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

ANTICIPATORY BAIL APPLICATION NO. 2206 OF 2022

Hira Gobind Bhatia ..Applicant

v/s.

State of Central Goods and Service Tax ..Respondents

Mr. Niranjan Mundargi with Mr. Kiran Jadhav, Mr. Vishal Kolekar, Mr. Harsharaj Jagtap i/b. Mr. Shubham Kadam and Mr. Randhir Kale for the Applicant.

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

Mr. Jitendra Mishra with Ms. Sangeeta Yadav and Ashutosh Mishra for the Respondent-CGST.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 6th JULY, 2023.**

P.C.

1. The Applicant, who has been served with summons under Section 70 of the Central Goods and Services Tax Act, 2017 apprehends his arrest in file No. V/AE/Bel/12-432/Amarnath/2021-2022.

2. The Anti Evasion Central Goods and Services Tax Act, Belapur, initiated inquiry against M/s. Amarnath Enterprises, a proprietorship concern of Priyesh Kumar for availing fraudulent Input Tax Credit (ITC) of 14.48 Crores for the period from August 2018 to March 2022. It was revealed that M/s. Amarnath Enterprises had issued fake invoices in favour of fictitious non existing entities without actual purchase and

sale of goods and further passed on fake ITC of Rs.13.31 Crores to various recipients across the country. Priyesh Kumar, the proprietor of M/s. Amarnath Enterprises was placed under arrest. In his statement recorded under Section 70 he stated that he had established the said proprietorship concern on his PAN and registered himself with GST at the instance of the Applicant, the Director of Photo Com Industries (India) Pvt. Ltd., engaged in the business in photographic items, electronics and home appliances products, computer parts and accessories, mobile phones and accessories, and other general items as per the customers requirements. The co-accused Priyesh Kumar stated that he had neither received the goods from the suppliers nor supplied the same to the buyers. He had issued invoices at the instances of the Applicant and that he was paid commission @ 2% to 3% of the value of such transaction.

3. In view of the voluntary statement made by Priyesh Kumar, summons came to be served to the Applicant under Section 70 of the GST Act. Apprehending his arrest, the Applicant filed an application for pre-arrest bail before the learned Sessions Judge, Greater Bombay. The Sessions Judge dismissed the said application mainly on the ground that M/s. Amarnath Enterprises was established at the instance of the Applicant and that the co-accused Priyesh Kumar was acting as per the instructions of the Applicant on receipt of 2% to 3% commission, of the

value of the transaction. It was further observed that the Applicant had inducted Mr. Priyesh Kumar as Director of M/s. Photocom Industries only to facilitate commission of the crime. The learned Judge further observed that the conduct of the Applicant in not disclosing his e-mail id and the password to the department prima facie reveals that the Applicant is trying to conceal the information. The learned Judge held that the Applicant is involved in committing economic offence, which affects the economy of the country. Considering the nature and the gravity of the offence, the learned Judge declined to exercise discretion under Section 438 of Cr.P.C. Hence the present application.

4. Shri Niranjan Mundargi, learned Counsel for the Applicant submits that the Applicant is neither associated with M/s. Amarnath Enterprises nor concerned with transactions of M/s. Amarnath Enterprises. He submits that the Applicant, who is the director of Photokom Industries (INDIA) Pvt. Ltd. has paid all GST of sale and purchases relating to his Company.

5. Mr. Mundargi submits that Mr. Priyesh Kumar was inducted as a Director of M/s. Photokom Industries in the year 2019. Mr. Priyesh Kumar has allegedly availed fraudulent ITC since the year 2018 i.e. much before he was inducted as a Director in Photokom Industries. He submits that the Applicant was never involved in day to day working of

M/s. Amarnath Enterprises or with the management of M/s. Amarnath Enterprises. Hence, the observations of the learned Sessions Judge that M/s. Amarnath Enterprises was established at the instance of the Applicant, are totally erroneous.

6. Learned Counsel for the Applicant further submits that the Applicant is in no way associated with M/s. R.S.Industries and M/s. Shiv Enterprises. He submits that on receipt of the summons under Section 70 of the CGST Act, and pursuant to the interim bail granted by the Sessions Court, the Applicant has co-operated with the investigation and that he has provided all the details to the Department. Learned Counsel for the Applicant therefore submits that no case is made out for custodial interrogation.

7. Per contra, Mr. Jitendra Mishra, learned Special PP submits that the statement of Priyesh Kumar and the other material on record prima facie indicate that the Applicant herein is the main conspirator. He submits that M/s. Amarnath Enterprises was established at the instance of the Applicant. The Applicant had also facilitated registration of M/s. R.S.Enterprises and M/s. Shiv Enterprises, which are non-existent entities. The proprietor of M/s. Amarnath Enterprises had raised fake invoices, without actual purchase and sale of goods and for the said purpose, the Applicant herein had paid to him 2% to 3% commission on

the value of the transaction. He submits that the Applicant has not cooperated with the investigation and has refused to share his email id and the password. In the circumstances, custodial interrogation is essential to unearth the conspiracy.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. A perusal of the records prima facie indicate that an inquiry was initiated against M/s. Amarnath Enterprises, a proprietorship concern of Priyesh Kumar, who allegedly availed fraudulent ITC from fictitious / non-existing entities, and passed on the fake ITC to various recipients. It is alleged that total fake ITC availed and passed on in M/s. Amarnath Enterprises works out to Rs.27.79 Crores. However, no tax recovery could have been made to the Government. Said Priyesh Kumar was summoned and in his statement recorded under Section 70 of the CGST Act. He has stated that he had established M/s. Amarnath Enterprises at the instance of the Applicant on his pan and registered himself with GST.

10. The statement of Priyesh Kumar reveals that the Applicant had also facilitated in establishing other fictitious and fake entities. M/s. R.S. Enterprises registered in the name of Rohan is one such non

existent entity registered in the year 2018. The principal place of business of the said entity was not rented to him and the leave and license document which was uploaded is forged and fabricated. Similarly, M/s. Shiv Enterprises registered in the name of Vijay Yadav is also a non-existent fake entity which has been availing and passing on the fake ITC. Both these entities had close nexus with M/s. Amarnath Enterprises either as buyer or seller. Post cancellation of registration of M/s. R.S. Enterprises, M/s. Amarnath Enterprises received invoices issued by M/s. Shiv Enterprises, and raised the invoices to M/s. Photocom Industries.

11. The statement of Priyesh Kumar reveals that he had neither received nor supplied the goods. The invoices were received and issued to avail and pass on fake ITC. He would get commission of 2% to 3% of the value of such transaction for issuing fake invoices. The balance amount was initially paid to the Applicant in cash and later remitted in multiple accounts of the Applicant as per his directions.

12. The Bank statement of M/s. Amarnath Enterprises for the period from July 2018 to March 2022 reveals that a large sum of money was transferred to the account of Shreeji Jewellers and Shrinath Jewels and others. The statements of the proprietors of these entities reveal that the Applicant had informed them that M/s. Amarnath Enterprises is his

company and that they had handed over to the Applicant, at his instance, diamonds equivalent to the value of the amount received from M/s. Amarnath Enterprises.

13. The records also reveal that the mobile number 9820156000, which is undisputedly in the name of the Applicant, was registered in the bank in respect of the account of M/s. Amarnath Enterprises from 16.08.2018 till 7.11.2019, i.e. even before Priyesh Kumar was inducted as a Director of Photokom Company. This fact prima facie suggests that the Applicant had access to the bank account of M/s. Amarnath Enterprises. The Applicant had also given his e-mail id in respect of the account of Amarnath Enterprises.

14. The above facts and circumstances prima facie indicate that the Applicant is involved in the said crime. Suffice it to say that such economic offences have long term and far reaching ramifications on the financial health of the country and affect the national interest at large in various ways. Considering the consequences of such economic offences that would befall the society, the offences have been held to be of distinct class and under the category of grave offences. Such offences, which affect the financial health of a country need to be investigated thoroughly.

15. In the instant case, the affidavit filed on behalf of the Department reveals that the Applicant has not co-operated with the investigation. He has failed to disclose the e-mail id and the password. He has also failed to hand over the mobile phone, which was registered with the bank. Hence, the mere statement of the Applicant that he is ready and willing to co-operate with the investigation does not serve any purpose. The nature of the offence, necessitates custodial interrogation to facilitate effective investigation and to unearth the fraud in all its facets.

16. For the reasons stated above, I am not inclined to exercise the discretion under Section 438 of Cr.P.C. in favour of the Applicant. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)