IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2537 OF 2021

Ronak Soni ..Applicant
Versus
The State of Maharashtra and Anr. ..Respondents

Mr. Rizwan Merchant i/by Mr. Bhavesh Thakur, Advocate for the Applicant.
Mr. M. G. Patil, APP for the Respondent – State.
Mr. Jitendra B. Mishra a/w Mr. Dhananjay B. Deshmukh, Advocates for the Intervenor.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th OCTOBER, 2021

P.C.

1. The prayer of the applicant for grant of anticipatory bail moved before the learned Sessions Judge in proceeding F. No.V/AE/MC/TF-II/Swara/89/2021 is rejected vide reasoned order dated 12.10.2021.

2. The applicant has invoked jurisdiction of this Court seeking prayer for anticipatory bail.

3. The case of the revenue against the applicant is that the applicant has passed illegal tax credit from such companies which are only existed on papers and not physically.

4. In the aforesaid background, while trying to make out case for grant of bail, Mr. Merchant, learned counsel for the applicant would strenuously urge that section 25 of the GST Act provides for procedure of registration. The procedure contemplates that registration is to be granted based on KYC documents, viz. Aadhar Card, Address proof etc.. According to him, it is only after verification of aforesaid documents, registration is granted to such firms (five companies). Applicant has dealt with these companies since 2017-2020. Learned counsel would then urge that if the alleged illegal tax credit availed of is below Rs.5 Crores, then the offence is bailable and same is always subject to the assessment against the applicant in which the show-cause notice is contemplated. He would further urge that in the absence of assessment of the liability as regards the illegal tax credit availed by the applicant, the applicant cannot be taken into custody for custodial interrogation.

5. His further contention is that the companies with whom the applicant has dealt with are holding registration certification under the GST and till date department has not proceeded against these companies for cancellation of their registration certificate. His further contentions are, entire dealings of the applicant were operated on the portal and same is available with the revenue. That being so, the custodial interrogation of the applicant is not warranted.

6. While resisting, learned counsel for the revenue would urge that custodial interrogation of the applicant is very much justified in this case, as transactions shown to have been done for which illegal tax input credit is drawn is only for the purpose of generating tax credit. According to him, even if the documents relating to applicant's GST transactions are available, however, as the firms with whom the applicant has entered into transactions for levelling such illegal input tax credit, are not in existence. The custodial interrogation is necessary so as to find out who is behind the operation of such fake companies.

7. As such, according to him, custodial interrogation is necessary.

8. Considered submissions.

9. Mr. Merchant is justified in claiming that the companies with whom the applicant has dealt with and from whom he has availed tax input credit, were granted registration certificate. He could also be justified in claiming that the documents relating to such transactions in availing input tax credits are available with the department.

10. However, during the inquiry in the State of Karnataka, so also in Bombay, it revealed that the five firms with whom the applicant has dealt with and has availed input cash credit are not

physically in existence as was found on physical verification.

11. As such, it can be noticed that even if the applicant claimed to have transactions with the companies, custodial interrogation is necessary so as to find out who was operating such fake companies and further investigation as to the whether such fake firms are in operation. In my opinion, there is substance in the contention of the learned counsel for the revenue, particularly in the verification reports stating that the five firms with whom the applicant has dealt with are not physically in existence. That being so, in my opinion, no case for grant of bail is made out.

12. Hence, the application stands rejected.

[NITIN W. SAMBRE, J.]