

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2020

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.2419 OF 2020

BETWEEN

SRI HANUMANTHAPPA PATHRERA LAKSHMANA
AGED ABOUT 52 YEARS,
S/O. MR. HANUMANTHAPPA,
No.37, 3RD CROSS,
JAYANAGAR,
SHIVAMOGGA-577 201.

...PETITIONER

(BY SMT. VEENA J. KAMATH, ADVOCATE, FOR
M/S. KAMATH AND KAMATH, ADVOCATES)

AND

STATE
BY SENIOR INTELLIGENCE OFFICER,
DIRECTORATE GENERAL OF GOODS
AND SERVICE TAX INTELLIGENCE,
BENGALURU ZONAL UNIT,
No.112, K.H. ROAD,
SHANTHINAGAR,
BENGALURU-560 027.

... RESPONDENT

(BY SRI JEEVAN J. NEERALGI, S.P.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN THE PROCEEDINGS INITIATED BY THE RESPONDENT IN PURSUANCE OF THE INSPECTION CONDUCTED ON 08.02.2020 AND CONSEQUENTIAL SUMMONS ISSUED BY THE RESPONDENT UNDER SECTION 70 OF THE CENTRAL GOODS AND SERVICE TAX ACTS, 2017.

THIS CRIMINAL PETITION IS COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for granting anticipatory bail. The case of the petitioner is that the respondent had issued notice/summons to the petitioner as per Section 70 of the Central Goods and Service Tax Act, 2017 (for short 'the CGST Act') summoning him to appear before the Authorized Officer finally on 12.05.2020 (before filing the petition and after filing the petition, another summon has been issued). Further contention of the petitioner is that the petitioner is the proprietor of M/s. Sri Om Traders, registered dealer under the provisions of the CGST Act and the SGST at Shivamogga, dealing in both ferrous and non-

ferrous scrap. During his regular course of business, he has purchased goods from various registered and unregistered dealers and issued tax invoices as per law. He has collected the taxes and remitted to the Government as per the CGST and the SGST Act.

2. Further, it is contended that on 08.02.2020, the respondent has issued a summon to appear before an Officer by name D. Bhaskar at 3:15 p.m., and prior to that on the same day, the respondent has conducted inspection of the business premises and drawn a mahazar. Another notice issued by the respondent to appear before K. Venumadhava Reddy on 10.02.2020. The petitioner is ready to appear before the respondent and co-operate with the investigation. However, the respondent has already collected all the documents and completed their investigation and the petitioner has apprehended his arrest in the hands of the respondent for the offence punishable under Section 132(5) of the CGST Act. In case, if he is arrested and sent to judicial custody, he will be put into

hardship and irreparable loss as he is having a old age mother and also a daughter and due to COVID-19 lockdown situation, his health may affect. Even though, he has not committed any offence, there is likelihood of his arrest for the non-bailable offence. He is ready to abide by any condition imposed by this Court. The offence is not punishable with death or imprisonment for life. He is ready to offer any surety. Hence, prayed for granting anticipatory bail.

3. Sri Jeevan Neeralgi, learned Special Public Prosecutor, has filed written objections contending that the petitioner is an assessee under the CGST Act. Intelligence has been developed by the Officers of the respondent that the petitioner was engaged in avilment of fake input tax credit i.e., availing of credit on the invoices received from the persons without actual supply of goods. Based upon the authorization given by the Competent Authority, summons have been issued to the petitioner to appear before the Officer as per Section 70 of the CGST Act. The

power conferred on the Officer under Section 70 of the CGST Act is to summon any person to appear and produce document or examine before him. The inquiry is deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of the Indian Penal Code. In spite of issuing so many notices/summons, the petitioner has failed to appear before the Authority on various dates. The preliminary investigation revealed that the input tax credit is taken by the petitioner from the bogus entities. The petitioner is operating from rented premises and his whereabouts were not known to his neighbours. The respondent is authorized to conduct proceedings in terms of Section 67 of the CGST Act. Neither the petitioner nor his authorized person approached the respondent till 03.03.2020. The whereabouts of the petitioner is not known. The petitioner is a habitual offender, he may commit same offence and he is deliberately avoiding his appearance for the purpose of enquiry proceedings. His bail petition filed before the City Civil and Sessions Judge came to be dismissed. If the bail is granted to the

petitioner, he will destroy the evidentiary material and other documents. The anticipatory bail is not maintainable and it is pre-matured. In similar cases, the Telangana High Court has dismissed the petitions in ***P.V.Ramana Reddy vs. Union of India in Writ Petition Nos.4764, 4769, 4892, 5074, 5130, 5329, 6952 and 7583 of 2019, dated 18.04.2019*** which was upheld by the Hon'ble Supreme Court by dismissing the SLP and the Hon'ble Supreme Court has reaffirmed ***P.V.Ramana Reddy's case*** in the case of ***Union of India vs. Sapna Jain and Others in SLP (CRL.)Nos.4322-4324/2019, dated 29.05.2019*** and hence, prayed for dismissing the bail petition.

4. I have heard the arguments of the learned counsel for the petitioner as well as the learned State Public Prosecutor and perused the records.

5. Before advertng to the case of the petitioner, it is worth to consider the judgment of the Telangana High

Court and the judgment of the Hon'ble Supreme Court which were relied by the respective learned counsel.

6. The main objection raised by the learned Special Public Prosecutor for the respondent is that the anticipatory bail is not maintainable. The petitioner is required to file only writ petition for seeking relief under the CGST Act. In support of his arguments, he has relied upon the judgment of the Telangana High Court in the case of **P.V.Ramana Reddy** stated supra and the Hon'ble Supreme Court has upheld the order of the Telangana High Court in the Special Leave Petition and the same was reaffirmed by the Hon'ble Supreme Court in **Sapna Jain's** case stated supra.

7. Per contra, the learned counsel appearing for the petitioner has contended that in a similar case, the Co-ordinate Bench of this Court has granted anticipatory bail in Criminal Petition Nos.497/2019 connected with 498/2019 dated 18.02.2019 in the case of **Sri Avinash Aradhya vs. The Commissioner of Central Tax and**

Sri Mallokaradhya I.P. vs. The Commissioner of Central Tax respectively. He further contended that in a similar case, the Bombay High Court has rejected the bail petition and in the appeal, the Hon'ble Supreme Court in the case of **Meghraj Moolchand Burad (Jain) vs. Directorate General of GST Intelligence Pune and Another** has granted bail vide order dated **13.12.2018**. Learned counsel for the petitioner has contended that there is no speaking order passed by the Hon'ble Supreme Court in **P.V.Ramana Reddy's** case in SLP, therefore, there is no law laid down by the Hon'ble Supreme Court in order to reject the bail petition in view of the law laid down by the Hon'ble Supreme Court in the case of **Khoday Distilleries Limited and Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal** reported in **(2019) 4 SCC 376**.

8. Writ petitions were filed by **P.V.Ramana Reddy** before the Division Bench of the Telangana High Court challenging the issuance of summons/notice issued by the

Authorities under Section 70 of the CGST Act. The Hon'ble Telangana High Court after considering various grounds urged by the learned counsel for the petitioner and the Additional Solicitor General has held at paragraph Nos. 47, 48 and 58 as under:

"47. Once it is found that Article 226 of the Constitution of India can be invoked even in cases where Section 438 Cr.P.C. has no application (in contrast to cases such as those under the SC/ST Act where it stands expressly excluded) and once it is found that the limited protection against arrest available under Sections 41 and 41A Cr.P.C. may be available even to a person sought to be arrested under Section 69(1) of the CGST Act, 2017 (though the necessity to record reasons in the authorization for arrest may not be there), it should follow as a corollary that the writ petitions cannot be said to be not maintainable.

48. That takes us to the next question as to whether the petitioners are entitled to protection against arrest, in the facts and circumstances of the case. We have already indicated on the basis of the ratio laid down by the Constitution Bench in Kartar Singh and the ratio laid down in Km. Hema Mishra that the jurisdiction under Article 226 of the

Constitution of India to grant protection against arrest, should be sparingly used. Therefore, let us see prima facie, the nature of the allegations against the petitioners and the circumstances prevailing in the case, for deciding whether the petitioners are entitled to protection against the arrest. We have already extracted in brief, the contents of the counter affidavits. We have summarized the contents of the counter affidavits very cautiously with a view to avoid the colouring of our vision. Therefore, what we will now take into account on the facts, will only be a superficial examination of facts.

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58. Therefore, all the technical objections raised by the petitioners, to the entitlement as well as the necessity for the respondents to arrest them are liable to be rejected. Once this is done, we will have to examine whether, in the facts and circumstances of these cases, the petitioners are entitled to protection against arrest. It must be remembered that the petitioners cannot be placed in a higher pedestal than those seeking anticipatory bail. On the other hand, the jurisdiction under Article 226 has to be sparingly used, as cautioned by the Supreme Court in Km. Hema Misra (cited supra)."

9. On merits of the case, the Hon'ble Telangana High Court has dismissed the writ petitions, which were challenged by the assesees before the Hon'ble Supreme Court by filing SLP Crl.No.4430/2019. The Hon'ble Supreme Court has dismissed the said SLP vide order dated 29.05.2019. In the case of **Sapna Jain** (SLP Crl.Nos.4322-4324/2019), the Hon'ble Supreme Court has held as under:

"while entertaining any such request in future, the order of the Telangana High Court be kept in mind, wherein the court has taken a view contrary to that of the other High Courts."

The Hon'ble Supreme Court has held that while dealing with any such cases under the CGST Act, the order passed by the Telangana High Court in **P.V.Ramana Reddy's** case shall be kept in mind.

10. As already held above in **P.V.Ramana Reddy's** case, the Telangana High Court has held that writ petition under Article 226 of the Constitution of India, the pre-arrest bail is maintainable, but on the merits, the writ petitions were dismissed as huge amount of tax evaluation was involved in the said case. It is also be noted that the then learned Additional Solicitor General Sri K.M. Nataraj has argued in the said case that writ petitions cannot be converted into bail petition under Section 438 of the Cr.P.C. for granting anticipatory bail. The said submission has been placed at paragraph No.16 of the said judgment and the Telangana High Court rejected the contention of the Additional Solicitor General and the writ petitions were dismissed. The Supreme Court has dismissed the SLP, however, no speaking order has been passed. In this regard, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Khoday Distilleries Limited** stated supra, wherein various guidelines have been issued. The relevant guidelines are as follows:

"Held, (i) an order refusing special leave to appeal may be a non-speaking order or a speaking one-In either case it does not attract the doctrine of merger-An order refusing special leave to appeal does not stand substituted in place of the order under challenge-All that it means is that Supreme Court was not inclined to exercise its discretion so as to allow the appeal being filed

(ii) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications- Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Art.141 of the Constitution- Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country-But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme

Court is the only order binding as res judicata in subsequent proceedings between the parties."

11. Further, the Hon'ble Supreme Court in the case of **Sapna Jain** stated supra has held as under:

"As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court. Hence, the notice.

As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by Order dated 27.05.2019 passed in SLP(Crl.) No.4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case."

12. Further, the Union of India challenged the granting of relief of bail in favour of **Sapna Jain** by the

Bombay High Court. The Hon'ble Supreme Court has not set aside the order of the Bombay High Court. Apart from that, in the case of **Meghraj Moolchand Burad (Jain)** stated supra in ABA No.2333 of 2018, the Bombay High Court has dismissed the bail petition filed under Section 438 of the Cr.P.C. and the assessee filed SLP before the Hon'ble Supreme Court in S.L.P (Cri.) No.244 of 2019. The Hon'ble Supreme Court granted anticipatory bail vide judgment dated 13.12.2018. The Co-ordinate Bench of this Court vide order dated 18.02.2019 in the case of **Avinash Aradhya** stated supra has granted anticipatory bail by imposing conditions. In another batch of case, on 15.04.2019, the Co-ordinate Bench of this Court has granted anticipatory bail to one **Mahendra Kumar Singhi** and **Suman Mahendra Kumar Singhi**. The said bail orders were not challenged by the respondent-State before the Hon'ble Supreme Court. The Co-ordinate Bench of this Court while granting anticipatory bail considered the provisions of Sections 132, 137 and 138 of the CGST Act and by considering the principal laid down by the Hon'ble

Supreme Court in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** reported in **(2011) 1 SCC 694** granted the relief by imposing conditions. Even otherwise, the Telangana High Court has not held that Section 438 of the Cr.P.C. bail application is not maintainable in the case of the offence which is punishable under the CGST Act.

13. That apart, the learned Special Public Prosecutor for the respondent fairly admits that there is no statutory bar in the CGST Act either expressly or impliedly for entertaining the bail petition under section 438 of the Cr.P.C. Unlike, the anticipatory bail has been prohibited in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and there was bar for anticipatory bail in the State of Uttar Pradesh. It is relevant to mention that as per the provisions of Section 70 of the CGST Act, the Officer has power to summon any person whose attendance is considered as necessary either to give evidence or to produce document or any other

thing in any inquiry in the same manner as provided in the case of Civil Court under the provisions of the Code of Civil Procedure, 1908, and every such inquiry referred to sub-section (1) shall be deemed to be "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code.

14. It is also relevant to mention that Section 69 of CGST Act empowers the Commissioner to authorize any Officer of central tax to arrest a person, if the Commissioner has reasons to believe that a person has committed any offence specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132. Sub-section (2) of Section 69 of the CGST Act empowers that where a person is arrested under sub-section (1) for 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 24 hours. Sub-section (3)(a) of Section 69 of the CGST Act empowers that where a person is arrested under

sub-section (1) for any offence specified under sub-section (4) of Section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. Sub-section 3(b) of Section 69 of the CGST Act empowers that in a case of non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same power and be subject to the same provisions as an Officer in-charge of a Police Station.

15. On bare reading of Section 69 of the CGST Act clearly empowers the Commissioner to authorize any Officer to arrest a person, if the Commissioner has reasons to believe that if a person committed the offence specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132 and as per Section 132 (4) of the CGST Act, if any offence is committed, other than the offence, Clause (a) or (b) or (c) or (d) of sub-section 1 of Section 132 shall be non-cognizable and bailable. As per sub-section (5) of Section 132, the offences specified in Clause (a) or (b) or

(c) or (d) of sub-section (1) of Section 132 shall be cognizable and non-bailable and punishable under Clause (i) up to 5 years and fine. Therefore, if the petitioner is arrested for the offences other than the offence stated under Section sub-section 4 of Section 132 of the CGST Act which are non-cognizable and bailable, wherein the Deputy Commissioner or Assistant Commissioner has power to release the petitioner on bail. If the Commissioner has reasoned to believe that the petitioner is arrested for the offence committed under Section 132(1)(a) or (b) or (c) or (d) which is punishable under sub-section 5 of Section 132 of the CGST Act, which is cognizable and non-bailable offence, the Officer authorized by the Commissioner after informing the grounds of arrest has to produce before the Magistrate within 24 hours. If the assessee is arrested and produced before the Magistrate, the petitioner/assessee is likely to be remanded to judicial custody. Therefore, when the offences punishable under sub-section 1 Clause (a) or (b) or (c) or (d) of Section 132 of the CGST Act which falls

under the provisions of sub-section 5 of Section 132 of the CGST Act is a cognizable and non-bailable offence punishable with imprisonment up to 5 years and fine. Once a person apprehends his arrest in the hands of the Commissioner under Section 69 of the CGST Act, the assessee has statutory right to seek anticipatory bail under Section 438 of the Cr.P.C. At this juncture, it is relevant to mention Section 438 of the Cr.P.C. which is as under:

438 - Direction for grant of bail to person apprehending arrest

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has

previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and.

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

16. On bare reading of Section 69 (1) of the CGST Act, where the Commissioner has reasons to believe if a person committed the offence under Section 132 of the CGST Act, he may, by order, authorize any officer of central tax to arrest such person. Therefore, the petitioner has reasons to believe that he may be arrested on accusation for having committed non-bailable offence under sub-section 5 of Section 132 of the CGST Act. Therefore, the petition under Section 438 of the Cr.P.C. is maintainable for the offences committed under the CGST

Act and there is no statutory bar for invoking or exercising power under section 438 of the Cr.P.C. for the offence committed under the provisions of the CGST Act. Therefore, the contention of the learned Special Public Prosecutor cannot be accepted.

17. On merits of the case, it is alleged by the prosecution that the petitioner is said to have involved fraudulent involvement of input tax credit on the basis of invoices without actual supply of goods in contravention of Section 16 of the CGST Act and caused loss to the exchequer for Rs.9.05 crore approximately. It is also stated that the preliminary stage of investigation has been completed and they found, the input tax credit taken by the petitioner from the bogus entities and said to be created fake invoices in order to avail input tax credit and to make enquiry under Section 70 of the CGST Act. Therefore, summons have been issued by the authorized officer under Section 70 of the CGST Act which clearly goes to show that the petitioner is reasoned to believe that he is

apprehending his arrest in the hands of the respondent in case after his appearance before the authorizing officer as per Section 69 of the CGST Act. Therefore, in case the petitioner is arrested, he is likely to remand to the judicial custody, after his production before the Magistrate and by looking to the present COVID-19 situation, if he is remanded to the judicial custody, he will be put to hardship and definitely, his health would likely to affect. The offences are not punishable with death or imprisonment for life. There is no statutory bar in the CGST Act for granting anticipatory bail by exercising power under Section 438 of the Cr.P.C. Merely, there were number of notices/summons issued by the respondent during the lockdown for COVID-19 that itself is not a ground to reject the bail petition. Considering the fact and circumstances of the case, if an anticipatory bail is granted, no prejudice would be caused to the respondent. Accordingly, I proceed to pass the following

ORDER

Petition is **allowed**. The petitioner is ordered to be enlarged on bail in the event of his arrest under Section 69 of the CGST Act by the respondent-Authorised Officer, after enquiry under Section 70 of the CGST Act, in summon dated 12.05.2020 in No.CBIC-DIN-202005DSS000006QFF52 and corrigendum dated 18.05.2020 in No.CBIC-DIN-202005DSS000001W4CCE, subject to following conditions:

- i. *Petitioner shall execute a personal bond for Rs.10,00,000/- (Rupees Ten lakh) with two sureties to the Apprehending Authority or Authorized Officer;*
- ii. *Petitioner shall appear before the Authorized Officer within one week, after receipt of this order, for the purpose of enquiry under Section 70 of the CGST Act;*

- iii. Petitioner shall not tamper with the prosecution evidence or any document directly or indirectly;*
- iv. Petitioner shall co-operate during the course of enquiry and shall not leave the country without prior permission of the Magistrate or the trial Court and he shall surrender his passport, if any, to the concerned Authorized Officer;*
- v. Petitioner shall appear as and when called for the purpose of any further investigation; and*
- vi. Petitioner shall not indulge in any similar offence.*

In view of the disposal of the main petition, I.A. No.1 of 2020 does not survive for consideration. It is, accordingly, disposed of.

Sd/-
JUDGE

GBB/kvk