

Bail Application No.1674/2022
Vimal Alawadhi vs. Anti Evasion CGST

15.10.2022

Present : Sh.Ramesh Singh, Sr. Advocate with Sh.Anupam Singh, Sh.Himanshu Tyagi and Sh.Deepak Kumar, Id. Counsels for applicant.
Sh.Harpreet Singh, Id. Special PP for CGST.

This order of mine will dispose off application u/s 438 Cr.P.C. seeking anticipatory bail. It is stated that applicant is a CEO of two companies M/s Best Agro Life Limited and M/s Best Crop Science Pvt. Ltd and partner in M/s Best Crop Science LLP. It is stated that these companies are duly registered with GST department and filing statutory returns and discharging liability of GST. While stating that companies have paid huge amount of GST for sum of Rs.880 crores from year 2020 to September 2022. It is further mentioned in the application that applicant is into business through above mentioned companies since 1992, engaged in manufacturing of pesticides of various grades in agro chemical industry of India as well as international market.

It is mentioned that on 05.05.2022 officers of non-applicant Anti Evasion CGST Commissionerate, Meerut, visited the premises of Best Crop Science Pvt. Ltd and certain documents were called upon. In this regard summons were issued u/s 70 of CGST Act in the name of the applicant for appearance on 11.05.2022. It is stated that thereafter simultaneous searches were conducted by officers of CGST at the premises of companies of applicant. It is stated that department is putting up a case of utilising of Input Tax Credit and that at the

time of search on 26.08.2022 excess stock was found. It is stated that various summons were issued by the officers of above said department, in pursuance thereto employees of the companies have duly attended and replied to all the information sought. It is stated that despite replying to the officers of the department, repeated issuance of summons to the applicant for appearance u/s 70 of the Act, applicant has an apprehension of being arrested. Hence he has approached the court seeking pre-arrest bail.

It is stated that applicant has been cooperating with the agency and providing all the necessary documents and information. As such there was no reason for the agency to believe of any likelihood of any non-cooperation in investigation or to avoiding the assessment. It is stated that offences under GST Act are otherwise compoundable and therefore not to be considered to be serious enough to deprive personal liberty of accused. It is stated that there is no assessment made in the present case against the applicant till date. As such it is prayed that till the accused joins the proceedings/investigation before the CGST Department, he may be protected from possible arrest. Hence the application.

Upon notice Department has filed the reply stating therein that applicant has been involved in availment of ITC without receipt of goods in contravention to the provision of section 16 of CGST Act. It is stated that both the above mentioned companies are registered under GST jurisdiction of CGST Meerut Commissionerate, 12 suppliers of the above said companies were found to be non-existent regarding which ITC involved is around Rs.35 crores. Among those non-existing entities some of the

entities by name M/s M.K. Chemicals, M/s Gurukripa Impex, M/s Sidhivinayak Chemtech. Pvt. Ltd, M/s Tarun Chemicals are being controlled and managed through employees of M/s Best Crop Science Pvt. Ltd.

It is stated that even as per e-way bill data analysis it was found that there was circular transactions among M/s Sidhivinayak Chemtech Pvt. Ltd., M/s M.K. Chemicals and M/s Gurukripa Chemicals till the filing of final bill by them to M/s Best Crop Science Pvt. Ltd. As such department has reasonable belief regarding suspicious transaction of issuing fictitious invoices without actual supply of goods to take undue benefit of ITC. Details of other allegations have been mentioned in the reply, however this court need not to go into that detail at this stage.

Ld. Senior counsel appearing for applicant submits that whole edifice of the department in compelling for appearance of the applicant is otherwise not sustainable because there is only taking of ITC but there is no case of having gained or availing of the benefit or undue gaining from the same. As such the offence in terms of section 132(c) of CGST Act has not made out. He submits that even otherwise it is undisputed fact that CFO and accounts head of the companies of the applicant have been responding to the different summons issued earlier and providing necessary documents and information. As such there was nothing to hide from the department by the companies of the accused/applicant who have been repeatedly paying huge amount of GST since long. While referring to circular containing guidelines for issuance of summons ld. Senior Counsel submits

that sub clause (vi) of clause 3 of said Circular clearly stipulate that senior management official like CMD, MD, CEO, CFO etc. of company/PSU should not generally be summoned at first instance unless in situation when there is clear indication of their involvement in decision making process leading to loss to state exchequer. Ld. Sr. Counsel for applicant submits that in the present case no such situation accrued till date and therefore applicant has reasonable apprehension of being deprived of his personal liberty.

Ld. Sr. Counsel has placed reliance of judgment of Apex Court in **Gurbaksh Singh Sibbia vs. State of Punjab** (1980) 2 SCC 565, **Make My Trip vs. Union of India** 2016 (44) STR 481 (Del.) and **Akhil Krishan Maggu vs. Dy. Dir. of DG of GST Intelligence** 2020 (32) GSTL 516 (P&H).

Ld. SPP Sh.Harpreet Singh for Department on the other hand submits that on seven occasions applicant was called upon to furnish the necessary details/information which he avoided to respond for reasons best known to him. While referring to the reply filed by the Department, he submits that it is not a case of simple taking benefit of ITC availing, rather it is a case where ITC has been availed in contravention of CGST Act by creating 12 non-existing entities and creating invoices through those entities to avail ITC without actual supply of goods. He submits that from transactions of those entities a sum of Rs.35 crores has been availed as ITC. He further submits that documents furnished upto now had indicated that there were circular transaction among non-existing entities. As such when statement of different employees were recorded during investigation, it

came to the knowledge of the Department that relevant information is available only with applicant, therefore he was called upon to join the proceedings as per law and rules.

Having considered the submissions at bar and having gone through the record carefully. At the outset it be noted that application is annexed with notice received to the applicant, at page no.16 stated to have been issued by Superintendent, Principal Commissioner, CGST Meerut in terms of section 70 of CGST Act. Perusal of the said notice/summon does not show the reason why it has been served. As per section 70 of CGST Act power has been given to the Department to summon a person concerned to give evidence and to produced documents. In the present case summon/notice dated 05.05.2022 does not mention any such detail as required from the applicant. It has come on the record that prior to issuance of summons to the applicant CFO and Chief of Account Department of companies involved have joined the investigation with the Department and required documents, informations have already been provided.

Now in view of the plea of Department that certain information is exclusively available with the applicant and therefore he is required to join the investigation, in such situation it is to be examined whether applicant is entitled for relief of anticipatory bail or not. In this regard ld. Senior counsel for the applicant has relied upon judgment of **Gurbaksh Singh Sibbia vs. State of Punjab** (1980) 2 SCC 565, **Make My Trip vs. Union of India** 2016 (44) STR 481 (Del.) and **Akhil Krishan Maggu vs. Dy. Dir. of DG of GST Intelligence** 2020 (32) GSTL 516 (P&H).

First of all it be noted that there is no specific bar under CGST Act from seeking pre-arrest bail. No doubt such matters are economic offences involving tax evasion etc. This court is very much aware about the legal proposition that economic offences are considered to be grave offence and approach of the court is required to be different while examining the case of the accused seeking relief in such cases. However in this regard it is also to be kept in perspective that even if the allegations are one of economic offences, in all those cases bail cannot be denied as a rule, more specifically when there is no specific bar under the law.

Ld. Senior counsel for the applicant has rightly relied upon the judgment of Delhi High Court in **Tarun Jain vs. Directorate General of GST Intelligence DGGI** (Bail Appln. 3771/2021 decided on 26.11.2021), wherein it was observed in para 44 as :

“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 18 dealing with economic offence 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 que non.”

Similarly reference can also be given of observation made by Hon'ble High Court in **Tarun Jain's** case (supra) as :

“55. Custodial interrogation in the instant matter is Supreme Court in numerous decisions.
59. In view of these facts and circumstances and in light of the provisions of law, this Court is inclined to allow the anticipatory bail application with some stringent conditions in view of the prior conduct of the Petitioner.”

Perusal of the above said judgment of Hon'ble High Court would show that it relied upon the judgment of Hon'ble High Court of **Karnataka In Shravan A. Mehra v. Superintendent of Central Tax, Anti evasion, Commissionerate** Manu/KA/0875/2019. In that matter, bail was granted in relation to offences under the Act in view of the fact that the offences were not punishable with imprisonment for more than five years. In that case, the petitioner was alleged of having obtained Invoices from the Company of the respondent without delivery of the goods and thereby evading payment of tax and committing an offence under Section 132 (1) (b) of the Act. Therein, the petitioner once appeared before the authorities concerned but on a subsequent summon, they were apprehending arrest because another witness who was called to tender statement was arrested by the police. Thus, an application for anticipatory bail was filed before the court. The court after analysing the provisions of the Act held as under:-

“8. On close reading of the above said Sections, the maximum punishment provided under the Act is five years and fine and if that is taken into consideration, the magnitude of the alleged offence and it is not punishable 20 with death or imprisonment for life. Even as per the said provision, the alleged offence is also

compoundable with the Authority, who has initiated the said proceedings. The only consideration which the Court has to consider while releasing the petitioners on anticipatory bail is, that whether the petitioners can be secured for the purpose of investigation or for the purpose of trial. Under such circumstances, I feel that by imposing stringent conditions if the petitioners are ordered to be released on anticipatory bail, it would meet the ends of justice.”

Keeping in view the ratio laid down in above referred judgments, it must be noted that court has to strike a balance to ensure that no unwarranted abuse of process is allowed to impinge upon life and liberty of applicant and at the same time also to ensure that investigation is not hampered, procedure of administration of justice is not adversely impacted. In the present case also taking into consideration overall facts and circumstances and the gravity of the offence under CGST Act, I find that once the necessary documents, information has already been provided to the Department regarding the alleged evasion of tax under Input Tax Credit facility, if at all applicant is required to join the investigation, he to my mind is entitled to protection against any possible arrest, particularly when officers/officials of the companies have been rendering all necessary information/documents to the Department; the summon issued to the applicant does not enumerate any details required from him by the Department.

In such circumstance it is directed that in the event of any possible arrest of the accused, he be released on bail upon furnishing of bail bond for Rs.50,000/- with two sureties each in

like amount and subject to the condition that :

- (i) Applicant would join the investigation within four weeks from today;
- (ii) Applicant would deposit 10% of the amount claimed by the Department which of course would be subject to assessment and adjustment;
- (iii) Applicant shall not leave the country without prior permission from the Agency;
- (iv) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

With these directions, application stands disposed off.

(Shailender Malik)
ASJ/NDD/PHC/ND/15.10.2022