



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.118 OF 2022

Director General of GST Intelligence,
Nagpur Zonal Unit,
having office at 2nd Floor,
South Wing, New Secretariat Building,
Civil Lines, Nagpur – 01.
through its Investigating Officer
Smt. Gayathri Ananth D/o Late G.S. Ananth,
Aged about 53 years,
Occupation – Service,
R/o GST Colony, Seminary Hills,
Nagpur

...APPLICANT

VERSUS

Bharat Bhushan s/o Late Shri Joginder Sharma,
Aged about 58 years,
Occupation – Property dealer and
Manager of RC Udyog,
Faridabad (Uttar Pradesh)

...NON-APPLICANT

Mr. S.N. Bhattad, Advocate for the applicant.
Ms Aarti Singh, Advocate h/f Mr. P.D. Meghe, Advocate for the
non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 8, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. By this application, the applicant seeks cancellation of pre-arrest bail granted to the respondent by order dated 06/09/2022 in Criminal Bail Application No.1038 of 2022 passed by the Additional Session Judge-13, Nagpur in connection with Crime arising out of Case File No.CBIC-DIN-202203DWW10000333A58 registered with Directorate of General of Goods and Services Tax Intelligence, Nagpur Zonal Unit, (P.S. Gittikhadan), Nagpur.

3. As per the contention of the applicant, the applicant is an investigating authority discharging its duty under the provisions of GST Act. The non-applicant is involved in running fake firms and generating fake E-way bills, thereby evading GST revenue for which inquiry and investigation was initiated by the applicants and in pursuance to the inquiry summons were issued to the non-applicant for appearance. The non-applicant anticipating arrest filed anticipatory bail application before the Sessions Court which was allowed without considering the magnitude and gravity of the offence and without considering necessity of the custodial interrogation of the non-applicant. The applicant seeks cancellation of bail on the ground that while granting the bail the Sessions Court has not considered that custodial interrogation of the present non-applicant is required for the purpose of interrogation and another ground raised by the applicant is that in fact, the application

under Section 438 of the Code of Criminal Procedure is not maintainable in view of the judgment of the Apex Court and the non-applicant has to file a petition under Article 226 of the Constitution of India. In view of that, the bail granted to the present non-applicant deserves to be cancelled.

4. Learned Counsel for the non-applicant submitted that now the non-applicant do not want to proceed with filing of any proceeding under Article 226 of the Constitution of India.

5. I have heard learned Counsel for both the parties and after going through the decision of the Hon'ble Apex Court in ***Special Leave to Appeal (Crl.) Nos.4212-4213/2019 (The State of Gujarat Vs. Choodamani Parmeshwaran Iyer and anr.) decided on 17/07/2023*** wherein the Hon'ble Apex Court in paragraph No.16 observed that :

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 438 of Criminal Procedure Code, 1908 cannot be invoked. We say so as no First Information Report gets 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 what the respondents did in the present case. What the respondents sought by filing two 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 the light of the above observation of the Hon'ble Apex Court, in the present case also after the non-applicant is summoned in view of the provisions conferred by Section 69(1) of the GST Act, 2017 he approached to the Sessions Court and the Sessions Court without considering the provisions and the necessity, granted bail to the non-applicant in the event of his arrest. In view of the observation of the Hon'ble Apex Court, the anticipatory bail application itself is not maintainable. Thus, the Sessions Court has ignored the provisions of law and granted bail which is contrary to the law. In view of that bail granted to the present non-applicant deserves to be cancelled. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The bail granted to the present non-applicant in connection with Crime arising out of

Case File No.CBIC-DIN-202203DWW10000333A58
registered with Directorate of General of Goods and
Services Tax Intelligence, Nagpur Zonal Unit, (P.S.
Gittikhadan), Nagpur is hereby cancelled.

(iii) The non-applicant shall surrender before the
agencies for the investigation purpose.

7. The application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*