BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2342 OF 2021

BHUSHAN KAILAS MUSALE ….Applicant.
V/s
THE UNION OF INDIA AND ANR. …..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2344 OF 2021

SANDEEP RAMSEVAK GUPTA …. Applicant.
V/s
THE UNION OF INDIA AND ANR. …..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2343 OF 2021

ASHISH DEOKINANDAN KANODIA ….. Applicant.
V/s
THE UNION OF INDIA AND ANR. …..Respondents

Mr. Niteen Pradhan, a/w Mr Shahen Pradhan, Mr Sanjay Trivedi i/b Mr. Ameya Mahadik, Ms. Tanvi Tapkire and Mr. Anthony Nadar for the Applicants.
Mr. Jitendra B. Mishra with Mr. Ashutosh Mishra for the Respondent No.1/Union of India.
Ms. Rutuja Ambekar, APP for Respondent No.2/State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 01, 2021

P.C.:-

1] All these Applicants are seeking pre-arrest bail as they are apprehending arrest under Section 69 of the Central Goods and

Services Tax Act, 2017 (For short “CGST Act”). Allegations against the Applicants are, they have committed an offence punishable under Sections 132(1)(b) and (c) of the CGST Act.

2] Applicant Bhushan, son of Kailas Musale is alleged to be employee of another Applicant Ashish Kanodia. Ashish is working as accounts manager and also shareholder of M/s. Green Shield Enterprises Pvt. Ltd. Applicant Bhushan is alleged to be proprietor in a dummy firm namely M/s. Purva Goods Carrier. It is alleged that said firm of Applicant Bhushan mainly involved in transportation of goods.

3] Respondent, based on intelligence inputs as to involvement of certain companies in issuance and receipt of bogus/fake invoices, carried out search at premises of various companies including M/s. Green Shield. During search it was observed that M/s. Green Shield, M/s. Krishna Company, M/s. Green Financial Services Pvt Ltd., M/s. H. N. Care Products Pvt. Ltd. and M/s. Riddhi Siddhi Solar Pvt. Ltd. were operating from the very same premises viz. Room No. 5, first floor, Hetal Apartment, N S Road, Mulund West, Mumbai – 400080. During investigation, it is noticed that Mrs. Arti wife of Applicant Ashish Kanodia and one Sudhir Goyal are the directors of M/s. Green Shield and Ashish is shown to be working as accounts manager who is managing day to day affairs and activities of the said company. M/s. Green Shield claims to be in the business of trading in fabrics from the following firms/companies:

- **i.** AT Trade Overseas Pvt. Ltd.
- **ii.** HK Enterprises
- **iii.** Casabella Trading Private Limited
- **iv.** Devadattam Multitrade Pvt. Ltd.
- **v.** Intelligent Experts Multitrade P. Ltd.
- **vi.** Jai Hanuman Enterprises
- **vii.** Kashish Multitrade
- **viii.** R & A Enterprises
- **ix.** Udhav International Pvt. Ltd.
- **x.** Vibgyor World
- **xi.** Zenex Trading Pvt. Ltd.
- **Xii.** Raghav International
- **xiii.** Tanishi Tradewell Pvt. Ltd.

4] During search, M/s. Vedant Tempo Service, M/s. Siddhivinayak Transport Company, M/s. S. S. Transport and M/s. Purva Goods Carrier it is noticed that they were shown to be engaged in transportation of goods for M/s. Green Shield. In investigation, since, the aforesaid transport companies were found to be either dummy or non-existent, primary investigation revealed that Applicant Bhushan has carried out all paperwork for aforesaid transactions. It is also noticed that Bhushan's wife used to sign bogus lorry receipts for M/s. Siddhivinayak Transports, M/s. Vedant Tempo Service. Said Applicant Bhushan used to report to Applicant Ashish Kanodia.

5] Since the firm of Ashish namely M/s. Green Shield was also into business with M/s. Bombay Rayon Fashions Ltd, upon enquiry, M/s. Bombay Rayon also found involved in getting undeserving tax benefits based on bogus/fake invoices.

6] As a consequences of above, Applicants are booked for the offence punishable under Sections 132(1)(b)&(c) of the Central Goods and Services Act, 2017 (For short 'CGST Act'). Applicant Sandeep Gupta, a chartered accountant by profession is working in close association with co-accused Ashish alleged of hatching conspiracy alongwith Ashish and co-accused Bhushan.

7] The contention of the Applicants is, procedure to be followed in the matter of scrutiny of details, audit, issuance of show cause notice, assessment and fastening of liability for payment of tax is admittedly not taken recourse to by Revenue. Hence, there is hardly any material on record to infer prima facie involvement of the Applicants in the offence alleged. It is further claimed that Applicants are willing to cooperate with the authorities in the investigation of the crime, as has been alleged, however, protection is warranted. Applicants have sought support from the Division Bench Judgment of this Court in the matter of *Daulat Samirmal Mehta vs. Union of India through the Secretary and Others* reported in **2021 SCC OnLine Bom 200** so as to substantiate the contention that assessment of tax liability should precede the criminal action.

8] While countering the aforesaid submissions, Counsel for the Respondent No.1 would urge that involvement of the Applicants in the crime in question is quite apparent from the fact that the Applicant-Ashish was the Accounts Manager in all five Companies of which admittedly two Firms i.e. M/s Green Shield and M/s Krishna were managed under his stewardship. It is claimed that one of the Directors has given statement that it is the Applicant -Ashish who was exclusively managing the said Firms. These two Firms and other three Firms as are named in the reply were claimed to be managed by the Applicants who have received forged tax credits based on the invoices which were never found to be genuine. It is further contention of Respondent No.1 that in all 12 shell Companies of which two only were found to be genuine, are used for the purpose of generating business on record and drawing undeserving tax benefits. As such, it is claimed that Applicants' prima facie involvement can be inferred.

9] Considered submissions.

10] During the course of investigation of the offence, as alleged against the Applicants, it is noticed that the Applicant – Ashish was managing these five Companies viz (i) M/s Green Shield Enterprises Pvt Ltd. (ii) M/s Krishna Company, (iii) M/s Dashabahu Multitrade Pvt. Ltd. (iv) M/s Tanishi Tradewell Pvt. Ltd and (v) M/s Pradhavi Multitrade Pvt. Ltd., whereas one of the Companies i.e. M/s Green Shield Enterprises is claimed to have purchased fabrics and cloth from 13 Companies viz. (i) AT Trade Overseas Pvt. Ltd. (ii) HK

Enterprises, (iii) Casabella Trading Private Limited, (iv) Devadattam Multitrade Pvt. Ltd., (v) Intelligent Experts Multitrading P. Ltd. (vi) Jai Hanuman Enterprises, (vii) Kashish Multitrade, (viii) R & A Enterprises, (ix) Udhav International Pvt. Ltd. (x) Vibgyor World (xi) Zenex Trading Pvt. Ltd., (xii) Raghav International and (xiii) Tanishi Tradewell Pvt. Ltd. Of these 13 Companies but for AT Trade Overseas Pvt. Ltd. and H.K. Enterprises, whereabouts of rest of the Companies are not traceable. As such, it is claimed that undeserving tax benefits are drawn by the Applicants which are further passed on to M/s BRFL. Though it is claimed that first assessment has to be made against the Applicants so as to find out remission of tax liability, fact remains that the assessment proceedings and the criminal proceedings can go hand-in-hand as is apparent from the judgment of Telangana High Court in the matter of *P.V. Ramana Reddy vs. Union of India* reported in **2019(25) G.S.T.L. 185 (Telangana)**, so also judgment of the Apex Court in the same matter in Speical Leave to Appeal (Crl.) 4430 of 2019. This Court has also taken a similar view while dealing with Bail Applications that proceedings parallel to the assessment in the form of criminal investigation can be taken recourse to by the Revenue. As such, contention that Applicants ought not to have been proceeded against in the absence of assessment proceedings does not hold any substance. In the light of the law laid down in the matter of *Daulat* cited supra, option was given to the Applicants to co-operate with the Revenue by depositing an amount of Rs 54.55 crores to which they have not agreed to. As such, having regard to the investigation carried out till date which reflects prima facie involement of the Applicants in drawing undeserving tax benefits, no case for grant of pre-arrest bail is made out. Applications as such stand rejected.

11] In the wake of the Division Bench Judgment of this Court in the matter of *Daulat* cited supra and the fact that the issue is pending before the Apex Court, ad-interim protection ordered by this Court is continued for a period of two weeks from the date of uploading the order, though opposed by the Revenue.

12] Applications are disposed of.

(NITIN W. SAMBRE, J.)