Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 659 OF 2022

Suresh Hukmat Rai Jadhwani ...Applicant

Versus

Union of India through Directorate General of GST Intelligence & Anr. ...Respondents

Mr. D. S. Joshi, for the Applicant.
Mr. Jitendra Mishra, a/w Mr. Ashutosh Misthra, for Respondent no.1.
Ms. P. N. Dabholkar, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED : 4th JULY, 2022

ORDER:-

1. Apprehending arrest pursuant to summons issued under Section 70 of the Central Goods and Services Tax Act, 2017 ("the CGST Act, 2017"), the applicant has preferred this application for pre-arrest bail.

2. Pursuant to an intelligence report that Shri. Pintu Itkare (co-accused), the proprietor of M/s S. B. Sales Corporation, was indulging in availing and passing of fraudulent Input Tax Credit (ITC), a search was conducted on 4th and 5th March, 2021. It transpired that co-accused Pintu Itkare was working for the applicant herein. It was further revealed that 18 firms were created by the applicant for the purpose of passing ITC without actual supply of goods in contravention of Section 16 of the CGST Act, 2017. Those 18 firms, allegedly, indulged in issue of fake bills without actual supply of goods and availed ITC to the tune of Rs.46.50 Crore (approximately) and further passed on ITC amounting to Rs.41.91 Crore (approximately) without actual supply of goods. The applicant did not appear in response to the summons.

3. The applicant preferred an application for pre-arrest bail which was rejected by the learned Additional Sessions Judge, Nashik, by an order dated 9th September, 2021. In connection with State GST case, the applicant preferred an application, being Anticipatory Bail Application No.2275 of 2021 in this Court. By an order dated 25th November, 2021 this Court disposed of the said application with the direction that, in the event, the respondent finds it necessary to arrest the applicant in connection with File No. ACST/INV-D-002/2021-22/B-/2019 and in connection with summons issued therein, under Section 70 of the M.G.S.T. Act, the applicant be given 72 hours advance notice. Armed with the said order, the applicant again preferred an application for pre-arrest bail before the learned Additional Sessions Judge, Nashik. The learned Judge was persuaded to again reject the application holding that, *inter alia*, there was no change in circumstances.

4. The applicant has moved this Court. When this application was listed before the Court on 11^{th} March, 2022, this Court was persuaded to grant interim protection in the nature that no coercive steps shall be taken against the applicant subject to the condition that the applicant reports to the Senior Intelligence Officer, under the Directorate General of Goods and Services Tax at Nashik, on 21^{st} March, 2022 and 22^{nd} March, 2022 and as and when called.

5. An affidavit-in-reply is filed on behalf of respondent No.1.

6. I have heard Mr. Joshi, the learned counsel for the applicant and Mr. Jitendra Mishra, the learned counsel for the respondent No. 1, at some length. With the assistance of the learned counsels, I have perused the material on record.

7. The learned counsel for the applicant submitted that in an identical action initiated by the State GST authorities, this Court has already protected the applicant by an order dated 25^{th} November, 2021. The same dispensation deserves to be made available in this proceedings as well, as only a summons under section 70 of the CGST Act, 2017 has been issued. It was further submitted that the authorities have yet not determined the liability for the alleged evasion of tax. Since, there is no demand notice, the applicant cannot be proceeded again. In any event, from the assertion in paragraph 19 of affidavit in reply, the applicant has benefited to the tune of Rs.3.5 Crore only. If that is the quantum of the liability fastened upon the applicant, the offence would be bailable. It was further submitted that the thrust of the respondent No.1's case is that the applicant has not maintained the books of accounts. However, the applicant is not statutorily enjoined to maintain books of accounts.

8. Mr. Jitendra Mishra, the learned counsel for the applicant, joined the issue by canvassing a submission that none of the aforesaid grounds are worthy of consideration for exercise of discretion in favour of the applicant. It is not the requirement of law that fist information report should be first registered before action is initiated under the CGST Act, 2017. Nor a demand notice is peremptory as submitted on behalf of the applicant. Mr. Mishra would further urge that the applicant has not cooperated with the investigation, and gave evasive replies. The investigation, as of today, has revealed the complicity of the applicant in as much as 21 fake entities have been identified, which have been created on the basis of the documents supplied to the applicant. Moreover, there are monetary transactions reflected in the accounts of the applicant establishing the nexus with those fake firms. In the circumstances, custodial interrogation is indispensable.

9. I have given anxious consideration to the aforesaid submissions.

10. The respondent No.1 has adverted to the facts, which have allegedly been unearthed, during the course of investigation, in the affidavit-in-reply in detail. The *modus operendi* is adverted to, the names of the fictitious firm have been furnished, with the details of transactions, *prima facie* establishing the nexus of the applicant with those firms. The money trail is indicated in paragraphs 19.5 and 19.6 of the affidavit in reply. In paragraph 20, the respondent has culled out the tentative out come of the investigation so far, to the effect that 21 fake entities, including M/s Prakash Steel, M/s Agarwal Enterprises and M/s Shivkiran Steel Private Limited, (with reference to whom specific details have been furnished) have been identified, which were created for passing on ITC to other entities without actual supply of goods in contravention of Section 16 of the CGST Act, 2017. All these entities have availed ITC amounting to Rs.57.61 Crore (approximately) and further passed on ITC amounting to Rs.52.95 Crore (approximately). It is further asserted that those entities were created by making fraudulent use of the documents supplied by persons for securing jobs. Reference is made to the statements of the persons, who control few of the aforesaid entities. The affidavit-in-reply also adverts to the ambivalent stand taken by the applicant as regards the relationship with co-accused Itkari and the transactions which have been reflected in the statements of account of the applicant and his family members.

11. The situation which thus, *prima facie*, obtains is that there is material to show that as many as 21 fake entities have been created to avail and further pass on ITC without the underlying transactions of sale and delivery of goods. The allegations are such that they warrant custodial interrogation. Mere presence of the applicant, before the authorities, or for that matter, the willingness of the applicant to cooperate with the investigation cannot serve the purpose of facilitating effective investigation and unearthing the fraud in all its facets.

12. Mr. Mishra, the learned counsel for the respondent No.1. was justified in placing reliance of a judgment of this Court in the case of ***Mr. Ashok Kumar s/o Shri. Chandrapal Singh and other vs. Commissioner CGST & Central Excise, Navi Mumbai Commissionerate and another***[1]***,*** wherein this Court had

1 LD/VC/ABA NO.319/2020.

repelled the submission that unless the returns are verified and liability determined, prosecution cannot be lodged. This Court also found no substance in the submission that lodging a first information report is a condition precedent. The observations in paragraphs 14 and 15 are material and hence extracted below:

> "**14**. Let me now deal with the applicants' contention that, unless returns GSTR-3B are verified and liability is determined, prosecution cannot be lodged. Chapter-XIX of the CGST Act, spells out offences committed by the registered person and penalties to be imposed; whereas, Chapter-XII lists out, modes of "assessments". Section 2(11) of the Act, defines expression "assessment" which reads as under:
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> > "Assessment" means determination of tax liability in this Act and includes self-assessment,re-assessment, provisional assessment,summary assessment and best judgment assessment.".
>
> Upon reading the provisions contained in Chapter-XIX, it may be stated that scheme of the Act, does not make provisions of Section 122 to 138 applicable, subject to "assessment". Both the Chapters, i.e. Chapter-XIX and Chapter-XII are distinct and application of the provisions thereunder are distinct and not subject to each other. If argument of applicants is accepted, it will turn the provisions of the prosecution nugatory. Therefore, this contention is also rejected.
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> **15**. Mr. Saraogi's next contention is that,registration of FIR is a condition precedent for arresting the person, also deserves no consideration.

> Section 69 of the CGST Act empowers Commissioner to order and authorize to arrest a person if he has "reason to believe" that person has committed any offence specified in Clause (a) or Clause (b) or Clause (c) or Clause (d) of sub-section (1) of section 132 which is punishable under Clause (i) or (ii) of sub-section (1) or sub-section (2) of the said Section. Herein, facts emerged from file notings do suggest that Commissioner has had, reason to believe, the applicant's complicity in committing the offence under Clause (b) and (c) of sub-section (1) of Section 132 of the CGST Act. I have culled out the facts emerging from the notings herein above."

13. Mr. Mishra, the learned counsel for the respondent No. 1, invited the attention of the Court to a number of orders passed by this Court wherein in the backdrop of the allegations of creating fake entities to avail and pass of ITC without actual supply of goods, this Court has refused to exercise the discretion namely ***Dev Adania vs. State of Maharashtra & Anr***[2] and ***Ajjimullah Naim Choudhary & another vs. The State of Maharashtra,***[3] ***Naitik Paresh Mawani vs. The Superintendent, O/o. Commissioner of CGST and C.Ex. Mumbai & Anr.***[4] and ***Bhupendra Majethia S/o. Hargovind Majethia vs. The superintendent (A.E) & Anr.***[5]

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2 Anticipatory Bail Application No.2030/2021, dtd.23/9/2021.
3 Anticipatory Bail Application No.1087/2022, dtd.21/4/2022.
4 Anticipatory Bail Application No.2267/2021, dtd.23/9/2021.
5 Anticipatory Bail Application No.2270/2021, dtd.23/9/2021.

14. For the foregoing reasons, I am inclined to hold that there is *prima facie* material to warrant interrogation of the applicant. The allegations are such that without personal interrogation of the applicant, fraud cannot be unearthed completely. Thus, I am persuaded not to exercise the discretion in favour of the applicant.

15. Hence, the following order.

: O R D E R :

(i) The application stands rejected.

(ii) Interim protection stands vacated.

[N. J. JAMADAR, J.]