IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2267 OF 2021

Naitik Paresh Mawani ... Applicant
versus
The Superintendent, O/o.Commissioner of CGST and C.Ex. Mumbai and another ... Respondents

AND
ANTICIPATORY BAIL APPLICATION NO.2269 OF 2021

Paresh Anubhai Mawani ... Applicant
versus
The Superintendent, O/o.Commissioner of CGST and C.Ex. Mumbai and another ... Respondents

Mr.Brijesh Pathak, Advocate for Applicants.
Mr.S.H.Yadav, APP, for State.
Mr.J.B.Mishra with Mr.Ashutosh Mishra for Respondent no.1.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd September 2021

PC :

1. The applicants in both these applications are apprehending arrest in connection with Summons No.GEXCOM/AE/FU/672/2021-AE, dated 17th September 2021. The case of prosecution is as follows:-

(i) On the basis of intelligence, the office of Central Goods and Service Tax (`CGST' for short) and Central Excise initiated investigation against a firm involved in trading of pharmaceutical products. Verification of the suppliers of the firm was done, which revealed that some firms being fictitious/dummy/non genuine. During investigation of such fictitious firms, substantial evidence was collected. Statements of persons involved in chain of fake ITC and on the basis financial transactions were gathered, which revealed active role of Naitik Paresh Mawani in business transactions of fictitious firms. Summons dated 30th July 2021 was issued to him;

(ii) The applicants did not respond. M/s.Unique Pharma Chem falling under the jurisdiction of Respondent no.1, was registered in the name of Mr.Harshil Atul Mehta as proprietor. The officers of respondent no.1 visited the place of business of Unique Pharma Chem and residential address of Harshil Atul Mehta on 30th July 2021. The premises were found locked. One Sameer who looks after the work of loading and unloading of Unique Pharma Chem was contacted. He refused to visit the premises. The premises were not opened. The care taker forwarded letter dated 30th July 2021 informing that Naitik Mewani is the owner of Unique Pharma Chem;

(iii) Harshil Mehta is having mild mental retardation. It is not possible for him to operate and manage any business or firm. Statements of mother of Harshil Mehta and Naitik Mawani were recorded on 30th July 2021. Smt.Mehta had stated that Paresh Mewani and Naitik Mewani had taken personal documents from them, like PAN card, Aadhar card etc. of Harshil Mehta, for opening a firm and opening accounts in the name of Harshil Mehta. All the activities of Unique Pharma Chem are managed by Paresh Mawani and Naitik Mawani. Harshil Mehta is dummy person in Unique Pharma Chem. They shared personal documents like PAN card, aadhar card and other residential address for opening firms and bank accounts and none of her family members are engaged in business and does not operate any of the firms registered in their names. Paresh Mawani and Naitik Mawani are the persons who operate and manage the business of the firm;

(iv) There are three firms registered using her family members' documents, however, all the three firms are operated and managed by Paresh Mawani and Naitik Paresh Mawani;

(v) From GST registration of Unique Pharma Chem, it is seen that its registered mobile number is 9372964449 and e-mail ID is heetoverseas01@gmail.com. On data analysis it was found that e-mail was used in GST registration of M/s.Global Pharma Chem and applicant Naitik Mawani is the proprietor and mobile number was used by himself, which was confirmed by him in his statement dated 13th August 2021. Further, on the basis of data analysis, 15 firms suspected to be non-genuine were traced that share the common mobile number or common e-mail ID. All the 15 firms have been registered using e-mail or mobile number of Naitik Paresh Mavani or his father Paresh Mavani;

(vi) Thee-mail of Chartered Accountant Chetan Tak is registered in two firms. His statement was recorded on 16th July 2021 and he stated that Paresh Mawani and Naitik Mawani have instructed him and his son for CGST related work of eight out of fifteen firms;

(vii) On inquiry with applicants about payment of Rs.50,000/- from the bank account of Unique Pharma Chem to

M/s.Befikar Holidays on 17th September 2020 for travel by applicant ad his wife to Bangalore, it was stated that he does not know who has made the payment. There are transactions of crores of rupees in the bank statement of M/s.Unique Pharma Chem and other firms. The amount was withdrawn and/or used by Naitik Mawani and his family members. The mobile number/e-mail ID in bank accounts of dummy firms belongs to Naitik Mawani. In statement dated 12th August 2021 Naitik Mawani denies having any personal e-mail ID. In statement dated 13th August 2021 he accepted operating e-mail ID mavani.priti.paresh@gmail.com, naitik.paresh.mavani@gmail.com. He is not aware as to how he got access of the e-mail IDs;

(viii) In statement dated 13th August 2021 applicant Naitik Mawani stated that he is not aware of transactions of crores of rupees from the bank accounts of Unique Pharma Chem and M/s.Avion Pharma Pvt.Ltd, in which he is a Director. He stated that he has not contacted Mr.Vinod Pandhari Gaikwad, proprietor of M/s.Life Care Pharma, since last six months. In the statement dated 1st July 2021 he stated that he had visited the office of Respondent no.1 regarding revocation of cancellation of GST registration of M/s.Life Care Pharma on request of Mr.Vinod Pandhari Gaikwad;

(ix) The statement of Paresh Mawani was recorded and he accepted that business activities of four firms out of fifteen firms are looked after by him with the assistance of Naitik Mawani.

2. The applicants preferred application for anticipatory bail before the Court of Sessions, which has been rejected by order dated 16th September 2021.

3. Learned advocate for applicants submitted that the applicants are willing to co-operate with investigation. They are ready to attend office of Respondents. The applicants are father and son. The applicants are falsely implicated in this case. The CGST Act, 2017 is a special act containing mechanism for demand of tax not paid or credit of refund erroneously taken. The procedure prescribed under the Act takes into account the principles of natural justice and determination of disputed amounts by quasi judicial proceedings, by issuing show cause notice, opportunity of reply, adjudication etc.. Section 136 of the Act provides personal hearing. The procedure cannot be bypassed by pressurizing the applicants to make deposit. The goods received or supplied are against GST paid invoices and there is no reason to doubt such invoices. The payment of tax paid invoices are made through proper banking channel, as required under the statutes. The transactions including purchase, sale and export are duly accounted for in books of accounts. The applicants cannot be subjected to arrest. Section 70 of the Act provides that the proper officer has the power to summon any person. The respondents are not proper officers. Proceedings are required to be initiated by show cause notice. No amount can be recovered from the applicants. The CGST Act being taxing statute, provides all eventualities which includes recovery of tax. The adjudication proceedings would prove that the transactions were genuine. Any allegation without issuance of show cause notice would be of conjectures and surmises. Section 132 of the Act provides that each transaction offending any of the provisions of Section 132, would be an office. The basic criteria for determining whether an offence is cognizable of non-cognizable, bailable or non-bailable, is only the amount of disputed tax alleged to have been evaded or utilized as

input tax credit. Sections 73 and 74 of the Act provides the manner in which tax is to be determined, which is possible by issuing show cause notice and adjudication. The applicants have co-operated with investigation. Learned counsel for applicants has relied upon decision in the case of **Prasad Purshottam Mantri Vs. Union of India (2019{29}G.S.T.L.647 {Bom})** and **Hanumanthappa Pathrera Lakshmana Vs. State, Senior Intelligence Officer, D.G. of GST Intelligence, Bengaluru (2020{38}G.S.T.L.447 {Kar})**.

4. Learned counsel for respondent no.1 opposed the application. He submitted that there is voluminous evidence to show involvement of applicants. They have not co-operated with investigation. Crores of rupees have came to the accounts of applicant in ABA No.2267 of 2021. The transaction is of Rs.300 crores. There is evasion of Rs.13 crores. The applicants are non co-operative and denying the transactions. Both the applicants have floated 17 firms wherein fake invoices of more than Rs.300 crores involved and more than Rs.1500 crores GST has been received/issued. The applicant Naitik Mawani is not acting as a broker but he is the proprietor of Global Pharma Chem. He is also one of the director in Avion Pharma Chem. The activities of both the firms fall under CGST Act. Summons was served upon him. Section 70 of the Act deals with power to give summons to give evidence and produce documents. The applicants were bound to honour the summons. The power to arrest is exercised under reason to believe by competent authority. There are substantial reasons to believe that inquiry with the applicants is necessary. The applicants are influencing the dummy persons, the Chartered Accountant and others. The personal mobile numbers and e-mail ID of the applicants are mentioned in GST registration form

and bank accounts of dummy. The statement of Ms.Alpa Mehta who was a dummy was recorded. The C.A of the applicants have stated that these applicants have asked him for GST related work. The family of applicants have huge banking transactions with dummy firms.

5. I have perused the documents on record. There is sufficient evidence showing involvement of applicants. Their custodial interrogation is necessary. The decisions relied upon by the advocate for applicants are not applicable to the applicants. The statement of Alpa Mehta indicate that accounts were opened in her name and in the name of her son by the applicants. They have obtained their personal documents. Three firms were registered using the name of Smt.Mehta. 15 firms suspected to be non genuine were traced. All the 15 firms were registered by using mobile number or e-mail IDs of applicant or his father Paresh Mawani. The statement of C.A Chetan Tak states that applicants have instructed him and his staff over phone for GST related work of 8 out of 15 firms. There were transactions of crores of rupees in the bank account of Unique Pharma Chem and other firms. The amount has been withdrawn. Mobile number/e-mail ID used for dummy firms belong to the applicants. The applicants have accepted that business activities of four firms out of 15 firms are looked after by them. Section 70 of the Act relates to power to summon person to give evidence and produce documents. The applicants were duty bound to honour the summons as per statutory provisions. The personal mobile number and e-mal ID of the applicants are mentioned in GST registration details and bank account details of the dummy/non-genuine firms. The statement of one dummy proprietor Mrs.Alpa Mehta (relative of

applicant) reveal that actual person behind the firms are Mr.Naitik Mavani and Mr.Paresh Mavani. The C.A of the applicants in his statement stated that the applicants had contacted him for GST related works of these dummy/non-genuine firms. The applicants and their family members have made huge banking transactions with these dummy/non-genuine firms even though they do not have any sale or purchase with these dummy/non-genuine firms. The broker-commission agent in his statement have stated that they contacted applicants for transactions with these dummy-non-genuine firms. The applicants from their personal e-mail ID have made correspondence with CGST officers and other tax payers in relation to GST query of one of dummy firms. Both the applicants have floated 17 dummy on-genuine firms wherein fake invoices valued more than Rs.300 crores approximately involving more than Rs.1,500 crores of GST were involved. The applicants Paresh Mawani has accepted that he is managing the business activies and maintaining four firms wherein two are dummy proprietorship firms.

6. In the light of the aforesaid factual aspects, no case for grant of anticipatory bail is made out.

ORDER

(i) Anticipatory Bail Application No.2267 of 2021 and Anticipatory Bail Application No.2269 of 2021 are rejected.

(PRAKASH D. NAIK, J.)

MST