IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.78 OF 2023

Bal Mukund Vaishnav ..Applicant
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Brijesh Pathak for the Applicant.

Mr. S. V. Gavand, APP for the State.

PI Preetam S. B., Unit XII (Sales Tax), EOW, Mumbai is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 30, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for pre-arrest bail in respect of the offences punishable under Sections 409, 420, 465, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860 (hereafter "the IPC", for short) and under Sections 132(1)(e), (1)(f) and 132(1)(iv) of the Maharashtra Goods and Services Tax Act, 2017 (hereafter "the said Act", for short) in connection with C.R. No.166 of 2019 registered with D.B. Marg Police Station and thereafter transferred to Sales Tax Unit-12 Economic Office Wing, Mumbai vide C.R. No.75 of 2019.

3. The GST department noticed something suspicious about the working of the company by name Sneheshwara Enterprises Private Limited. Sneheshwara Enterprises was run by two directors namely Dilkhush Abdul Jabbar and Vijay Singh Naruka. Accordingly, the witness summons came to be issued. When the informant visited the premises from where the said company was shown to be functional, he found the premises locked. On enquiry with the owner of the premises, it came to light that the owner never let out the premises on leave and license or on rent to anybody named Dilkhush Abdul Jabbar or Vijay Singh Naruka. When confronted with the documents, the owner of the premises Usman Wali Mohammad in his statement said that he has never given the premises on leave and license or on rent and the NOC which was submitted does not bear his signature. The enquiry proceeded and during the course of the investigation, the statement of the Chartered

Accountant Shri Omprakash Hariprasad Ajmera was recorded. In his statement it is indicated that the applicant had approached the firm for the work relating to the formation of private limited company. The name of the directors was to be Dilkhush Abdul Jabbar and Vijay Singh Naruka.

4. Learned counsel for the applicant submitted that the FIR was registered in the year 2019. Pursuant to the notice issued to the applicant, he attended the Investigation Officer on as many as four occasions and co-operated with the investigation. It is submitted that the case rests on documentary evidence. The custody of the applicant is not required. It is further submitted by learned counsel that Section 132(1)(f) of the said Act provides that whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax shall be punishable in terms of what is provided in sub-section (iv) of Clause (1) of Section 132 of the said Act.

5. Learned counsel for the applicant invited my attention to the provisions of Section 132 of the said Act. It is submitted that for the alleged offence the maximum punishment provided is a sentence of imprisonment which may extend to six months or with fine or with both. It is submitted that once the special statute like GST has prescribed the punishment for the offence punishable under the said Act, the provisions of the IPC then cannot be invoked. Learned counsel relied upon the decision of Punjab and Haryana High Court in the case of **Deepak Kumar Vs. State of Punjab**[1] in support of his contention that if a special provision has been made qua a particular subject (in the present case Value Added Tax), the said subject is excluded from the general provisions (in the present case Indian Penal Code).

6. The allegation in the present case is not merely that the applicant has evaded payment of tax or falsified financial records or produce fake accounts or furnished any false information with an intention to evade payment of tax.

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The allegation is that the applicant has produced fraudulent documents and fraudulent NOC while obtaining the registration itself under the said Act. This can be seen from the statement of the owner of the premises.

7. Learned APP submitted that the applicant has not co-operated with the investigation. It is after the statement of the Chartered Accountant was recorded that the involvement of the present applicant came to light. The persons who are shown to be directors namely Dilkhush Abdul Jabbar and Vijay Singh Naruka are factually working as gas cylinder delivery boy and welder in whose accounts the transaction worth Rs.1,35,00,000/- is shown to have taken place. According to the prosecution, it is the applicant who is the person behind Sneheshwara Enterprises Private Limited operating the affairs with these two Directors as fronts. The statement of the Chartered Accountant reveals that it is the applicant who had approached him for the work relating to the formation of the company.

8. Having regard to the nature of the accusations, in my opinion, this is not a fit case to grant relief of pre-arrest bail to the applicant. The anticipatory bail application is rejected.

(M. S. KARNIK, J.)