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

CRIMINAL APPLICATION (ABA) NO.280 OF 2025

(Rahul s/o Vijaykumar Ahuja Vs. Directorate General of GST Intelligence, Nagpur Zonal Unit, 2nd Floor, South Wing, New Secretariat Bldg., Civil Lines, Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Mr. Akshaya Naik, Senior Advocate with Mr. C. B. Barve, Advocate and Mr. G. S. Gour, Advocate for Applicant.
Mr. Kunal Nalamwar, Advocate for Non-Applicant.

CORAM: URMILA JOSHI PHALKE, J.
DATE: 24th APRIL, 2025.

1. Heard.

2. By this application, the applicant is seeking anticipatory bail in connection with File No.DGGI/INT/INTL/1425/2024 dated 03.01.2025 for the offences punishable under Sections 132(1)(a), 132(1)(b), 132(1)(i) and Section 132(5) of the Central Goods and Service Tax Act, 2017.

3. Learned Senior Counsel for the applicant submitted that the applicant is the proprietor of M/s. Rahul Mobile. The said firm came to be incorporated in the year 2017 as a proprietary concern for business of sale of mobiles and accessories. The said proprietary firm also holds a GST registration certificate bearing No.27BVYPA2889K1ZP. The applicant is also the regular income tax payer from past several years and also in the habit of diligently filing his GST

returns. On 29.11.2024, the officers of Director General of Goods and Service Tax Intelligence team of Nagpur Zonal unit raided the premises of the applicant and seized various documents and articles including files, diary, documents, laptop from the shop of the applicant. The GST officer issued summons to the applicant to remain present and answer the queries raised in the summons on 07.01.2025. The applicant sought exemption from personal appearance on 07.01.2025 because of the advanced stage of pregnancy of his wife. On 09.01.2025 the officer of GST again issued summons for the appearance to the applicant with a direction to remain present before the Director General of GST Intelligence on 16.01.2025. The applicant again sought the exemption from personal appearance because of the advanced stage of pregnancy of his wife. He submitted that without issuing a notice under Section 41 of Cr.P.C. the summons is issued. He submitted that thereafter the present applicant approached to this Court by filing Criminal Writ Petition No.100/2025 this Court has protected the applicant by granting ad-interim protection. Sub-sequent to that in view of the decision of the Hon'ble Apex Court in the case of ***Radhika Agarwal v. Union of India and others [2025 SCC OnLine SC 49]***. The liberty was granted to the present applicant to approach to the Sessions Court. The Sessions Court has rejected the application and therefore this application.

4. He submitted that as far as the custodial interrogation is concerned the applicant has already

co-operated with the investigating agency as the applicant has already attended the concerned office and co-operated with the investigating officer. He submitted that this Court as well as while disposing the writ petition the co-ordinate bench also protected the present applicant. Now, anticipatory bail application is maintainable and therefore, the co-ordinate bench has given a liberty to the present applicant to apply for the anticipatory bail and further liberty is granted to apply for the ad-interim anticipatory bail. He further invited my attention towards the observation of the Hon'ble Apex Court as far as the application of the provisions and the guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** and he submitted that in view of that the investigating agency of the officials of the non-applicant shall follow the procedure by issuing the notice under Section 41 of Cr.P.C. and (35) of the Bhartiya Nyay Sanhita, 2023 to the present applicant.

5. Learned Special Prosecutor for the non-applicant submitted that Section 69 of the CGST Act, 2017 empowers the Commissioner to arrest a person when he has reasons to believe that a person has committed any offence specified in clauses (a) or (b) or (c) or (d) of sub-section (1) of Section 132, which is punishable under clauses (i) and (ii) of sub-section (1) or sub-section (2) of the said Section. He may by order authorizes any officer of the Central Tax or to arrest such person. In view of sub-section (2) of Section 69, where a person is arrested under sub-section (1) of an

offence specified under sub-section (5) of Section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

6. I have heard learned counsel for both the parties. Perused the notice which is issued to the present applicant from which it reveals that the grounds of appearance are not mentioned in the said notice. In view of Section 35 of the Bhartiya Nyay Sanhita the arrest of the applicant, if required the investigating agency or the officers to the in-charge shall issue the notice specified or recording his reasons for arrest. The offences punishable are less than seven years as punishment provide for the offence under Section Section 132(1) and (2) provide imprisonment of 5 years. Thus, punishment provided is less than seven years. There appears to be non-compliance of the Section 35 and therefore, while considering the criminal writ petition the applicant was protected by this Court by granting ad-interim anticipatory bail.

7. This Court has also in the case of ***Rahul v. Director General of Goods and Service Tax Intelligence, Nagpur Zonal Unit, thr. Sr. Intelligence Officer [2024 SCC OnLine bom 262]*** has considered the scheme contemplated under Section 132 of the CGST Act, 2017 and held that it provide punishment for certain offences and it is urged that it is only when a person supplies any goods or services or both without issue of any invoice, in violation of the provisions of the Act and with an intention to evade taxes or

issues any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, leading wrongful availment of the utilization of ITC or refund of the tax or avails ITC using such invoice or bill or collects any amount as tax but fails to pay the same to the Government beyond a period of three months, he can be said to have committed offences under clauses (a) or (b) or (d) of the Act which is cognizable and non-bailable and the imprisonment imposed by way of punishment, on being convicted for the said offences, may extend to five years or fine, if the amount of ITC is wrongly availed or the amount of refund wrongly taken exceeds Rs.500 lacs. In all other cases, punishment prescribed is imprisonment which may extend to three years and with fine.

8. In the light of the above provisions describing the punishment, the guidelines issued by the Hon'ble Apex Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation* (supra) and considering the penalty to be imposed on conviction for the offences alleged to have been committed, the arrest of the applicant was unwarranted.

9. This Court at Principal Seat in the case of ***Daulat Samirmal Mehta Vs Union of India, thr. the Secretary and ors. [AIR OnLine 2021 BOM 516]*** also dealt with the same issue and held that power to arrest is provided in Section 69. As per sub-section (1), where the Commissioner has reasons to believe that the person has committed any offence specified in clause (a) or clause (b) or clause (c) or

clause (d) of sub-section (1) of Section 132, which is punishable under clause (i) or (ii) of sub-section (1) or sub-section (2) of the said section, he may by order authorize any officer of central tax to arrest such person. Chapter XIX deals with the offences and penalties. Section 132 is part of Chapter XIX. It provides for punishment for committing certain offences and considering all these aspects as well as considering the Hon'ble Apex Court judgment it is held by this court that upon considering the scheme in Section 132 of Chapter XIX of the CGST and after taking into account the punishment provided. The decision in the case of ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** as well as *Satender Kumar Antil Vs. Central Bureau of Investigation* (supra) is applicable in these cases also.

10. In the light of the above observation, the applicant has made out a case for the protection, and therefore, the prayer of the present applicant as to the ad-interim protection deserves to be allowed. Accordingly, I proceed to pass following order:

O R D E R

(i) In the event of the arrest in connection with File No.DGGI/INT/INTL/1425/2024 registered with non-applicant – Directorate General of GST Intelligence Nagpur Zonal Unit, Nagpur for offences punishable under Sections 132(1)(a), 132(1)(b), 132(1)(i) and Section 132(5) of Central Goods and Service Tax Act, 2017, the applicant shall be released on ad-interim anticipatory bail on executing P.R. bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.

(ii) The applicant shall attend the office of the non-applicant – Directorate General of GST Intelligence Nagpur Zonal Unit, Nagpur twice in a week on Monday and Thursday between 10:00 a.m. and 01:00 p.m. and shall co-operate with the investigating agency.

(iii) The applicant shall not induce or tamper any prosecution evidence in any manner.

(iv) The applicant shall not leave the jurisdiction of Nagpur City without prior permission of this Court.

11. Stand over after Summer Vacation, 2025.

(URMILA JOSHI-PHALKE, J.)

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