IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.114 OF 2022

(NITIN MOHANLAL TAORI....VS.. STATE OF MAH. THR. PSO PS KHAMGAON CITY, DIST. BULDHANA.)

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri Anil Mardikar, Sr.Adv. a/b. Shri Sumit Joshi & Shri Digvijay Singh, Advocates for Applicant.
Shri Sagar Ashirgade, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 10, 2022.

1. Heard.

2. On the allegation that to obtain exemption in payment of Goods and Services Tax (GST) a fabricated and bogus affidavit was submitted as a disclaimer and it was pretended that it was submitted in the Inward Section of the Department by putting a forged signature of Inward Clerk, though it was never submitted, Crime No.69 of 2022 was registered with Khamgaon City Police Station, District : Buldana for the offences punishable under Sections 467, 468, 469 and 471 of the Indian Penal Code against the applicant who is doing business of Dal Milling.

3. This Court, vide order dated 22/02/2022 granted *ad-interim* protection in view of the interim protection granted by the learned Sessions Judge vide order dated 17/02/2022.

4. Shri Anil Mardikar, learned Senior Advocate points out that the applicant deals in pulses and as per the policy of the Government, if the pulses are not sold by trade name or mark, there is an exemption in payment of GST. According to him, therefore, an affidavit was submitted, which alleged to have forged by the applicant, claiming exemption from payment of GST. Thereafter, on receipt of notice, a response was submitted to the Department, however, no orders were passed in respect of payment of GST. It is pointed out that after transfer of new Assistant Commissioner, the case of the applicant was reopened and as there was harassment, a complaint was made on 4th October 2021 to the higher authorities i.e. Divisional Commissioner and the result of the same is the present F.I.R. to falsely implicate the applicant in the alleged offence.

5. Shri Mardikar, learned Senior Advocate submits that subsequently order directing payment of GST was passed against which an appeal was preferred under Section 107 of the Goods and Services Act, 2017 and as per sub-section (6) of Section 107 of the Act, 10% was also deposited, thereupon order of recovery was stayed under sub-section (7) of Section 107 of the Act. He, therefore, submits that after passing the order directing payment of GST amount, the affidavit, which alleged to have tampered, has lost its relevance as no exemption relying upon such affidavit was granted to the applicant.

Moreover, he submits that as all the documents, submitted by the applicant, are with the Department and which can be obtained, the custody of the applicant is not necessary.

6. On the other hand, Shri Ashirgade, learned A.P.P. strongly opposed the application and submits that the custody of the applicant is necessary to find out whether some more evasion of tax is there at the behest of the applicant. He submits that the counter signature of the Inward Clerk has been forged by the applicant. It is further submitted that to find out the persons who are involved in preparing of such affidavit, which alleged to have forged, the custody of the applicant is necessary.

7. On perusal of the case diary and the contents of the F.I.R., the whole complaint revolves around the affidavit, which according to the complainant is forged one. If the purpose of affidavit is seen, it is clear that it was submitted as a disclaimer to obtain exemption for payment of GST on the pulses sold by the applicant.

8. The prosecution has not pointed out that on relying upon such affidavit any benefit or exemption was granted to the applicant. In fact, discarding the said affidavit, the order directing to pay GST amount was passed and against which appeal is pending.

9. Thus, at this stage, *prima-facie,* I am of the opinion that in view of the subsequent event, i.e. order

passed by the GST Authority to pay GST amount, the alleged forged affidavit has lost its relevance and in any case, custody of the applicant is not necessary in this matter for further interrogation in view of the fact that all the relevant document are in custody of the Department.

10. In these circumstances, I pass the following order:

i) The application is allowed.

ii) Order dated 22/02/2022 passed by this Court, consequent to the orders dated 10/02/2022 and 17/02/2022 passed by the Additional Sessions Judge, Khamgaon on ABA No.80/2022 granting and extending interim pre-arrest bail to the applicant, is confirmed.

iii) The applicant shall attend the concerned Police Station as and when his presence is required.

The application stands **disposed of** accordingly.

JUDGE

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