Diksha Rane

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2321 OF 2022

KAMLESH MAJITHIA ..APPLICANT
VS.
ASSISTANT COMMISSIONER OF SALE TAX AND ANR. ..RESPONDENTS

Mr. Pankaj D. Jain a/w Tejashree R. Kamble i/b P.D. Jain and Co. for applicant.

Mr. S.H. Yadav, APP for State.

Mr. Rajnath Pathak, for respondent.

CORAM : M. S. KARNIK, J.

HEARD ON : DECEMBER 23, 2022.

PRONOUNCED ON : MARCH 13, 2023.

ORDER :

1. This is an application for pre-arrest bail. The applicant apprehends arrest in respect of the offence punishable under Section 132 of the Maharashtra Goods and Services Tax Act, 2017 (hereafter 'the said Act' for short) investigated by the first respondent-Assistant Commissioner of Sale Tax.

2. The applicant is a proprietor of 'Riddhi-Siddhi Enterprises' and has obtained GST registration. It is his case that the applicant is a service provider and his proprietary concern has never carried out trading of any goods. On 20/5/2022, the applicant was issued summons for his appearance before the respondent no.1. The investigation is alleged to have been initiated against 'Platinum Trading Company', a proprietary concern of Nitin Ramchandra Bansode. During the course of investigation, Nitin Bansode disowned the concern, stating that he is not aware of the same. The allegation is that the third party or operator obtained the registration with the intent to utilize the Input Tax Credit (ITC).

3. It is alleged that the said concern has passed on ITC of Rs.567.28 lakhs without supplying of goods. The statement of Prakash Agarwal (proprietor of S. S. Scrap Traders) confirms that he had purchased the goods from the said 'Platinum Trading Company' through Salimullah Abdul Kuddus Khan and produced documents showing receipt of goods and payment of the value. It is alleged that

Salimullah Khan had made certain statements alleging that the applicant had handed over the documents to him. According to learned counsel for the applicant, the applicant has no concern with Salimullah Khan or for that matter with 'Platinum Trading Company'.

4. Salimullah Khan was arrested by the first respondent on 10/5/2022. Kanak Jain was arrested on 12/5/2022 in connection with the aforesaid investigation. These accused have been released on bail.

5. The first respondent issued the summons to the applicant requiring his presence in its office. The applicant filed an application for anticipatory bail before the Sessions Court under Section 438 of the Code of Criminal Procedure. The Sessions Court granted interim relief to the application by an order dated 13/6/2022. A reply was filed by the respondent no.1, which according to learned counsel for the applicant fails to provide any reason to believe for causing arrest of the applicant. The Sessions Judge rejected the application by the order dated 20/8/2022. Learned counsel for the applicant submitted that the Sessions Judge did not record any reason while rejecting the application. The applicant was summoned to appear on 4/7/2022. A representation was made by the applicant that he may be granted permission allowing presence of an advocate at visible but not audible distance and permit videography of the proceedings.

6. Learned counsel for the applicant submits that the offence under the MGST Act is punishable with the maximum punishment for 5 years and are compoundable. It is further submitted that 'Platinum Trading Company' received ITC to the tune of Rs.36,99,32,662/- and ITC debited was to the tune of Rs.3,63,19,643/- which is far less than the amount of Rs.5 crores and therefore, undisputedly, the offence, if any, are bailable in nature. Learned counsel for the applicant made extensive submissions inviting my attention to the averments made in the application to demonstrate that the applicant has no concern with 'Platinum Trading Company'. According to him, only on the basis of the some whatsapp messages which have no evidentiary value and statements of the accused that the applicant is being implicated. Reliance is placed on several decisions in support of his submissions.

7. Learned counsel for the first respondent, on the other hand, relied upon the reply filed on behalf of the respondents before the Trial Court. It is submitted that the applicant is not cooperating with the investigation and has not attended on three occassions despite issuance of summons. Submissions are advanced countering those of learned counsel for the applicant. Reliance is placed on the compilation of documents wherein the statements of the accused are placed on record and the *modus operandi/*flow chart of passing ITC. My attention is also invited to the whatsapp messages exchanged between Salimullah Khan and the applicant, invoices E Way Bill issued by 'Platinum Trading Company' to 'S. S. Scrap Traders' sent through whatsapp.

8. Heard.

9. Having carefully perused the record and the reply, it *prima facie* appears that the matter needs to be investigated thoroughly by the first respondent. The applicant must cooperate with the investigation. On the basis of the materials i.e. whatsapp chats, the statements of the accused, invoices, the first respondent is justified in contending that it is necessary to record the statement of the applicant to find out his involvement in the case and other operators of the scam of 'M/s. Platinum Trading Company'. The applicant has not attended to record his statement despite issuing witness summons on 20/5/2022, 30/5/2022 and 3/6/2022 and he is not cooperating with the investigation. In paragraph 9 of the reply filed by the first respondent, it is stated that in the summons to witness the first respondent never mentioned about the arrest of the applicant. The first respondent just wants to record his statement and to verify any books of account he is having regarding M/s. Platinum Trading Company. It is also pertinent to reproduce paragraph 10 of the reply which reads thus:-

> "10. In para D, the applicant said, this office is having vindictive approach to harass the applicant by issuing summons and no purpose would be served by seeking custody of the applicant. But, this office having lenient approach towards the applicant and gave him several

> opportunity to attend the office. To issue summons to witness is the procedure adopted according to the law. Also this office never mentioned about the judicial custody of the applicant. The applicant trying to misguide the court and making wrong interpretation about the government agencies procedures."

10. It is then the stand that in terms of Section 69 of the MGST Act, where the Commissioner has reason to believe then only he may, by order, authorize any officer of Central Tax to arrest such person. In paragraph 16 it is then stated that the applicant never attended the office even after issuing three summons to witness. The applicant absconded from his place of residence. The first respondent tried to reach the applicant through E-mail, mobile, whatsapp and any possible way. The inspector of the first respondent visited the applicant's residence thrice but did not get any response.

11. From the record it appears that the applicant is not cooperating with the investigation and even not willing to attend pursuant to the issuance of the witness summons.

12. In my opinion, the present application is premature and the apprehension that the applicant will be arrested without following due procedure of law is unfounded. The first respondent is bound to comply with the mandate of the law and upon adhering to the dictum laid down by the Hon'ble Supreme Court before effecting arrest.

13. The applicant was called upon to remain present and to cooperate with the enquiry as a witness. From the reply of the first respondent, it is clear that what has been issued is the summons to the applicant to record his statement and that at this stage there is only reason to believe about the involvement of the applicant in the alleged scam. From the stand of the first respondent it is clear that first informant just wants to record his statement and to verify the books of account regarding M/s. Platinum Trading Company. The apprehension of the applicant that he will be arrested is without any basis. The applicant is not cooperating even for the purpose of recording his statement pursuant to the issuance of the summons to witness. The first respondent submitted that they have reasons to suspect the involvement of the applicant. Undoubtedly, after recording the statement, if the first respondent had reason to believe that the arrest is imperative, the applicant may at that stage have an apprehension that he is likely to be arrested. It is open for the applicant at the appropriate stage to apply for anticipatory bail. The applicant must first cooperate with the investigation which according to the first respondent is only for the purpose of recording his statement and to verify the books of accounts the applicant is having regarding M/s. Platinum Trading Company.

14. Reserving the liberty of the applicant to apply for anticipatory bail, at a later stage, the present application is rejected as premature. As it is the stand of the applicant that he is always willing to cooperate, the first respondent will issue a fresh witness summons to the applicant for the purpose of recording his statement and to verify the books of accounts. The applicant must attend. If the applicant does not attend pursuant to issuance of witness summons, it is open for the first respondent to proceed in accordance with law.

15. Liberty to apply for anticipatory bail at the appropriate stage is kept open.

16. The application is rejected as premature.

17. All contentions on merits expressly of either side are kept open.

18. The application is disposed of.

(M. S. KARNIK, J.)