited, without supply of goods is in violation of provisions of the Act and Rules made thereunder leading to wrongful availment and utilization of input tax credit on the basis of such invoices/bills issued without supply of goods or services is an offence under clause (b) and (c) of sub-section (1) of Section 132 of the Act. It is evident from the scrutiny of the documents that M/s. Aaria Projects Limited, has passed on GST credit to the tune of Rs.10.98 Crores to various entities/GST Registrants wrongfully and also wrongfully availed GST credit to the tune of Rs.8.81 Crores.

4. Learned Counsel appearing for the petitioners/A-1 to A-3 would submit that petitioners/A-2 and A-3 are the Directors of petitioner/A-1 apart from one Akella Sai Kumar and Koppula Vidya Sagar Reddy. It is also submitted that the respondent falsely implicated the 1st petitioner company alleging that it engaged in the activity of receiving and issuing fake invoices without any supply of goods and services. Without issuing any notices either under Section 41-A Cr.P.C. or under Section 70 (1) of the Central Goods Service Act, 2017, the respondent illegally took the custody of one of the Directors of the 1st petitioner company by name Akella Sai Kumar and recorded his statement on 22.08.2019. However, the respondent issued summons,

dated 23.08.2019, calling upon him to appear on 23.08.2019 at 9.30 hours. It is submitted that the panchanama was drawn on 22.08.2019 while the said Akella Sai Kumar was under the custody of the respondent, but the authorities illegally served the notice on 23.08.2019 and shown the arrest of the said Akella Sai Kumar on 23.08.2019. This is glaring irregularity committed by the respondent. It is submitted that the respondent, without giving any opportunity to give evidence or to produce documents as summoned through notice dated 23.08.2019, high handedly arrested one of the Directors of the 1st petitioner. Under those circumstances, the petitioners are also apprehending their arrest. It is also submitted that the 1st petitioner was sub-contractor under various third party companies, which are related to Mission Bhagiratha, Mission Kakatiya, Kaleswaram Project etc., and that the 1st petitioner was only rendering its services under the agreements. Thus, the very allegation that the 1st petitioner issued invoices without any supply of goods is not based on any material evidence. It is also submitted that there is no dispute with regard to the fact that M/s. Aaria Projects Limited had been executing civil works as sub-contractor and for this reason it is delightfully absurd for the Investigating Agency to allege that there should have been a physical transfer of goods in this particular transaction. It is also submitted that the authority miserably failed to follow the due procedure of passing assessment, which is subject matter of the appeals and revisions under Chapter-18 of the Act. In other words, there is no assessment at all by way of an adjudicatory order and as such invoking the penal provisions contemplated under Chapter-19 is unwarranted. Moreover, the authorities under the guise of notice under Section 70 (1) of the Act are arm twisting the tax payers. It is also submitted that it is always open to the officials to scrutinize the books of accounts and pass orders of assessment reversing the Input Tax Credits availed by dealers under the Act, there is no necessity of arrest of the Directors, especially in the absence of any adjudication or final determination. It is further submitted that since the offence under the Act are compoundable, the arrest is wholly unnecessary under Section 138 of the Act. It is further submitted that Section 132 (6) of the Act specifically says that "A person shall not be prosecuted for any offence under this Section except with the previous sanction of the Commissioner". The entire remand report of the said Akella Sai Kumar is silent as to whether any sanction was accorded by the Commissioner or not. It is submitted that viewed from any angle the proceedings initiated by the respondent are contrary to law and no *prima facie* case is made out against the petitioners. Moreover, already the respondent authorities have arrested one of the Directors of the 1st petitioner.

5. Sri P.Dharmesh, learned Special Public Prosecutor, appearing for the respondent, while opposing the application, contended that the Department is conducting further investigation with regard to irregular passing of Input Tax Credit and to collect further material evidence and if the petitioners are released on anticipatory bail, there is every possibility of manipulating the records.

6. A Division Bench of this Court in its order, dated 18.04.2019, in W.P.No.4764 of 2019 and batch, 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.*
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> *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.*
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> *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 be 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).*
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> *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."

In view of the aforesaid observations made by the Division Bench of this Court in its order dated 18.04.2019 in W.P.No.4764 of 2019 and batch and in view of the fact that the department is still conducting further investigation with regard to irregular passing of Input Tax Credit and that there are specific allegations that the 1st petitioner/M/s. Aria Projects Limited, in which petitioner Nos. 2 and 3/A-2 and A-3 are Directors, issued and received fake invoices without supply of goods in violation of the provisions of the Act and Rules made thereunder, leading to wrongful availment and utilization of Input Tax Credit by the companies on the basis of such invoices, I am of the considered opinion that this is not a fit case to grant anticipatory bail to the petitioners/A-1 to A-3 and that the prayer for grant of anticipatory bail is rejected.

Accordingly, the Criminal Petition is dismissed.

JUSTICE G. SRI DEVI

15.11.2019
gkv/Gsn