

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 1275 OF 2020

ORDER :

1. The present Criminal Petition is filed under Section 438 Cr.P.C. seeking to enlarge the petitioners on bail, in the event of their arrest, in connection with the proceedings in F.No.INV/DGGI/WRU/GST/04/2019-20/PF (Legal) on the file of the Special Judge for Economic Offences, Nampally, Hyderabad.

2. Heard Sri P.Vamseedhar Reddy, learned Counsel appearing for the petitioners and Sri B.Narasimha Sharma, learned Special Public Prosecutor, appearing for the respondent.

3. The case of the prosecution is that the petitioners are the Directors of M/s. Transworld Educare Private Limited (hereinafter referred to as "TEPL"). The Intelligence developed by the officers of the Warangal Regional Unit revealed that TEPL is providing taxable services i.e., consultation services without raising invoices for the services rendered by them and also not paying appropriate GST on the consideration received towards provision of taxable services, resulting in loss of revenue to the government exchequer. Accordingly, investigation was initiated against TEPL and some incriminating documents were recovered under panchanama dated 06.01.2020 and the statement of David Koil Pillai (A-1) Chairman and CEO of TEPL. On scrutiny of the documents resumed and voluntary statement given by A-1 reveals that the TEPL is indulging in evasion of GST on the

taxable services provided by them during the period from 7/2007 to 12/2019 without raising any invoices for the taxable services rendered. During the said period, TEPL evaded an amount of Rs.11,80,95,716/- towards GST by not raising any invoice/bill and by suppressing the details in the returns filed for the taxable services rendered by them to various service recipients and caused loss to the Government exchequer. During the course of investigation and as per the statement of A-1, it is revealed that A-1 is managing entire affairs of the organization and he is responsible for evasion of GST on the taxable services provided by them without issuing any invoices. Further, he had deliberately evaded GST without raising invoices/bills resulting in huge loss to the Government.

4. Learned Counsel appearing for the petitioners would submit that the petitioners are innocent of the offences alleged, they are in no way connected with the offences and that they are falsely implicated in the above crime. It is further submitted that even if the entire complaint is taken into consideration, no offence is made out against the petitioners for the offence under Section 132 of the CGST Act, 2017. The 1st petitioner is the wife and that 2nd petitioner is the son of A-1. It is further submitted that the entire operation and running of the TEPL company was looked after by A-1, the petitioners were not even aware about the activities being run by A-1, they are only Directors and that they are nothing to do with the said offence. It is also submitted that the petitioners received summons under Section 70 of the CGST Act, 2017 calling upon them to appear before the respondent authority and

that they are apprehending that they would be falsely implicated in the above crime by using coercive measures to extract confession.

5. Sri B.Narasimha Sharma, learned Special Public Prosecutor, appearing for the respondent filed counter opposing the application and it is contended that the petitioners are the Directors of TEPL and they were summoned thrice on 27.01.2020, 31.01.2020 and 18.02.2020 but they have not appeared before the respondent authorities to give evidence. The petitioners being Directors it is mandatory to appear before the investigation agency and admit what are their roles in the company's affairs and in the alleged offence. It is apparent that the petitioners are not cooperating with the investigation. The petitioners preferred the present petition on assumptions and presumptions with a view to avoid the statutory proceedings. The nature of financial frauds is complex in nature and requires examining several evidences to conclude the investigation and if the petitioners are released on anticipatory bail, there is every possibility of manipulating the records. He relied on the order of this Court in CrI.P.No.5324 of 2019 dated 15.11.2019 and also the order of the Division Bench of this Court in W.P.No.4764 of 2019 and Batch dated 18.04.2019.

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.

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 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).

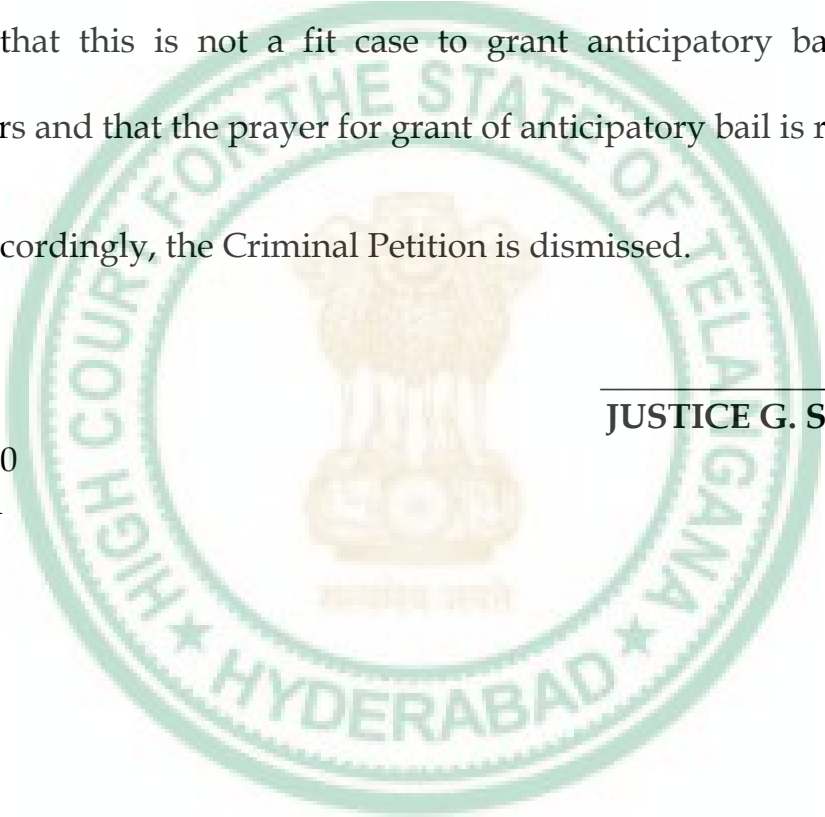
61. In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that 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. 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 the offence committed by TEPL, in which the petitioners are Directors and that there is specific allegation that TEPL is providing taxable services without raising invoices for the services rendered by them to the various service recipients and is not paying appropriate GST on the consideration received towards provision of taxable services, resulting in loss of Rs.11,80,95,716/- to the Government exchequer, I am of the considered opinion that this is not a fit case to grant anticipatory bail to the petitioners and that the prayer for grant of anticipatory bail is rejected.

8. Accordingly, the Criminal Petition is dismissed.

10.03.2020
gkv/Gsn


JUSTICE G. SRI DEVI

