IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2030 OF 2021

Dev Adania
Age : 36 Years Adult, Occ : Business
Proprietor of Gajmukhi Bullion
Having his office address at
601, Arthum Mall,Vithalwadi,
Zaveri Bazaar, Kalbedevi,
Mumbai 400 003. **... Applicant**

Versus

1. State of Maharashtra
2. Commissioner of Central GST
(Mumbai South) **... Respondents**

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Mr. Bhavesh Thakur, Advocate for the Appellant.

Mr. S. R. Agarkar, APP for Respondent No.1 – State.

Mr. J. B. Mishra a/w. Mr. Ashutosh Mishra, Special P. P. for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 23rd SEPTEMBER, 2021.

PER COURT :

1. This is an application under Section 438 of Cr.P.C. apprehending arrest in connection with F.No.V/CGST/MS/AE/GR08/1125/20-21 investigated by Commissioner of Central GST (Mumbai South) under Section 70 of the Central Goods and Services Act, 2017 (for short "CGST Act").

SAJAKALI LIYAKAT JAMADAR
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Date: 2021.10.01 20:42:42 +0530

2. The brief facts of the prosecution case are that on the basis of information received by respondent No.2 vide letter dated 16th March, 2021 from CGST and Cx. Jodhpur subject “ineligible Input Tax Credit (ITC) in the matter of M/s. Gajmukhi Bullion” wherein the inputs were given as M/s. Gajmukhi Bullion was found non-existent at their registered place of business at 178, Veer Durgadas Nagar, Pali, Rajasthan and no activity was found at the said premises. Information was provided regarding suppliers/recipients of M/s. Gajmukhi Bullion pertaining to jurisdiction of CGST and Cx. Mumbai South wherein one of the supplier is M/s. Gajmukhi Bullion having address at 13, 3rd floor, Plot No. 31/35, Rangwala Building, Zaveri Bazar, Mumbai. The applicant had passed ITC (Input Tax Credit) to the tune of Rs.2.54 Crores to M/s. Gajmukhi Bullion. Information was received from Belgavi CGST & Cx. Commissionerate that M/s. Gajmukhi Bullion being receiver of ITC to the tune of Rs.15.22 Crores approximately from Karnataka Jewellers. Search of premises was conducted on 25th March, 2021 at the registered address of the applicant and another place at Kalbadevi Mumbai where the applicant has shifted his office under the reason to believe that thorough investigation is required alongwith examination of documents to ascertain final quantum of GST liability. The documents were seized. The applicant was summoned under Section

70 of CGST Act vide summons dated 25th March, 2021. search was conducted applicant was directed to remain present on 26th March, 2021 to give evidence, provide documents.

3. The applicant had preferred an application for anticipatory bail before the Court of Sessions. The said application was opposed by the respondents by filing reply. Vide order dated 20th August, 2021 the application was rejected by the Sessions Court. While rejecting the said application the learned Sessions Judge had observed that the allegations against the applicant are that he made payment of Rs.666.37 Crores to M/s. Karnataka Jewellers against deal between M/s. Golden Bullion and Ms. Karnataka Jewellers but received the purchased invoices of Rs.367.37 Crores from August-2020 to October-2020 from M/s. Karnataka Jewellers and Rs. 226 Crores invoices from M/s. Balaji Enterprises and Rs.115.66 Crores from M/s. Kismat Enterprises including GST respectively for the goods purchased. No payment was transferred from the account of applicant to M/s. Balaji Enterprises and M/s. Kismat Enterprises but to compensate balance amount, invoices of Rs.305 Crores from M/s. Karnataka Jewellers and he again issued sale invoices of Rs.305 Crores to M/s. Balaji Enterprises and M/s. Kismat Enterprises against the balance payment, he need to make to both the parties. It is further observed that the case diary reflects as per the statement of

applicant Janak Kalsaria filed applicant's GSTR-3B, GSTR-2A and GSTA-1 and other returns in the year 2020-2021. The E-mail issued by Janak Kalsaria dated 29th May, 2021 to CGST Officer shows that he did not file any GSTR-1, GSTR-2A and GSTR-3B. The case diary also reflects that the applicant was released on bail by the High Court of Rajasthan in view of Section 439 of Cr.P.C. in Complaint No.CGST/ Div.D/AE/Gajmukhi/95/20, on the ground that there are no criminal antecedents. The release of applicant by High Court of Rajasthan would not dis-entitle the respondent No.2 from making any investigation in the present case. Statement of employee of the applicant was recorded which reveals that he was responsible for issuing invoices and he had never seen any Gold/Silver and precious stones in the office and the applicant himself is engaged in the said activities. Any offence under CGST Act – 2017, is compoundable both before and after institution of prosecution, but the applicant had not offered to compound the offence, though compounding is permissible. Under Section 138 of CGST Act compounding is allowed only on making payment of tax, interest and penalty involved. It is alleged that the ITC availment to the tune of Rs.30 Crores approximately from M/s. Karnataka Jewellers, M/s. Balaji Enterprises, M/s. Kismat Enterprises has been made by the applicant.

4. Learned counsel for the applicant submitted that the applicant was arrested and released on bail vide order dated 12th November, 2020 by the High Court of Rajasthan, Jodhpur in relation to the same transaction. The applicant need not be again subjected to custodial interrogation. Ultimately the inquiry was conducted with the applicant by CGST Commissionerate, Jodhpur pertaining to firm of applicant including the firms at Mumbai and Rajasthan. Till the applicant was released, no communication was sent by CGST Jodhpur and it is only after his release on 12th November, 2020, the communication was sent to CGST Mumbai. The respondent No.2 has admitted that the applicant was arrested and released on bail in connection with the inquiry conducted by CGST Jodhpur. The applicant cannot be arrested again. It is further submitted that the contention of respondents that the applicant had availed ITC from M/s. Karnataka Jewellers, M/s. Kismat Enterprises and M/s. Balaji Enterprises is not supported by any material. The respondents are relying upon the statements of the applicant to establish his complicity. The statement dated 21st June, 2021 was immediately retracted on 22nd June, 2021 by the applicant vide E-mail to Investigating Officer. Retraction was also submitted by hand delivery on 25th June, 2021. The statement dated 12th July, 2021 was also retracted by submitting retraction to the trial Court. The applicant

had produced several documents in relation to the transactions with the firms stated therein. The documents includes ledger statement, statement pertaining to transactions with M/s. Karnataka Jewellers, copy of GSTR-3B reflecting transactions with M/s Karnataka Jewellers, ledger documents pertaining to transaction with Kismat Enterprises, returns relating to transaction with M/s. Kismat Enterprises, documents pertaining to transaction with Balaji Enterprises and the copy of the GSTR. It is further submitted that E-way bill is exempted for the business of Bullion/Jewellery by notification dated 30th August, 2017. The applicant has provided and produced all the documents of transaction which indicate that transaction is genuine and on the other hand the respondents have not come out with any cogent material in support of their case. As per the normal business transaction all the basic documents pertaining to the transactions have been provided and produced by the applicant which indicate that the transactions were executed. Moreover in absence of any E-way bill there cannot be better evidence than the aforesaid documents.

5. It is contended that there is difference between supply of goods and movements of goods and keeping practicality of business in mind. The ledgers had clarified such distinction under Section 31 of the CGST Act. From reading of section 31(b) r/w

Section 132(b) supply of goods, can be without involvement of the movements of goods, hence, it cannot be alleged that there is no supply of goods. Requirement of Section 132(b) is that in addition to issuance of invoices of bills or without supply of goods or services it has to be pointed out that activities are in violation of provisions or Rules of CGST Act. It is mandatory on the part of the respondents to show or demonstrate the violation of the Act and moreover considering the facts of the present case where there is delivery of goods and payment being made to the respective suppliers there is no offence under Section 132(b) of CGST Act.

6. It is submitted that companies reffed to by respondents are active and existent. Documents downloaded from portal of CGST demonstrate that creative overseas, Nevaki Enterprises and Kismat Enterprises are active. There is no material placed by respondent No.2 to indicate that parties were non existant and relevant time when transactions were execute. The applicant has appeared before respondent No.2 and produced all the documents. CGST Act is complete fiscal statute. In view of Section 134 of CGST Act sanction is mandatory for taking cognizance and for initiating prosecution against applicant. Assessment under Section 73 or 74 of the Act is required to be done to adjudicate tax liability. In absence of show cause notice to applicant for assessment of liability under Section 73

of CGST Act, there is no possibility of any charge-sheet being filed against applicant in near future and hence necessity of custodial interrogation does not arise sanction is necessary to take cognizance of offence under this Act.

7. It is submitted that the decisions in the case of **Union of Indian V/s. Sapana Jain and Ors.** delivered by apex Court was arising out of order passed by this Court in Writ Petition No. 1996 of 2019. In the context it was observed or gave cautionary note of granting privilege of pre-arrest bail in with jurisdiction. This Court had rejected Anticipatory Bail Application No.2333 of 2018 wherein similar allegations were made and the order was challenged before apex Court in SLP No.244 of 2019, wherein ad-interim relief was granted by order dated 9th January, 2019. Interim Application No. 85230 of 2019 was moved by GST for vacating interim relief. The same was disposed of by order dated 30th May, 2019. Delhi High Court in the case of **Pavan Goyal & Ors. V/s. Directorate General of GST intelligence Gurugram,** in Bail Application No. 458 of 2021 wherein similar accusation, the applicant therein was granted pre-arrest bail. The High Court of Kerala in the case of **Abdul Shaji V/s. Commissioner of Central Tax and Central Excise** in similar accusations granted pre-arrest bail. The Division Bench of this Court in the case of **Krishna Murari V/s. Union of India** in Writ Petition No.

5484 of 2021, considered scope of 69 and 132 and enlarged petitioners on bail. Reliance is also placed on decision of this Court in the case of **Daulat Mehta V/s. Union of India** and decision of Alahabad High Court in the case of **Nitin Verma V/s. State of U. P. and Ors.**

8. It is submitted that the applicant has cooperated with the investigation on several occasions. He had appeared before the respondents. He tendered documents. The applicant is willing to cooperate with investigation. While interim relief was granted to applicant by Sessions Court, he has attended respondent No.2.

9. Learned counsel for the respondents Mr. Mishra submitted that there is sufficient evidence to show the complicity of the applicant. The applicant is involved in commission of the economic offence. There is sufficient material to indicate that custodial interrogation of the applicant is necessary. The respondents have filed affidavit opposing this application. It is submitted that the investigation conducted by respondents in respect to the different aspects and it cannot be said that the applicant was already arrested in connection with the FIR registered at Jodhpur. The verification of the suppliers revealed that M/s. Gajmukhi Bullion availed ineligible Input Tax Credit from several entities. The custodial interrogation of

the applicant is necessary. The offence is of serious nature. As per the GSTR-2A of the applicant amount of Input Tax Credit availed by the applicant in respect of three firms with relating to the total GST of Rs.29,70,50,865/- and taxable value was Rs.990.17 Crores. He further submitted that the companies were fictitious. They were floated by the applicant to avail all the Input Tax Credit facility. The applicant has availed ITC availment to the tune of Rs.30 Crores from M/s. Karnataka Jewellers, M/s. Balaji Enterprises and M/s. Kismat Enterprises. He further submitted that there is involvement of the applicant in committing the offence is writ large and apparent from the documents on record. He further submitted that respondents have powers to arrest the applicant. The submissions of learned counsel for the applicant that the sanction is required for the arrest of the applicant is devoid of merits. He referred to Sections 132, 69, 73 and Section 74 of the CGST Act. It is submitted that the sanction which is contemplated under the provisions of this Act is for prosecution and not for registration of the FIR. He relied upon the decision of the Division Bench of this Court delivered in Writ Petition (St.) No. 9335 of 2021 dated 6th May, 2021 in the case of Amitkumar Shukla V/s. Union of India & Others. It is submitted that in several decisions of this Court and the Apex Court it is held that the respondents have powers to arrest. The reason to believe that the applicant was involved in spelt out from the material on record. In the case of **Amit Kumar Shukla** the division Bench of this Court had referred to decision in the case of **Daulat Sharma (Supra)**. The Court also referred to Section 69 of the CGST Act which deals with Power of officers to effect arrest and Section 132 of this Act relating to punishment for certain offences. Reference is also made to decision in the case of **Arnab Goswami V/s. State of Maharashtra AIR 2021 SC-1**. It was observed that decision in the case of Daulat Mehta is different on emergent of facts. It was observed that, considering the magnitude and the scale of alleged fraud involving public money and the critical stage when investigation to get hold of the mastermind/kingpin and other key conspirators as well as *modus operendi* is underway in which the petitioner through his proprietary concern is active participant bail cannot be granted under Article 226 of Constitution of India.

10. Having heard both the sides. I have perused the documents on record. In addition to oral submission, learned counsel for the applicant had tendered the compilation of documents and written notes of arguments. It is apparent that the respondents had received information from CGST Jodhpur vide letter dated 16th March, 2021. M/s. Gajmukhi Bullion was found non existent at the registered place of business. The information was provided regarding

recipients of M/s. Gajmukhi Bullion pertaining to jurisdiction of CGST and Cx. Mumbai that one of the supplier is M/s. Gajmukhi Bullion. The case of the respondents is that the applicant had passed ITC to the tune of Rs.2,54,61,612/- to M/s. Gajmukhi Bullion. The information was received from Belgavi CGST and Cx. Commissionerate Mumbai that M/s. Gajmukhi Bullion being receiver of ITC to the tune of Rs.15,22,02,368/- from one non-existence tax payer M/s. Karnataka Jewellers. Pursuant to that search under Section 67 of CGST was conducted on 25th March, 2021 at the registered address of the applicant at Zaveri Bazar, Mumbai and at another place under the reason to believe that thorough investigation is required along with examination of documents to ascertain quantum of GST law, sales and purchase documents. The applicant was summoned to appear. The case of the respondents is that the applicant had fraudulently passed ITC to the tune of Rs.2,54,61,612/- to M/s. Gajmukhi Bullion which is non-existent firm without actual receipt of goods and also availed the ITC. There is no reason to believe that the applicant is involved in availing ITC. There was no genuine transaction as claimed by the applicant. There was verification of supplier as per the GSTR-2A and it was revealed that M/s. Gajmukhi Bullion, Mumbai had availed ineligible ITC facilities from those companies. The investigation also revealed that

11 entities are non-existent. The total ITC availed by the suppliers was amount of Rs.40.11 Crores approximately. The statements of the applicant were recorded on 21st June, 2021 & 12th July, 2021 under Section 70 of CGST Act in which he admitted that he took invoices without corresponding receipts of the goods from three firms namely M/s. Karnataka Enterprises, M/s. Kismat Enterprises and M/s. Balaji Enterprises and had also not made any payment to two suppliers i.e., M/s. Kismat Enterprises and M/s. Balaji Enterprises. The legal names of three suppliers are i) Ramakka K. Holkar (Proprietor of M/s. Karnataka Jewellers), ii) Prakash Ravaso Lakade (Proprietor of M/s. Kismat Enterprises) and iii) Sunita Bhosale (Proprietor of M/s. Balaji Enterprises). The total ITC availed from those three firms was of Rs.29.7 Crores. The statement indicate that there was fraudulent availment of ITC from non-existence companies. During the course of investigation statement of Gautam Joshi was recorded under Section 70 of CGST act. He stated that he was ex-employee of the applicant and the firms namely M/s. Karnataka Jewellers, M/s. Balaji Enterprises and M/s. Kismat Enterprises were opened by him on the basis of documents arranged from various sources. The search was conducted. The contention of the applicant that the statement was retracted and there is no corroborative material on record to support the claim of respondents. There sufficient material to deny

pre-arrest bail to applicant. According to respondents during the statement recorded on 12th July, 2021 under Section 70 of CGST Act, the applicant has stated that statements dated 31st May, 2021, 16th June, 2021 and 21st June, 2021 have been correctly recorded. There is no retraction of statement dated 25th June, 2021. As per GSTR-2A of applicant the amount of ITC availed by applicant in respect to three firms is total taxable value in Rs.990.17 Crores. The custodial interrogation of applicant is necessary. The legal provisions are dealt with in several decisions. The submission of learned counsel for applicant about power of arrest and taking cognizance of offence are deviod of merits in the light of provisions of ACT.

11. In the light of the factual matrix of the case and investigation conducted by the respondents, I do not find that the applicant have made out case for granting relief under Section 438 of Cr.P.C.

12. Hence, I pass the following order :-

ORDER

Anticipatory Bail Application No. 2030 of 2020 is rejected and stand disposed of accordingly.

(PRAKASH D. NAIK, J.)

13. At this stage learned counsel for the applicant on instructions submits that the applicant proposes to move the Apex Court to seek appropriate relief and hence interim protection granted by this Court may be extended by two weeks.

14. The submission is opposed by learned counsel for the respondents. However, considering the submission of learned counsel for the applicant, interim protection granted by this Court is extended by a period of two weeks from the date of uploading of this order.

(PRAKASH D. NAIK, J.)