

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL NO.11651 OF 2021

Sonam Berlia

....

Petitioner

Mr. Asok Mohanty, Sr.Advocate

-versus-

***The Senior Intelligence Officer,
D.G. of GST, Bhubaneswar***

....

Opposite Party

Mr. Choudhury Satyajit,
Senior Standing Counsel (CGST)

CORAM:

MR. JUSTICE D.DASH

ORDER

25.11.2022

Order No.

05. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
2. The Petitioner by filing this Application under section-438 of the Code of Criminal Procedure has prayed for grant of anticipatory bail in connection with 2(C) C.C. No.328 of 2021 arising out of DGGI/BbZU/ INV/110/GST/2018 for offence under section-132(2) of the CGST Act for violation of the offence under Section-16 of the said Act pending in the Court of S.D.J.M., (Special), Bhubaneswar.
3. Learned Senior Counsel for the Petitioner submitted that the prosecution allegations which have given rise to the lodging of the complaint is that since the year 2016, the husband of this Petitioner namely, Rohit Berlia was managing the business of M/s. Arshee Venture, the proprietorship concern standing in the name of this Petitioner which is engaged in trading of sponge iron, iron scrap and billets and is stated that the husband of the Petitioner who is the co-accused in the case was in-charge of the

business and the authorized signatory, looking after the business transactions. Inviting the attention to the Court to the report addressed to the Court while forwarding the husband of the Petitioner (co-accused) to the Court, he submitted that from the materials collected in course of investigation, it has come to surface that said accused who happens to be the husband of the Petitioner used to sign most of the documents including invoices issued by M/s. Arshee Venture and he received all amount and the payments and liaised with the parties for all such supply and purchase and now, it is said that fake transactions have been made on pen and papers as to the supply and purchase of the goods by different Firms in order to avail the Input Tax Credit (ITC) and that too has been availed which the Petitioner, her husband as also others have stated. He further submitted that in course of investigation, it has also been found out that the husband of this Petitioner was solely handling the entire business of the said proprietorship concern in the capacity of being the authorized signatory and this Petitioner had absolutely no such knowledge which too has been admitted by the husband of the Petitioner. He also submitted that in view of all these above, the likely arrest and detention of the Petitioner in the case which has been initiated for availment of fraudulent Input Tax Credit by M/s. Arshee Venture on the allegation that by issuing several invoices in favour of non-existing /fake Firms without physical receipt of goods/services would be sheer harassment to the Petitioner serving no useful purpose when in the meantime, the case being based on documentary evidence, all those documents have been taken into custody by the Investigating Agency and the co-accused Rohit Berliah who is the husband of this

Petitioner, having remained in custody for about five (5) months has been released on bail by order dated 11.01.2022 in BLAPL No.883 of 2021. He further submitted that the Petitioner having been provided with the interim protection by the order passed by this Court on 29.09.2021 has been abiding by the conditions imposed for the said purpose. In view of all these above; he urged for grant of anticipatory bail to the Petitioner as according to him, at this stage, no useful purpose would be served by the detention of the Petitioner in custody when the co-accused mainly the husband of the Petitioner is enjoying liberty.

4. Learned Senior Standing Counsel for the CGST submitted that the Petitioner being the proprietor of the Firm, M/s. Arshee Venture as has been found from the materials, has also played definite role in collusion with her husband namely, Rohit Berlia and she has received fake invoices without actual receipt of goods/services in collusion with said accused and thus they have availed fake Input Tax Credit of Rs.7.30 crore and have utilized the same for discharge the liabilities with intention to defraud the State exchequer. He submitted that the co-accused Rohit Berlia, the authorized signatory, partner of M/s. Arshee Venture has also admitted the above quantum of availment of fake Input Tax Credit in his statement and that quantum is also not disputed by this Petitioner. It was submitted that the Petitioner is still liable to pay balance wrongful avail Input Tax Credit of Rs.5.82 crore along with interest @ 25% on Rs.7.30 crore and applicable penalty. With all these above, contending that this being a case of Economic offences of significant magnitude, he urged that anticipatory bail to the Petitioner be not granted.

5. Keeping in view the submissions made and on going through the records as placed, it is seen from the very complaint lodged by the GST Officials in connection with the case, that the husband of the Petitioner namely, Rohit Berlia was mainly managing the business of his wife Smt. Sonam Berlia, the present Petitioner in respect of her proprietorship concern M/s. Arshee Venture which of course may not be the ground at this stage to take a final view on the matter as urged by the learned Senior Counsel for the Petitioner as that would be within the domain of the Trial Court.

In course of investigation, the husband of this Petitioner who is the co-accused had been arrested in the case and he has finally been released on bail by the order passed by this Court dated 11.01.2022 passed by this Court in BLAPL No.8831 of 2021. The Petitioner in her letter dated 17.08.2021 has apprised the GST Officials that her business were being entirely handled by her husband in the capacity of authorized signatory and she had no any knowledge about the same, which too stands admitted by the husband of the Petitioner in his statement recorded on 23.07.2021. The case is entirely based on documents and most of the relevant papers are stated to have been seized and verified and are in custody of the CGST Authorities. This Petitioner has not yet been arrested and the co-accused who happens to be her husband is enjoying liberty. The Petitioner is a lady of 33 years of age and is a permanent resident of the District of Sambalpur and no such materials are placed which are suggestive of the scope on her part to flee from justice whom, at this stage, tampering of the documents at her behest also appears to be a remote possibility.

6. In the obtained facts and circumstances as also the situation it stands at present; this Court is not in a position to repel the submission of the learned Senior Counsel for the Petitioner that the likely arrest and detention of this Petitioner would serve no useful purpose. Accordingly, it is directed that in the event, the Petitioner surrenders before the Court in seisin of the case within a period of three weeks hence and moves for her release on bail; she shall be released on bail on such terms and conditions as deemed just and proper by the Court in seisin of the case with further conditions that she will appear in person before the Trial Court as and when so directed; would surrender her Passport before the said Court and in case she has not been issued with any such Passport; she shall furnish an affidavit indicating that fact as well as stating her present and permanent address as also contact cell phone number(s) and in case of any change would further intimate the same in the that manner.

Violation of condition(s) shall entail cancellation of bail.

7. The ABLAPL is accordingly disposed of. .
Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**