

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2085 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.09.15
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Omkar Sandeep Shipurkar Proprietor of
Veer Exim

...Applicant

Versus

Asst. Commissioner of State Tax (D-32),
Investigation Branch – A and
State of Maharashtra

...Respondents

Mr. Sujit Sahoo, for the Applicant.

Mr. Rajnath Pathak, Special P.P. a/w Karunesh Mishra, for
Respondent No.1

Mr. M. G. Patil, APP for the State.

Mr. Mankar, Asst. Commissioner, MGST, present.

CORAM: N. J. JAMADAR, J.

DATED: 14th SEPTEMBER, 2023

Order:-

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

2. This is an application for pre-arrest bail in connection with summons/File No. AC (INV-D-032)/Investigation-A/Mumbai/2023-24/-04, issued by Assistant Commissioner of State Tax (D-032) – respondent No.1 under Section 70 of the Maharashtra Goods and Services Tax Act, 2017.

3. The learned Counsel for respondent No.1 submitted that an application for pre-arrest bail under Section 438 of

the Code of Criminal Procedure, 1908 is not maintainable when only a summons under Section 70 of the Act is issued.

4. The learned Counsel for the applicant endeavoured to contest this position. It was urged that the decision of the Supreme Court in the case of *The State of Gujarat Etc. vs. Choodamani Parmeshwaran Iyer & Anr. Etc.*¹ does not preclude consideration of prayer for pre-arrest bail under Section 438 of the Code.

5. I am afraid to accede to this submission. The observations in paragraph No.16 of the judgment of the Supreme Court in the case of *Choodamani Parmeshwarn* (supra) are clear and explicit and the Supreme Court has held, in no uncertain terms, that at the stage of summons, the person summoned cannot invoke Section 438 of the Code. They read as under:

“16. Thus, the position of law is that if any person is summoned under Section 69 of the CGST Act, 2017 for the purpose of recording of his statement, the provisions of Section 138 of Criminal Procedure Code, 1908 cannot be invoked. We say so as no First Information Report get registered before the power of arrest under Section 69(1) of the CGST Act, 2017 is invoked and in such circumstances, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. The only way a person summoned can seek protection against the pre-trial arrest is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India. Undoubtedly, this is exactly

1 Criminal Appeal SLP(Cri) No.4212 – 4213 of 2019.

what the respondents did in the present case. What the respondents sought by filing tow criminal applications under Article 226 of the Constitution before the High Court was the direction to the appellant herein not to arrest them in exercise of the power conferred by Section 69(1) of the GST Act, 2017. This, in essence, is key to prayer for anticipatory bail. However, as we have explained aforesaid, at the stage of summons, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure.”

6. In view of the aforesaid enunciation, the application stands disposed with liberty to the applicant to avail the remedies as permissible in law.

[N. J. JAMADAR, J.]