THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL PETITION No.13011 of 2023

O R D E R:

This Criminal Petition is filed by the petitioners - accused under Section 438 of Code of Criminal Procedure for grant of anticipatory bail in the event of their arrest in Case No.AC (ST)/NG/MJM/1/2023 on the file of the Court of Special Judge for Economic Offences at Hyderabad.

2. The case against the petitioners was that the petitioners firm namely M/s.Bengal Cold Rollers Private Limited was in the business of supplying steel straps. They allegedly committed offence under Section 132 of Telangana Goods and Services Tax (for short "TGST Act), 2017 by availing fraudulent Input Tax Credit and passing of Input Tax Credit without actual supply of goods to a tune of Rs.8.01 Crore.

3. Basing on the same, a case was registered by the Assistant Commissioner (ST), Narayanguda, MJ Market Circle, Abids Division, Hyderabad in Case No.AC(ST)/NG/MJM/1/2023 on the file of Special Judge for Economic Offences at Hyderabad against the petitioners and one Kusum Agarwal. The respondent No.2 addressed intimation letter dated 28.12.2023 vide Letter No.AC/NG/MJM/1/2023 intimating about the arrest of Smt.Kusum Agarwal. The petitioners were also apprehending their arrest and therefore filed

the Criminal Petition seeking anticipatory bail to enlarge them on bail in the event of their arrest in respect of Case No.AC(ST)/NG/MJM/1/2023.

4. Heard Sri V.Chandrasen Reddy, learned Senior Counsel for the petitioners and Sri Swarup Purella, the learned Special Government Pleader representing Additional Advocate General for the respondents.

5. Learned counsel for the petitioners would submit that the petitioners' firm namely M/s.Bengal Cold Rollers Private Limited would supply steel straps regularly to M/s.KLSR Infratech Limited who in turn was in the business of manufacturing / trading of steel straps and supply steel straps to various clients across India. M/s.KLSR Infratech Limited was due an amount of Rs.1,84,13,128/- (Principal of Rs.1,37,04,516/-, Interest of Rs.12,82,483/-) and Penal charges @ 25 % on Principal amount) to the petitioners' firm as on 27.05.2022. On 27.05.2022, the petitioners' firm issued Demand Notice to M/s.KLSR Infratech Limited in Form 4 as per Insolvency and Bankruptcy Rules. To avoid payment, as a counterblast on 29.06.2022, M/s.KLSR lodged a complaint with SHO, PS Jeedimetla, Cyberabad. Basing on the complaint, FIR No.539 of 2022 dated 30.06.2022 was registered by PS Jeedimetla against the Directors of M/s.AS Met Corporation Private Limited and three other companies including the petitioners' company. The petitioners' company and other companies approached National Company Law Tribunal (for short

"NCLT") under Section 9 of Insolvency and Bankruptcy code under CP(IB) No.263/9/HDB/2022 and CP ((B) No.247/9/HDB/2022. After hearing both the sides, NCLT by order dated 14.07.2022 ordered their applications. It was after the applications were ordered by NCLT, the Police Officials addressed a letter dated 26.07.2023 to the GST Officials requesting to furnish GST related documents of M/s.Bengal Cold Rollers Private Limited and of other companies i.e. after the order was passed by the NCLT. Thereafter, the Deputy Commissioner (ST-II), Enforcement, O/o. Commissioner of Commercial Taxes, CT Complex, Nampally, Hyderabad submitted reply dated 07.08.2023 vide Rc.No.DC-II/2023, alleging fake invoices on baseless opinions without any truth. It was only after the petitioners issued demand notice, M/s.KLSR lodged a frivolous complaint with all false allegations only to avoid payments. The GST Department was acting purely at the behest of M/s.KLSR, who was very influential.

5.1. He further submitted the GST Department, without conducting any sort of independent enquiry on the basis of the complaint filed by M/s.KLSR, without issuing any show cause notice on their findings and without giving any opportunity to submit their explanation pertaining to transactions with M/s.KLSR, initiated the present frivolous proceedings only to support M/s.KLSR and to see that the petitioners come to terms with M/s.KLSR and forgive the payments due. The present case was ex facie prepared at the behest of the 2nd respondent only to fix the petitioner and to see that the petitioner would settle the issues with 2nd respondent as per their whims and fancies and to avoid making huge payment due to the petitioner.

5.2. He further submitted that the petitioner was doing transactions with M/s.KLSR since 2019 and there were no allegations of any kind of fraud or manipulation in respect of transactions pertaining to petitioners' company and when M/s.KLSR company was due huge amounts payable to the petitioner for supply of raw material, the present story had been cooked up to avoid making payment, which was illegal, arbitrary and purely collusive.

5.3. He further submitted that as per the series of events that took place, the petitioner had initiated proceedings before NCLT, Hyderabad under Section 9 of Insolvency and Bankruptcy Code, against M/s.KLSR Infratech Limited in the month of May, 2022 claiming amount due as on 27.05.2022. M/s.KLSR filed counter with same untenable allegations. The NCLT adjudicated the matter and after hearing both sides, ordered the petitioners' application. NCLT had ordered for initiation of Corporate Insolvency Resolution Process of M/s.KLSR Infratech Limited and Mr.Manjeet Bucha was appointed as Interim Resolution Professional. It was only after the petitioner approached NCLT, M/s.KLSR Infratech Limited as a counterblast and afterthought to avoid making payments, filed a false police complaint with untenable allegations in the month of June i.e. on 30.06.2022, which would fortify the plea of the petitioner that the complaint lodged was false and frivolous and filed only to avoid making huge outstanding amounts due to the petitioner. Moreover, the report was mysteriously silent about the demand notice dated 31.05.2022. A perusal of the complaint would clearly show that the 2nd respondent suppressed the factum of pendency of civil case in NCLT and filed the complaint with an oblique motive attributing allegations against the petitioner of collusion, which was far from truth and was liable to be brushed aside in the light of the adjudication of the NCLT.

5.5. He further submitted that the petitioner supplied raw material to M/s.KLSR and raised invoices as per the prevailing practice. M/s.KLSR filed annual report before the Registrar of Companies, Ministry of Corporate Affairs, Government of India, duly signed by the Directors along with independent auditor's report up to the period 31.03.2021 wherein they had reported that there was no fraud played by the company or on the company for the financial year. The report further stated that physical stock and figures were tallying. Such being the statement of the complainant company, there was no fraud on the company even as per the annual report which was filed on 15.10.2022 i.e. much after lodging of complaint. It was not open for the company to take a different stand altogether as per their convenience to avoid making payments to the creditors including the petitioner. This would make it crystal clear that the complaint lodged was primafacie malafide, without any iota of truth, with ill intention to settle the issue.

5.5. He further submitted that the report furnished by the GST was a colorful exercise at the option of M/s.KLSR who was mighty and influential and the report was in the form of a conclusion or rendering of opinion, when no such opinion or judgment was sought from the department. The GST department had gone beyond the scope of the complaint and submitted report in respect of transactions, in respect of which M/s.KLSR never had any grievance more particularly transactions prior to March, 2021, which itself would show that the report of GST filed was malicious, prepared at the behest of M/s.KLSR, only to avoid making payment. It was only in continuation of report of GST, the present case was booked against the petitioners the Directors of M/s.Bengal Cold Rollers Private Limited by respondent No.2. The fact that GST rendered their opinion by way of reply to the Police Officials, even before issuing any show cause notice to the petitioners itself was enough to prove the collusion between M/s.KLSR and GST Department. In this regard, as per the complaint, the entire evidence had been destroyed. In such a scenario, it was completely beyond comprehension as to on what basis an opinion was formed by the GST Department about the nature of E-Way Bills, invoices and LCs. This would clearly indicate that the opinion of GST was purely on the basis of assumptions without any concrete evidence at the behest of M/s.KLSR to target and fix the petitioners. In respect of allegation of fake invoices, the petitioner immediately after despatch of raw material to M/s.KLSR Infratech Limited, raised Way Bill paying the GST. The raw material reached M/s.KLSR and the same could be established from the fact that M/s.KLSR had availed the ITC (Input Tax Credit), which was sufficient evidence to show that the present complaint was colorful exercise of power to benefit the mighty people to defraud the innocent creditors. At no point of time, the GST Department called upon the petitioner to show cause with regard to evasion of tax if any and in the absence of same, rendering an opinion on assumptions only to fix the petitioner was an abuse of power and process and a perfect example of dereliction of duty on the part of GST Department.

5.6. He further submitted that this Court granted ancitipatory bail to the petitioner No.1 in Crime No.539 of 2022 in Crime registered against the petitioners on the complaint lodged by M/s.KLSR appreciating the evidence on record. All the transactions pertaining to M/s.Bengal Cold Rollers Private Limited were legal and on all the Way Bills, they had paid GST, which itself was a valid requirement to show that the business carried by them was lawful. It was nobody's case that M/s.Bengal Cold Rollers Private Limited did not pay GST on the invoices which now were being disputed. Further all the transactions of M/s.Bengal Cold Rollers Private Limited were being taken care by Petitioner No.1. Petitioner No.2, who was the Managing Director of the company, due to health reasons had been out of business for the past five years and petitioner No.3 was a family member and her job was only to take care of the discipline of the labors and housekeeping of the company and at no point of time she participated in any of the business transactions. As such petitioners 2 and 3 had no role to play. He further stated that the Petitioner No.1 was the authorized representative for GST, which fact could be borne from the record of GST certificates and therefore there was no role by petitioners 2 and 3 to play in any transactions much less the disputed transactions.

6. The learned Special Government Pleader for the respondents on the other hand contended that the petitioners were not entitled for anticipatory bail in view of the orders of this Court in **P.V.Ramana Reddy v. Union of India**[1] delivered on 18.04.2019 in Writ Petition Nos.4764, 4769, 4892, 5074, 5130, 5329, 6952 and 7583 of 2019. The Hon'ble Apex Court in several cases like **Nimmagadda Prasad v. Central Bureau of Investigation** [2] and in **P.Chidambaram v. Directorate of Enforcement**[3] observed that in cases pertaining to economic offences having an impact on the society, the Courts should be slow in exercising discretion for granting anticipatory bail under Section 438 of Cr.P.C. and contended that primafacie case of serious economic offence and fraud resulting in loss of more than Rupees Five Hundred Lakhs to

[1] 2019 (25) G.S.T.L. 185 (Telangana)
[2] Criminal Appeal No.728 of 2013 dated 09.05.2013
[3] (2020) 13 SCC 791

the State exchequer was made out against the petitioners. The petitioners were highly influential persons. If they were granted pre-arrest bail, there was every possibility of tampering of evidence and influencing the witnesses, which would have a bearing on the investigation and prayed to dismiss the Criminal Petition.

7. The learned Senior Counsel for the petitioners on the other hand contended that the decision of **P.V.Ramana Reddy v. Union of India** (cited supra), was neither applicable to the facts of this case nor on law, as the point for consideration therein was that whether writ jurisdiction under Article 226 of the Constitution of India could be used as a substitute to Section 438 of Cr.P.C. and the direction of the Court was on the principle that the jurisdiction under Article 226 of the Constitution of India to grant protection against arrest should be sparingly used. Several High Courts and even the Hon'ble Apex Court had granted anticipatory bail for the offences under Section 132 of GST Act and relied upon the judgment of the High Court of Delhi in **Tarun jain v. Directorate General of GST Intelligence DGGI**[4].

8. Perused the record.

9. The main allegation against the petitioners was that they availed fraudulent ITC and passed input tax credit without actual supply of goods. The following allegations are made against the petitioners that they:

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[4] (2022) 89 GST 380 (Delhi)

(a) Fraudulently claimed Input Tax Credit of Rs.5,24,58,071/- (IGST ITC) on purchases of Rs.29,14,33,729/- from various tax payers of Odisha.

(b) Fraudulently claimed Input Tax Credit of Rs.79,09,333/- (CGST + SGST) on purchases of Rs.4,39,40,743/- from M/s.Diwan Engineering Works Rolling Shutters, GSTIN: 36ACHPA5582G1ZO.

(c) Passed on Input Tax Credit of Rs.1,98,05,596/- (CGST + SGST) on sales of Rs.11,00,31,089/- to various tax payers of Telangana without movement of goods.

10. The 2nd respondent had also mentioned that the screen shots of RFID Data taken from E-Way bill portal would indicate that there was no movement of goods and the vehicles did not cross any of the toll gates during the course of transit.

11. Learned Senior Counsel for the petitioners submitted that the petitioners did not commit any offence under TGST Act, 2017 or any other Acts. The GST Officials had conducted raids on the office of the petitioners on 24.12.2023 and 26.12.2023 and seized books of accounts, Computer CPU, Laptop, document and records, loose slips and loose papers which were available at residential premises, factory premises and Administrative Office of the petitioners and kept under their custody. On 23.01.2024, the Assistant Commissioner (ST), Basheerbagh - Nampally Circle had issued show cause notice in form DRC-01 under Section 74 of TGST Act, 2017 for the tax periods 2018-19 to 2023-24

(upto December, 2023), wherein he had intentionally escalated the turnovers to increase the quantum of tax payable making false allegations, creating false evidence and statements and proposed to levy the GST of Rs.111,61,05,885/- and escalated to Rs.223,22,11,770/- by adding penalty and interest. On receipt of show cause notice through e-mail, the petitioners filed the petition dated 26.01.2024 to issue the photocopies of books of accounts, documents and records, etc., so that the petitioners could verify the same and draft the proper reply, but the Assistant Commissioner (ST), Basheerbagh-Nampally Circle did not acknowledge the affidavit till 09.02.2024. On 09.02.2024, he acknowledged the petition but did not issue the photo copies of books of accounts, document and records, loose slips and papers and did not return the Computer CPU and Laptop till date. The petitioners had e-mailed the said petition to the Assistant Commissioner (ST), Basheerbagh – Nampally Circle, the Joint Commissioner (ST) Abids Division and the Commissioner (SGST) on 27.02.2024, but till date, the petitioners did not receive any reply from them. The act of the GST Officials appeared to be like forcing the horse to run after tying its legs.

12. He further submitted that the GST Officials proposed to levy GST basing on the loose slips seized by GST Officials. The petitioners had tagged the information of loose slips which GST Officials had mentioned in their annexures by producing the sales details / job work and proof of payment of taxes accordingly within the due dates. The Assistant Commissioner (ST),

Basheerbagh–Nampally Circle alleged that the petitioners had not declared the purchases turnovers in monthly GST returns and not paid the taxes accordingly. The Assistant Commissioner (ST), Basheerbagh–Nampally Circle mentioned that he came to know about such escaped turnover by verifying the E-Way Bill portal, but ignored the fact that the E-Way Bill which he was referring was outward E-Way Bills used to send the material to job work. The Assistant Commissioner (ST), Basheerbagh-Nampally Circle prepared the statements and proposed the GST liability without proper investigation and without verification of the books of accounts and documents and prayed to enlarge the petitioners on anticipatory bail in the event of their arrest.

13. On a perusal of the judgment of the Delhi High Court in **Tarun Jain v. Directorate General of GST Intelligence DGGI** (cited supra), it considered the provisions of the CST Act, the powers of inspection, seizure and arrest prescribed under Chapter XIV of the Act, the provisions under Section 69 and 132 of the CGST Act and the judgment in **P.V.Ramana Reddy vs. Union of India** (cited supra) of this Court and the judgments in **Shravan A.Mehra v. Superintendent of Central Tax, Anti Evasion, Commissionerate**[5] and of the Delhi High Court itself in **Raghav Agrawal v. Commissioner of Central Tax and GST Delhi North**[6] and of the Bombay High Court in **Sapna Jain vs. Union of India**, which was challenged before the Hon'ble Apex Court and the

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[5] MANU/KA/0875/2019
[6] Bail Application 4019/2020 vide order dated 21.12.2020

Hon'ble Apex Court without interfering into the order tagged it to be listed before the 3-Judge Bench in the case of **Union of India v. Sapna Jain**[7] and the said matter was pending till date, it observed that the question regarding anticipatory bail while dealing with offences under CGST was yet unsettled and as such decided the matter by exercising its own discretion. It also considered the judgments of the Hon'ble Apex Court in **P.Chidambaram v. Directorate of Enforcement** (cited supra) relied by the Special Government Pleader and held that:

> "44. In the present case, there cannot be any conflict with the fact that petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than five years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view 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.
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> 52. In the present case, the Petitioner has been accused of wrongfully utilizing the Input Tax Credit amounting to Rs. 72 Crores, an offence under Section 132(b) and (c). Since the alleged amount exceeds five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under the Act are bailable and non-cognizable except for the offence under Section 132(5) of the Act.

[7] (2021) 2 SCC 782

> Additionally, under Section 135 of the Act, in any prosecution under the Act requiring culpable mental state, the court is bound to presume culpable mental state of the accused. The section further states that the accused will have a defense to prove that he had no such mental state. Also, Section 138 of the Act states that the offences under the Act shall be compoundable either before or after the prosecution.
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> 53. The task before this Court is two-fold, first being to ensure that no unwarranted abuse of process is allowed to impinge upon life and liberty of the petitioner, and second to ensure that the investigation is not hampered, procedure of administration of justice is not adversely impacted and ultimately the guilty is prosecuted.
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> 54. These are competing interests included in an anticipatory bail application i.e., the liberty of the accused and the interest of the investigative authorities for discovering the particular of offence. It is the case of the Petitioner that he failed to appear due to his ill health, which evidently no more exists. The other ground pertains to apprehension of arrest, which can be removed by allowing the present application. It is very well possible that the respondent department might get the information as required if the Petitioner cooperates with the authorities concerned and arrest might not be necessary.
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> 55. Custodial interrogation in the instant matter is neither warranted nor provided for by the statute. Detaining the petitioner in Judicial Custody would serve no purpose rather would adversely impact the business of the petitioner."

Observing thus, granted anticipatory bail to the petitioners on stringent conditions.

14. As the facts of this case are also similar to the facts of the above case, which were pertaining to fraudulently availing input tax credit, extending to

more than Rupees Five Hundred Lakhs under Section 132 of the TGST Act, 2017 and the petitioners are also apprehending their arrest, it is considered fit to grant anticipatory bail to the petitioners on the following terms and conditions:

> (i) The petitioners shall surrender before the Investigating Officer / Apprehending Authority within 15 days from the date of this order and on such surrender they shall be released on bail on their furnishing a personal bond for Rs.5,00,000/- (Rupees Five Lakhs) each with two solvent sureties for the like sum each to the satisfaction of the Special Judge for Economic Offences at Hyderabad.
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> (ii) The petitioners shall surrender their passports before the Investigating Officer / Apprehending Authority and shall not leave India without prior permission of the Investigating Officer / Apprehending Authority and shall co-operate in the investigation and shall appear before the Investigating Officer / Apprehending Authority as and when summoned by them.
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> (iii) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
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> (v) The petitioners shall provide their mobile numbers and keep them operational at all times.

15. Breach of any of the above conditions would entail in cancellation of the bail.

16. In the result, the Criminal Petition is allowed with the above conditions.

As a sequel, miscellaneous applications pending in this petition if any, shall stand closed.

Dr. G.RADHA RANI, J

Date: 07th March, 2024
Nsk.