IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 ANTICIPATORY BAIL APPLICATION NO.790 OF 2020
WITH APPLN/1720/2020 IN ABA/790/2020

ASHOK S/O. VITTHALRAO SABLE
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Singh J.N.
APP for Respondent/State: Mr. V.M. Kagne.

CORAM	:	**MANGESH S. PATIL, J.**
DATE	:	**18.01.2021.**

PER COURT :

The applicant is seeking bail in the event of his arrest in connection with Crime No. 318/2020, registered with Ghansavangi Police Station, District Jalna, for the offences punishable under Sections 406 and 409 of the Indian Penal Code and under Sections 74, 74(2), 74(3)(f), 74(3)(m) and 74(3)(d) of the Maharashtra Value Added Tax Act, 2002 (hereinafter 'VAT Act').

2. In short the allegations as can be discerned from the F.I.R. filed by a Sales Tax Inspector Jalna are to the effect that the applicant is a dealer and runs several business establishments and was under statutory obligation to recover tax from the customers and to submit assessment returns and deposit the VAT. It is alleged that he intentionally and deliberately evaded the tax by not disclosing the details of the transactions and also failed to disclose his true liability to pay the tax. Though his Chartered Accountant pointed out that he was liable to pay balance tax to the tune of Rs. 65,19,211/-, in his returns he disclosed his liability only to the tune of Rs. 28,67,520/-. Even the calculations done by his Chartered Accountant were incorrect. According to the assessment done by the Department he was due

and payable an aggregate of Rs. 5,09,56,250/- towards the liability. It is then alleged that in spite of issuance of statutory notices he failed to clear the dues and derived wrongful gain and caused wrongful loss to the government.

3. The learned advocate Mr. Singh for the applicant would submit that the offences punishable under the VAT Act are all bailable. Only the offences punishable under Sections 406 and 409 of the Indian Penal Code are non bailable. Necessary ingredients for constituting those offences cannot be made out from the F.I.R. No prosecution simultaneously could have been proceeded against under two different statutes. The applicant's custodial interrogation is not necessary. He would be put disreputed if allowed to be arrested without admitting him to bail. The learned advocate would further submit that his liability is still not finalized. He has challenged the assessment orders by preferring statutory appeals. The issue regarding his liability cannot be prejudged when the matter is *sub judice* before the Appellate Forum. The learned advocate would further point out that already a no dues certificate in Form No. 415 has been issued to him by the Assistant Tax Commissioner dated 30.03.2019.

4. The learned A.P.P. opposes the application. He submits that the offence is serious. For number of years the applicant has failed to file the returns or file correct assessments much less within stipulated time. He was served with notices and still failed to obey them. The learned A.P.P. would further point out from the affidavit in reply of the informant the details in respect of which defaults were committed by the applicant and as to how he is in arrears of huge tax.

5. The learned A.P.P. would further submit by referring to the decision of the Supreme Court in the case of **State of West Bengal Vs. Narayan K. Patodia; (2000) 4 Supreme Court Cases 447,** which in turn has been relied upon by the Division Bench of this Court in the case of **G.S. Oil Ltd. Though**

its M.D. Shri. Manoj Kumar Shrigovind Agrawal and another Vs. State of Maharashtra through PSO Wani, District Yavatmal and others (Criminal Writ Petition No. 396/2012) dated 11.10.2012 that there could be a prosecution under both the VAT Act as well as the Indian Penal Code.

6. I have carefully gone through the papers. Needless to state that the offences under the VAT Act being charged against the applicant are bailable ones and therefore it is not necessary in the present discussion to go into the details as to how the offences punishable under that Act can be made out from the F.I.R. and the material collected during investigation in that respect. Suffice for the purpose, going by the allegations and the papers of the investigation to observe that *prima facie* the applicant is due and payable a tax wroth more than Five Crores rupees which are dues right from the year 2009-2010 up to the recent past. As has been demonstrated in the affidavit in reply of the informant, there are several lapses in filing the returns as enumerated therein.

7. Be that as it may, the core issue would be as to if the applicant can be simultaneously prosecuted under the provisions of the VAT Act as well as for the offences punishable under the Indian Penal Code. The issue is no longer *res integra.* One need only refer to the decision of the Supreme Court in the case of **Narayan K. Patodia** (supra) and the Division Bench judgment of this Court in the case of **G.S. Oil Ltd.** (supra).

8. As far as the ingredients of offence punishable under Section 406 and 409 of the Indian Penal Code are concerned conceptually, a dealer like the applicant would act as an agent of the Government for recovering the tax and depositing it with the latter. It would thus tantamount to creating a relationship of a principal and an agent between the Government and the dealer. If the dealer is supposed to recover the tax it would come with a consequential liability to credit it to the Government. In my considered view it is in this manner *prima facie* the applicant can be said to be entrusted with

the money which he was liable to pay to the Government but has failed to do so.

9. The period for which he failed to deposit the VAT and the enormity of the amount is sufficient to disentitle him of any protection in the form of anticipatory bail.

10. The Application is rejected.

11. As the Application is rejected, Criminal Application No. 1720/2020 is disposed of.

(MANGESH S. PATIL, J.)

mkd/-