IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2364 OF 2022

Chetankumar Jasraj Palgota ...Applicant

Versus

Assistant Commissioner of State Tax
and Anr. ...Respondents

...

Mr. Pankaj D. Jain with Ms Tejashree R. Kamble i/b. M/s. P.D. Jain and Co. for the Applicant.
Mr. Rajan Pathak for Respondent No.1.
Mr. R.M. Pethe, APP for Respondent- State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 8th MARCH, 2023.

P.C. :-

1. The Applicant herein has filed this application under Section 438 of the Cr.P.C. apprehending his arrest by the first Respondent in File No.AC(INV)/D-001/Rai.Dn/Platinum Trading Co/B-157 Navi Mumbai 22-23 for offence punishable under Section 132 of the Maharashtra Goods and Services Tax Act, 2017 (MGST Act).

2. The Applicant is running a business of Bullion Trading and related business in the name and style of Chamunda Bullion. It is the case of the Applicant that he has duly paid and discharged the tax

liability including the amount of GST to its suppliers. The Claimant has stated that as per Section 16(a) of the MGST Act the Complainant has paid and discharged tax in the inward supply and having complied with all the requisite conditions was eligible and entitled to claim input tax (ITC) on such taxes paid. The Applicant has stated that the supplier has filed relevant returns under GSTR 1 and GSTR 3B discharging the tax dues. Accordingly, the Chamunda Bullion availed the ITC which is matched with GSTR 2A and so also the payment of tax amount paid to the supplier.

3. On 16/04/2022 the Officers of the first Respondent visited the office of the Applicant and conducted search and enquiry and verified the stock of 13.2 kg of gold bullian. The Officers thereafter issued summons to the Applicant as per Section 70 of the MGST Act. The Applicant appeared before the first Respondent and has been duly interrogated. The Applicant claims that in the course of the enquiry and interrogation he was coerced to deposit Rs.11 crores to avoid arrest. Apprehending his arrest the Applicant filed an application for anticipatory bail before the learned Sessions Judge. The Applicant was granted interim protection by order dated 21/04/2022 with directions to appear before the first Respondent on every Monday, Wednesday

and Friday. The Applicant complied with the said conditions.

4. The learned Sessions Judge after hearing the respective parties dismissed the application by order dated 22/08/2022. Hence, the present application.

5. Smt. Vanmathi C. Joint Commissioner of State Tax (Investigation -B) has filed her affidavit wherein she has stated that the Applicant had defrauded the Government revenue by filing inadmissible input tax credit to the tune of Rs.11,34,98,066/- from non-genuine non-existent suppliers M/s. Yash Bullion and M/s. Malishka Gold and Jewelry Pvt. Ltd. by issuing invoices without supply of any goods. It is stated that such inadmissible ITC is further passed on to the beneficiaries to offset their tax liability. It is stated that the Applicant did not allow the team to enter the premises and fled away through the window. Later, in the evening one person, who had disclosed his identity as Pravinkumar Mafatlal, tried to enter the premises through window and tried to take away the laptop and other important documents from the premises at the instance of the Applicant. It is stated that unaccounted cash and silver was found in the premises and the same has been reported to the Income Tax

department. It is stated that several factors such as sudden spike in turnover, high utilisation of Input Tax Credit, availment of Input Tax Credit from non-existent taxpayers without supply of any goods, etc., need to be scrutinised and verified. It is stated that material on record prima facie indicates that the Applicant is involved in commission of offence under Section 132 of the MGST Act and it is therefore stated that custodial interrogation of the Applicant is necessary to investigate the said crime.

6. Learned counsel for the Applicant submits that the Applicant has made sale to M/s. Yash Bullion and M/s. Mallishka Gold and Jewelry Pvt. Ltd. against which payments have been made and received by the Applicant herein. He states that the Applicant has paid the amount of invoices and GST through proper banking channel and that the stocks are duly accounted for without there being any discrepancy. Learned counsel for the Applicant submits that the goods are procured with due compliance of the statutory provisions.

7. Learned counsel for the Applicant/s submits that both the entities M/s. Yash Bullions as well as M/s. Malishka Gold and Jewelry Pvt. Ltd. were duly registered and the contention of the Respondent

that these are non-existing entities is baseless. He has relied upon the decision of the Hon'ble Supreme Court in ***Tarun Jain v/s. Directorate General of GST Intelligence DGGI (2021-TIOL-2224-HC-DEL-GST)*** to contend that the Applicant cannot be deprived of statutory right of bail under section 438 of Cr.P.C. on baseless accusations.

8. Per contra, learned counsel for the Respondent submits that the Applicant has defrauded the Government by wrongfully availing inadmissible input tax credit to the tune of over 11 crores from non-genuine/non-existing suppliers. He submits that the inadmissible tax credit is further passed on to the beneficiaries to offset their tax liability. He submits that considering the fact that the Applicant/s are involved in economic offence, would itself not justify grant of pre-arrest bail.

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

10. The Petitioner is alleged to have committed offence under Section 132(1) (b) and 132(1)(c) of the CGST Act. Section 132 of the GST Act provides for punishment for certain offences identified in 12

categories. In present case, we are concerned only with Clauses (b) and (c) of Section 132. Hence, it is not necessary to refer to the other categories. Clause (b) of Section 132 provides for prosecution and punishment if any person issues any invoice or bill without actual supply of goods or services or both, leading to wrongful input tax credit or refund of tax. Clause (c) of Section 132 prescribes punishment if any person avails input tax credit using invoice or bill without the supply of goods or services or both, in violation of the GST Act, using invoice referred to in clause (b) of the Section.

11. Section 69 of the GST Act empowers the Commissioner to authorise any officer to arrest any person where he has reason to believe that such person has committed an offence under Section 132 (1) Clauses (a), (b), (c) or (d) of the GST Act, which is punishable under Section 132(1) (i) (ii) or 132(2) of the CGST Act. It is well settled that power to arrest cannot be exercised arbitrarily or on mere suspicion or on purely subjective satisfaction of the concerned officer. Suffice it to say that satisfaction of the officer must be based on material on record.

12. In ***Daulat Sameermal Mehta v/s. Union of India through***

the Secretary and ors. in Writ Petition No.471/2021, the Petitioner who was arrested for offences under Sections 132(1)(b) and 132(1)(c) had interalia sought a declaration that the power under Section 69 of the CGST Act can be exercised only upon determination of the liability. An interim prayer was also made for enlarging the Petitioner on bail. While considering the prayer for interim relief, the Division Bench of this Court observed that the expression 'reasons to believe' as appearing in sub-section (1) of section 69 is a *sine qua non* for exercise of power to arrest by the Commissioner. It is held that the expression 'reasons to believe' postulates belief and the existence of reasons for that belief. The belief must be held in good faith, it cannot be merely a pretence. It must be founded upon information and can be formed on the basis of direct or circumstantial evidence and not on mere suspicion, gossip or rumor. It is held that a rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the officer and the formation of his belief.

13. The Division Bench of this Court, upon considering the principles laid down by the Apex Court in ***Arnab Manoranjan Goswami v/s. State of Maharashtra AIR 2021 SC 1*** observed that *Supreme Court*

has once again reminded us that the basic rule of our criminal justice system is 'bail not jail'. In cases at undertrial stage, not involved in heinous offences like rape, murder, terrorism, etc. it is bail and not jail which is the norm."

14. It would also be relevant to refer to the decision in ***Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., BI 2022 Online SC 825*** wherein the Hon'ble Supreme Court has reiterated the principles laid down in ***Arnesh Kumar*** (supra), that notwithstanding that existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. It is held that sub clause (1)(b)(i) of section 41 has to be read along with sub-clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the police officer.

15. In ***Nathu Singh v/s. State of U.P. ,(2021) 6 SCC 64,*** a three Judge Bench of the Hon'ble Supreme Court has observed that *'it is no longer res integra that any interpretation of the provisions of section 438 Cr.P.C. has to take into consideration the fact that the grant or rejection of an application under section 438 Cr.P.C. has a direct*

bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the Courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the Applicant seeking relief.'

16. In ***Sushila Agarwal v/s. State (NCT of Delhi) (2020) 5 SCC 1,*** the Constitution Bench of the Hon'ble Supreme Court has observed thus :-

> *" 92. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:*
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> *92.1 Consistent with the judgment in Shri Gurbaksh Singh Sibbia and others v. State of Punjab 54, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific*

offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2 It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3 Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence *(including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.*

The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases.

Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4 Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5 Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

92.6 An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7 An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail."

17. In ***Siddharth v/s. The State of Uttar Pradesh and anr. In Criminal Appeal No.838 of 2021,*** the Hon'ble Supreme Court while interpreting the word 'custody' appearing in section 170 of the Cr.P.C., has observed that '… *personal liberty is an important aspect of our Constitutional mandate. The occasion to arrest an accused during investigation arises when custodial interrogation becomes necessary or it is a heinous crime where there is possibility of influencing the*

witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused. "

18. It is true that economic offences such as tax evasion affect the economy of the country and are considered to be grave in nature. However, the gravity of such offence cannot *per se* be a reason to decline pre-arrest bail and deprive a person of his personal liberty. In ***P. Chidambaram v/s. Directorate of Enforcement (2020) 13 SCC 791,*** the Hon'ble Supreme Court has observed thus :-

> *" 21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the*

opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to *case basis on the facts involved therein and securing the presence of the accused to stand trial. "*

19. The Delhi High Court in ***Tarun Jain*** (supra), while dealing with an application for pre-arrest in an offence under section 132 of CGST Act has held thus :-

> *"36. There is no embargo under the CGST Act restraining the petitioner from seeking pre-arrest bail. Economic offences such as tax evasion, money laundering, etc. affect the economy of the country and thus are considered grave in nature. To deter persons from indulging in such economic offences, criminal sanctions are required to be imposed. One of the most prominent criminal sanctions imposed with regard to economic offences is that of arrest. It is widely acknowledged that arrests result in deprivation of liberty of a person. Thus, while it is imperative to maintain law and order in society, the power to arrest must also always be subject to necessary safeguards. Against this backdrop, analysing the arrest provisions*

under the Goods and Services Tax Law, with a view to study the adequacy of the safeguards and authorisation built into the text of the statute, the interplay between these provisions and the standards of arrest has to be established through judicial precedents, as well as other sources such as the Constitution of India and general statutes such as the Code of Criminal Procedure. "

20. The learned Single Judge while granting pre-arrest bail observed that though the Petitioner was charged with economic offence, the maximum punishment for the offences involved was not more than five years and held that the offences under the Act are not grave to an extent where the custody of the accused can be held to be sine qua non. It is further observed that section 138 of CGST Act makes every offence under the Act compoundable except for certain circumstances which are specified under different clauses to the proviso of section 138 and this dilutes the heinousness of offences under the Act.

21. Reverting to the facts of the present case, the Applicant is

Karta of Chetan Palgota, Hindu Undivided Family, which is in the business of trading and related business in the name and style of Chamunda Buillion. The crux of the allegation against the Applicant is that the Applicant has availed inadmissible input tax credit to the extent of Rs.11,34,98,066/- from two non-existent suppliers viz. M/s. Yash Bullion (ITC at Rs.4.37 Crores) and M/s. Malishka Gold and Jewellery Pvt. Ltd. (ITC at Rs.6.91 Crores) by issuing of invoices without actual supply of goods.

22. It appears that the investigation against the Applicant is based on the premise that the companies which had supplied goods to the Applicant are non-existent. It is not in dispute that both these companies viz. M/s. Yash Bullion and M/s. Malishka Gold and Jewellery Pvt. Ltd. are registered under the Act. It is also not in dispute that the Applicant is in possession of tax invoice issued by the said companies. Though it is alleged that these entities viz. M/s. Yash Buillian and M/s. Malishka Gold and Jewelry Pvt. Ltd. are non-existent, it is stated that GST registration of M/s. Yash Bullion has been restored. Hence, allegations against this entity are prima facie not sustainable.

23. The records also prima facie indicate that the Applicant has

paid to the supplier amount of the invoice, which includes the GST, through proper banking channel. The supplier has also filed returns, confirming the supply of goods and charging of GST from the clients and has filed returns as GSTR1 and GSTR3B. GSTR2A filed by the Applicant prima facie reveals that the suppliers have filed statutory returns and discharged the tax liability. In such circumstances, no case is made out for custodial interrogation.

24. Be that as it may, the investigation is based mainly on documents. All the documents are in custody of the Department. The Applicant who is on interim bail has co-operated with the investigation. Considering the fact that the offence is punishable with imprisonment for five years and considering the principles laid down by the Apex Court in the case of Arnesh Kumar (supra) and Satender Kumar Antil (supra), in my considered view, this would be a fit case to exercise discretion under section 438 of Cr.P.C. in favour of the Applicant. Hence, the Application is allowed on the following terms and conditions :-

(i) In the event of arrest of the Applicant in File No.No.AC(INV)/D-001/Rai.Dn/Platinum Trading Co/B-157 Navi Mumbai 22-23 , Mumbai. the applicant be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount, to the satisfaction of the Investigation Officer.

(ii) Applicant shall report to the Investigating Officer for four days from 13th March, 2023 from 11.00 a.m. to 2.00 p.m., and further as and when required by the Investigating Officer for the purpose of investigation and interrogation.

(iii) Applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer.

(iv) Applicant shall not change his residential address without prior intimation to the Investigation Officer.

(v) Applicant shall not interfere with the complainant and the other witnesses in any manner.

25. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

MEGHA S PARAB Digitally signed by MEGHA S PARAB Date: 2023.04.13 18:20:37 +0530