



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on : 23rd August, 2023*
Judgment delivered on: 6th September, 2023

+ BAIL APPLN. 3408/2022 and CRL.M.A. 23659/2022 (interim relief)

AMAN GUPTA Petitioner
 Through: Mr.Siddharth Aggarwal, Senior
 Advocate with Mr.Satyam Thareja,
 Ms.Vasundhara Nagrath and
 Ms.Arshiya Ghosh, Advocates.

Versus

STATE Respondent
 Through: Mr.Ritesh Kumar Bahri, APP for
 State.
 SI Neeraj, PS.KNK Marg.
 Mr.Tanmay Mehta, Mr.Vijay Kasana,
 Mr.Kshitij Chhabra and Mr.Chirayu
 Verma, Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

BAIL APPLN. 3408/2022

1. The present application has been filed seeking anticipatory bail on behalf of the applicant in FIR No.515/2022 under Sections 420/467/468/471/34 of the Indian Penal Code, 1860 registered at PS KN Katju Marg.
2. The present FIR was registered on the complaint of one, Umang Garg (hereinafter 'complainant'), wherein the complainant alleged that he had appointed the applicant, who was a CA, to look into books of accounts of his

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business. The applicant was looking after day-to-day business of the complainant and accounts related transactions for the last two years in respect of M/s Ulagarasan Impex Pvt Ltd, the company of the complainant.

3. It has been alleged in the FIR that the applicant induced the complainant to purchase goods/material through different firms, which the applicant claimed to be of his known persons. The complainant started purchasing goods/materials, through Bills/E-way Bills from the said firms and the complainant was regularly making payments to the said firms. The applicant made the complainant deposit payments of the said goods in various accounts, existing in different names and was adjusting the payments against the said firms on his own. However, the complainant later got to know that the said firms are bogus and non-existent.

4. The complainant has also alleged that the applicant and his associates have duped him of Rs.2,81,99,475/- by creating fake, forged and fabricated firms and received payments including GST in different accounts against the purchased goods from the complainant, but have not deposited GST with the GST department.

5. In the Status Report filed on behalf of the State, it has been stated that the complainant was arrested by the Directorate General of Goods and Services Tax Intelligence (DGGI), Gurugram on 5th April, 2022 on the ground that various companies owned by him were involved in GST evasion by way of availing and passing fake Input Tax Credit (ITC) claims. Ultimately, the complainant was granted bail on 19th April, 2022 after depositing Rs.1 crore as GST. After his release, the complainant tried to contact the applicant but the applicant started avoiding the complainant.

6. It is further stated that during the course of investigation, the

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complainant produced copies of invoices and e-way bills issued in the name of his company by the aforesaid firms and also produced one pen drive of telephonic conversations between the complainant and the applicant, in which the applicant accepted the fact of doing business with the complainant and also admitted that he had received Rs.3.5 crores from the complainant. During investigation, it also came to light that an amount of Rs.10,00,000/- was also transferred from the account of the complainant to the account of the applicant.

7. The addresses of the companies, which had raised invoices/e-way bills were also verified during investigation and were found to be locked. The statement of one Gunjan Nagpal, who was an employee of M/s Asian Enterprises, one of the firms which issued invoices to the complainant, was also recorded. In his statement, Gunjan Nagpal stated that, M/s Asian Enterprises, was run by one Deepak Agarawal and Aman Gupta.

8. Senior counsel appearing on behalf of the applicant submits that the applicant has throughout joined investigation as well as cooperated in the investigation. He further submits that the applicant has nothing to do with the GST evasion allegations against the complainant as the applicant never worked on accounts/returns of the complainant or complainant's companies such as M/s Ulgarasan Impex Pvt. Ltd. and the regular accounting and filing work is handled by the team of accountants of the complainant. In this regard, he has drawn attention of the Court to the bail application filed by the complainant (Annexure B) and the reply of the DGGI (Annexure C), in which no allegations have been made against the applicant. It is further stated that the present FIR has been filed belatedly on 4th September, 2022 even though the complainant was granted bail on 14th June, 2022.

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9. *Per contra*, learned APP appearing for the State has submitted that in the telephonic conversations between the applicant and the complainant, which are contained in the pen drive recovered during investigation, the applicant has clearly admitted that he has received around 3.5 crores from the complainant. It is further submitted that even though the applicant has joined investigation, he has not cooperated with the investigation.

10. Counsel appearing on behalf of the complainant submits that the present anticipatory bail application is not maintainable in view of the earlier bail applications having been withdrawn by the applicant. There are no change of circumstances for the applicant to move the present bail application.

11. Further, it has been submitted on behalf of the complainant that the applicant used the mediation process as an excuse to enjoy interim protection granted to him, whereas he had no intention to settle the matter. It is further submitted that the police complaint was filed by the complainant on 31st May, 2022, even though the present FIR was registered on 4th September, 2022.

12. In rebuttal, senior counsel appearing for the applicant submits that there was no bar for the applicant to file a fresh anticipatory bail application as the applicant was willing to deposit a sum of Rs.75 lakhs and settle the matter with the complainant. It is further submitted that the present dispute is civil in nature, which pertains to recovery of money and the criminal proceedings cannot be resorted to for making recoveries of money.

13. I have heard the counsels for the parties and perused the material on record.

14. In the present case, first anticipatory bail application was dismissed

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by the learned Sessions Court vide order dated 15th September, 2022. Thereafter, the applicant filed an application for anticipatory bail being Bail Application No.2869/2022 before this Court, which was dismissed as withdrawn vide order dated 13th October, 2022, with liberty to the applicant to approach the Trial Court. Immediately thereafter, the applicant filed an application for surrender cum bail before the Sessions Court, which was listed on 17th October, 2022, on which date, it was adjourned to 18th October, 2022.

15. On 18th October, 2022, the applicant did not appear before the Sessions Court and the counsel for the applicant sought to withdraw the said application. Taking note of the absence of the applicant, the Sessions Court dismissed the application for surrender cum bail as not pressed and vacated the stay granted on NBWs issued against the applicant. Thereafter, the present application was filed before this Court, which came up for hearing on 17th November, 2022. Upon payment of Rs.75 lakhs by the applicant to the complainant, the matter was referred for mediation and the applicant was granted interim protection.

16. On 14th March, 2023, it was noted by the Predecessor Bench that the mediation proceedings have not been successful between the parties. However, the interim protection granted to the applicant was extended.

17. In light of the aforementioned facts, in my considered view, the applicant has abused the process of the court. Having withdrawn his anticipatory bail application before this Court on 13th October, 2022 with a liberty to approach the Trial Court, the applicant did not file a fresh application for anticipatory bail before the Sessions Court, but preferred an application for surrender cum bail before the Sessions Court. Due to non-

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appearance of the applicant on the date fixed for consideration of the aforesaid application, the same was dismissed as not pressed. Thereafter, the present bail application was filed before this Court.

18. Once the applicant had withdrawn his anticipatory bail application before this Court on 13th October, 2022, there was no occasion for the applicant to file a fresh bail application in a month's time. The only justification given by the applicant is that he was willing to deposit a sum of Rs.75 lakhs and settle the matter in the mediation proceedings in respect of the remaining amount. It appears that the intent of the applicant was to secure interim protection upon payment of Rs.75 lakhs to the complainant and continue enjoying the said interim protection during the pendency of the mediation proceedings. It is to be noted that the interim protection was not granted to the applicant on merits but on account of possibility of settlement. Once the mediation proceedings have ended as 'not-settled', the application of the applicant has to be considered on merits.

19. As per the Status Report filed by the State, the complainant was issued various invoices as well as e-way bills in the name of his company by alleged firms, which were found to be non-existent and were being operated only for generating e-way bills for GST evasion. During investigation, evidence has been gathered that suggest that the applicant was running the aforesaid companies/entities. The financial transactions between the complainant and the applicant have also been analyzed, which suggest that the applicant had received a sum of Rs.3.5 crores from the complainant.

20. The factors to be taken into account while considering grant of anticipatory bail, as explained by the Supreme Court in the case of *Sumitha Pradeep v. Arun Kumar CK*, 2022 SCC OnLine SC 1529, are (i) prima

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facie case against the accused; (ii) nature of offence and; (iii) severity of the punishment.

21. In my considered view, the present case is not just relating to the applicant having duped the complainant of a huge sum of money, it also involves allegations of issuing fake invoices and e-way bills for the purposes of GST evasion, which is an economic offence involving loss to the public exchequer. Such offences need to be viewed seriously as the same pose a threat to the economy of the country. Further, the present case involves offence under Section 467 of the IPC read with Section 471 of the IPC, for which the maximum punishment is imprisonment for life.

22. On a pointed query by this Court with regard to requirement of the applicant for custodial interrogation, learned APP submits that the amounts allegedly duped by the applicant, which are proceeds of crime, have to be recovered. Further, the applicant has to be confronted with various documents and statements recorded by the prosecution as also to unravel the larger conspiracy.

23. As regards the custodial investigation, this Court in the judgment in ***Haresh Kumar Choudhary V. State (NCT of Delhi)***, 2023 SCC OnLine Del 1877, has observed that:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would

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reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

21. This Court is of the opinion that grant of anticipatory bail to the present applicant would prejudice the ongoing investigation in the present FIR. In the present case, custodial interrogation of the applicant is required for the aforesaid purposes.”

24. In the present case, for the aforesaid reasons, the custodial interrogation of the applicant is required. Considering the overall facts and circumstances of the case and the fact that the applicant needs to be confronted with various documents and statements of the witnesses, and the allegations levelled against him are serious, being in the nature of forgery and GST evasion by creating false invoices issued by non-existent entities, no grounds for grant of anticipatory bail to the applicant are made out.

25. Accordingly, the present bail application along with all pending applications is dismissed.

26. Consequently, the interim protection granted to the applicant on 14th March, 2023 is vacated.

27. Needless to state that the observations made herein are purely for the purposes of deciding the present application and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

SEPTEMBER 06, 2023

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