IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.471 OF 2021

Daulat Samirmal Mehta ... Petitioner
Vs.
Union of India through the Secretary and others ... Respondents

Mr. Ashish Batra a/w. Mr. Pankaj D. Jain a/w. Ms. Tejashree R. Kamble and Mr. Arun Lambe i/b. P. D. Jain & Co. for Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra for Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 15, 2021

ORAL ORDER : (*Per Ujjal Bhuyan, J.*)

Heard Mr. Batra, learned counsel for the petitioner and Mr. Pradeep S. Jetly, learned senior counsel along with Mr. Mishra, learned counsel for the respondents on the prayer for bail.

2. This petition under Article 226 of the Constitution of India challenges constitutional validity of section 132(1) (b) of the Central Goods and Services Tax Act, 2017 (briefly "the CGST Act" hereinafter) and seeks a declaration that the power under section 69 of the CGST Act can only be exercised upon determination of the liability. A further prayer has been made to restrain respondent No.4 from filing any criminal complaint against the petitioner for alleged violation of the provisions of the CGST Act which are compoundable offences. Additionally, petitioner seeks a direction to respondent Nos.2 and 3 to take a decision by passing a speaking order on the compounding applications dated 28.01.2021 filed by the petitioner and the two companies of which he is a director. An interim prayer has been made for enlarging the petitioner on bail since he is under judicial custody with effect from 21.01.2021.

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3. Though facts lie within a very narrow compass, to have a proper perspective it would be apposite to briefly advert to the relevant facts as averred in the writ petition.

4. It is stated that petitioner is a senior citizen aged about 65 years. He is the Director of two companies by the name of Twinstar Industries Limited and Originet Technologies Limited.

5. In the year 2018, respondent No.4 initiated an investigation on the basis of intelligence inputs regarding alleged fraudulent availment and utilization of input tax credit (ITC) by one M/s. Al Fara's Infraprojects Private Limited on the basis of bogus invoices without actual receipt of goods or services. During the course of the investigation, statements of various persons including certain officials of M/s. Al Fara's Infraprojects Private Limited were recorded. In so far petitioner is concerned, on several occasions, summons were issued to him by the office of respondent No.4 under section 70 of the CGST Act and in response to the summons, petitioner had appeared before the investigating officer in the office of respondent No.4 whereafter his statements were recorded on 05.12.2018, 12.12.2018, 04.01.2019, 15.02.2019 and 21.01.2021.

6. After recording his last statement on 21.01.2021, petitioner was arrested by officials working in the office of respondent No.4 whereafter he was produced before the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai along with remand application. Remand application disclosed that petitioner is accused of committing offence under section 132(1)(c) of the CGST Act as his companies had fraudulently availed and utilized ineligible input tax credit (ITC) amounting to Rs.122.59 crores approximately on the strength of bogus invoices without actual receipt of goods or services as mentioned in the respective invoices; besides committing an offence under section 132(1)(b) as it was alleged that companies of the petitioner had fraudulently

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issued bogus invoices and passed on ineligible ITC to various companies without actual supply of goods or services mentioned in the respective invoices thereby leading to wrongful passing on of ITC amounting to approximately Rs.191.66 crores to the recipient companies. By the said remand application, the arresting authority sought for judicial custody of the petitioner for a period of 14 days seeking liberty to interrogate the petitioner in jail custody.

7. It is stated that following his arrest, petitioner has been lodged in judicial custody as on today.

8. In the meanwhile, on behalf of the petitioner and the two companies of which he is the director, three separate compounding applications dated 28.01.2021 were filed under section 138 of the CGST Act before respondent Nos.2 and 3 for compounding of the offences and to prevent further infringement of the personal liberty of the petitioner.

9. Petitioner has stated that though he does not admit any of the allegations levelled against him, he has nonetheless filed applications for compounding to avoid multiplicity of proceedings as well as to avoid the rigours of prosecution besides any further prejudice to his personal liberty.

10. With the above grievance, the present writ petition has been filed seeking the reliefs as indicated above.

11. On 02.02.2021, when the writ petition was placed before the Court, the same was adjourned to 05.02.2021 on request of Mr. Jetly, learned senior counsel for the respondents. On 05.02.2021, notice was issued. While issuing notice, this Court noted that petitioner is in custody since 21.01.2021; therefore, the matter was directed to be listed on 10.02.2021 for consideration of the bail prayer of the petitioner. Accordingly, the matter was listed and heard on 10.02.2021 on the

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prayer for bail.

12. Respondent No.4 has filed a detailed affidavit in reply. Stand taken in the reply affidavit is that the petitioner has the remedy of applying for bail under section 437 of the Code of Criminal Procedure, 1973 (briefly 'the Cr.P.C.' hereinafter). In such circumstances, filing of writ petition under Article 226 of the Constitution of India for bail would not be a proper remedy. After referring to the allegations against the petitioner in detail, it is stated that in the course of investigation, statements of the petitioners were recorded on 05.12.2018, 12.12.2018, 04.01.2019, 15.02.2019 and 21.01.2021. Investigation is still going on. On the basis of the evidence collected during the investigation, it is evident that petitioner is the managing director of M/s. Twinstar Industries Limited and M/s. Originet Technologies Limited besides being the promoter of M/s. Boostmetric Solutions Limited, M/s. Stuti Comtrade Private Limited, M/s. Vintage Comtrade Private Limited and M/s. Kala Exports has created a cartel in active collaboration with the officials of Al Fara's group of companies wherein they have indulged in circular transactions of goods without actual supply of the same. Enquiries conducted till date have revealed that petitioner through his companies has availed inadmissible ITC to the extent of Rs.191.66 crores and has also passed on inadmissible ITC to the tune of Rs.122.59 crores to other companies, totaling Rs.314.25 crores.

12.1. Referring to sections 69 and 132 of the CGST Act, it is contended that there are inbuilt internal safeguards in the said provisions as no arrest and prosecution can be made or launched without the previous sanction of the Commissioner of Central Tax. Thereafter reference has been made to a decision of the Telangana High Court in the case of *P. V. Ramana Reddy Vs. Union of India*, **(2019) 73 GST 727** in which the Telangana High Court declined the prayer for pre-arrest bail where the petitioner faced identical allegations. Reference has also been made to the order passed by the Supreme Court on 27.05.2019 dismissing the

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Special Leave Petitions filed against the decision of the Telangana High Court. Reference has also been made to the observations of the Supreme Court in *Union of India Vs. Sapna Jain*, S.L.P. (Criminal) No.4322 of 2019 dated 29.05.2020. In that case, SLP was filed against the decision of the Bombay High Court granting interim protection to the accused from being arrested for committing alleged offence under the CGST Act. While issuing notice, Supreme Court observed that the High Courts while entertaining such request in future should keep in mind that the Supreme Court had dismissed the S.L.P. filed against the decision of the Telangana High Court wherein the High Court of Telangana had taken a view contrary to what was held by the Bombay High Court. Therefore, based on the above prayer has been made not to entertain the writ petition.

13. Mr. Batra, learned counsel for the petitioner submits that though the petitioner denies all the allegations made against him by the respondents, he has nonetheless co-operated with the investigation carried out by respondent No.4. Whenever summons were issued to him under section 70 of the CGST Act, petitioner had responded to the same and had appeared before the respondents not once but on five occasions. In such circumstances, there can be no justification or reasons to believe for arresting the petitioner. The arrest carried out is arbitrary, unreasonable and punitive thus illegal. Mr. Batra has referred to a decision of the Delhi High Court in *Makemytrip (India) Private Limited Vs. Union of India*, **2016 (44) STR 481** in support of his contention that arrest in such a situation cannot be justified and, therefore, petitioner should be enlarged on bail forthwith.

14. Mr. Jetly, learned senior counsel for respondent No.4 at the outset has referred to the prayer portion in the writ petition. After reading out the prayer portion, he submits that there is no substantive prayer for bail, only an ad-interim prayer for bail has been made. In the absence of any substantive prayer, no interim relief can be granted on such prayer. On

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this ground itself, petitioner's prayer for bail is liable to be turned down.

14.1. Second submission of Mr. Jetly is that petitioner has an efficacious and effective alternative remedy under section 437 Cr.P.C.; rather filing of bail application under the said provision is the normal rule and there is no justification for by-passing the regular procedure of bail as provided under section 437 Cr.P.C. Writ jurisdiction cannot be a substitute for jurisdiction under section 437 Cr.P.C. Referring to the averments made in the reply affidavit as well as in the remand application, he submits that petitioner has admitted his culpability in the commission of offence of utilizing ITC generated fraudulently without there being any transfer of goods.

14.2. In so far sections 69 and 132 of the CGST Act are concerned, he submits that though the power to arrest by the revenue officials under the aforesaid provisions has been conceded by the Parliament in the larger interest of the society, nonetheless it cannot be said that these two provisions provide for an unbridled power of arrest rendering such power arbitrary and unreasonable. There are inbuilt procedural safeguards in these two provisions. In this connection, he has referred to the judgment of the Telangana High Court in the case of **P. V. Ramana Reddy** (*supra*) and submits that the present case is identical to the one dealt with by the Telangana High Court. In that case, Telangana High Court had rejected the prayer for pre-arrest bail of the petitioner accused of committing identical offence which decision has not been interfered with by the Supreme Court by rejecting the special leave petitions. Distinguishing the Delhi High Court judgment in the case of **Makemytrip (India) Private Limited** (*supra*), Mr. Jetly submits that was a case pertaining to service tax prior to coming into force of the CGST Act. Mr. Jetly has also referred to the observations made by the Supreme Court while issuing notice in the case of **Sapna Jain** (*supra*). In the light of the above, he submits that while considering the prayer for bail of the petitioner, it would be necessary to keep in mind the decision

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of the Telangana High Court rejecting identical prayer.

15. Supporting the submissions of learned senior counsel Mr. Jetly, Mr. Mishra, learned counsel additionally submits that both adjudicatory process and prosecution in the case of alleged tax evasion can go on simultaneously. It is not necessary that the demand has to be first quantified after an adjudicatory process and thereafter resort can be taken to for arresting the person concerned or those involved in evasion of tax. Economic offences are a class apart. Therefore, such offences must be viewed seriously and a different yardstick has to be followed while considering the prayer for bail of a person accused of committing economic offence. In support of his submissions, Mir. Mishra has placed reliance on a number of decisions apart from reiterating the decision of the Telangana High Court in **P. V. Ramana Reddy** (*supra*). He, therefore, submits that the prayer for bail of the petitioner may be rejected.

16. Mr. Batra, learned counsel for the petitioner in his reply submissions has stressed upon the fact that investigation is going on for more than two and half years. There is no record of the petitioner avoiding investigation or tampering with evidence during this period. His conduct is self-evident from the record itself. Therefore, continuing with the illegal detention of the petitioner would be wholly oppressive besides being in violation of Article 21 of the Constitution of India.

17. At the end of the hearing, Mr. Mishra has produced before the Court, the record in original in four sealed envelopes which we have opened and perused.

18. Submissions made by learned counsel for the parties have been duly considered.

19. At the outset, we may refer to the remand application of

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respondent No.4 filed before the Additional Chief Metropolitan Magistrate at the time of production of the petitioner after his arrest on 21.01.2021. A perusal of the remand application would go to show that the allegation against the petitioner is that petitioner as the director of M/s. Twinstar Industries Limited and other companies has committed offence under section 132(1)(c) of the CGST Act in as much as his companies have fraudulently availed and utilized ineligible input tax credit amounting to Rs.122.59 crores approximately on the strength of bogus invoices without actual receipt of goods or services as mentioned in the respective invoices and that he has also committed offence under section 132(1)(b) of the CGST Act in as much as his companies have fraudulently issued bogus invoices and passed on ineligible ITC to various companies without actual supply of goods or services mentioned in the respective invoices thereby leading to wrongful passing on of ITC amounting to Rs.191.66 crores approximately to the recipient companies. It was mentioned that these two offences are cognizable and non-bailable as per provisions of section 132(5) of the CGST Act read with section 137 thereof and punishable with imprisonment for a term which may extend to five years and fine. Accordingly, the accused (petitioner) was arrested on 21.01.2021 at 13:45 hours. After narrating in detail about the offences allegedly committed by the petitioner, prayer was made for judicial custody of the petitioner for a period of 14 days and also for granting liberty to the investigating officer to interrogate the petitioner in jail custody.

20. Thus from the above, it is seen that petitioner has been charged with committing offences under section 132(1)(c) and 132(1)(b) of the CGST Act.

21. Chapter XIV of the CGST Act deals with inspection, search, seizure and arrest. It comprises of sections 67 to 72. Before coming to section 69 which deals with the power to arrest, we may briefly note the provisions of section 70. Section 70 deals with power to summon

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persons to give evidence and produce documents. As per sub-section (1), the proper officer under the CGST Act shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry in the same manner as provided in the case of a civil court under the provisions of the Civil Procedure Code, 1908. Thus what sub-section (1) of section 70 provides is the conferment of power on the proper officer to summon any person whose attendance he considers necessary to either tender evidence or to produce documents etc. in any enquiry. Exercise of such a power is akin to power exercised by a civil court under the Civil Procedure Code, 1908. Sub-section (2) clarifies that every enquiry in which summons is issued for tendering evidence or for production of documents is to be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860.

22. As noticed above, 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. Therefore, what sub-section (1) provides is that Commissioner may by order authorize any officer of central tax to arrest a person if he has reasons to believe that the said person has committed any offence under clauses (a) or (b) or (c) or (d) of sub-section (1) of section 132. The expression 'reasons to believe' as appearing in sub-section (1) of section 69 is of crucial importance because the same is the *sine qua non* for exercise of power to arrest by the Commissioner. However, we will deal with this aspect a little later.

22.1. One more aspect which needs mention is that under sub-section (3) of section 69, arrest under sub-section (1) has been made subject to

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the provisions of Cr.P.C., which would include section 41 and 41-A thereof.

23. Chapter XIX deals with offences and penalties. Section 132 is part of Chapter XIX. It provides for punishment for committing certain offences. As per sub-section (1), whoever commits any of the twelve offences mentioned therein shall be punished in the manner provided in clauses (i) to (iv) of sub-section (1). In this case, we are concerned with offences under clauses (b) and (c) of sub-section (1). As per clause (c), the offence is availing input tax credit using invoice or bill without the supply of goods or services or both in violation of the CGST Act; and as per clause (b), a person who issues any invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax. If a person commits the above two offences as per clauses (c) and (b), he shall be punishable under clause (i) if the amount of tax evaded or the amount of input tax credit wrongly availed of or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees with imprisonment for a term which may extend to five years and with fine. All other penalties are below five years. Therefore, the maximum penalty that can be imposed for committing offences under clauses (c) and (b) of sub-section (1) of section 132 is imprisonment for a term which may extend to five years and with fine.

23.1. As per sub-section (5), the offences specified in clause (a) or (b) or (c) or (d) of sub-section (1) and punishable under clause (i) of that section are cognizable and non-bailable.

24. Reverting back to the facts of the present case, we find that summons were issued to the petitioner under section 70 of the CGST Act. Responding to the summons, petitioner had appeared before the investigating officer whereafter his statements were recorded on 05.12.2018, 12.12.2018, 04.01.2019, 15.02.2019 and 21.01.2021. We

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have perused the statements which are part of the record produced before us by Mr. Mishra. We also notice that after recording of the statement of the petitioner on 15.02.2019, his statement was again recorded after almost two years on 21.01.2021. What happened in the interregnum is not known. The record does not disclose that during this period or even prior to that after the first statement of the petitioner was recorded on 05.12.2018, there was any incident of the petitioner tampering with the evidence or threatening or inducing any witness. There is nothing on record to show that the petitioner had avoided the investigation or there was a possibility of the petitioner fleeing from investigation.

25. We notice that respondents have relied upon the statements of the petitioner as alluded to hereinabove to contend that there is clear admission on the part of the petitioner to the wrong doing and thus committing offences under section 132(1)(c) and (b) of the CGST Act and, therefore, his arrest has been justified. Though section 25 of the Indian Evidence Act, 1872 is not attracted to recording of statements by revenue officers under the CGST Act, nonetheless we find that section 136 of the CGST Act may have a bearing on this aspect. Section 136 of the CGST Act deals with relevancy of statements under certain circumstances. It says that a statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under the CGST Act shall be relevant for the purpose of proving in any prosecution for an offence under the CGST Act, the truth of the facts which it contains when a person who made the statement is examined as a witness in the case before the court and the court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

26. Though we are aware that section 136 of the CGST Act will only come into play at the time where the trial commences nonetheless the

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said provision is important to highlight the fact that an admission made by a person before the revenue officials under the CGST Act would not be *per se* admissible in evidence unless it receives the imprimatur of the Court.

27. Having briefly noted the aforesaid provision, we may now revert back to what we had discussed about the *sine qua non* for exercising the power of arrest under section 69 of the CGST Act. We had noticed that the Commissioner may authorize arrest of a person only if he has reasons to believe that such a person has committed any offence under the clauses mentioned therein. The expression 'reasons to believe' is an expression of considerable import and in the context of the CGST Act, confers jurisdiction upon the Commissioner to authorize any officer to arrest a person. This expression finds place in a number of statutes including fiscal and penal. Without dilating much, it can safely be said that the expression 'reasons to belief' postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. Reasons to believe does not mean a purely subjective satisfaction. It contemplates existence of reasons on which the belief is founded and not merely a belief in the existence of reasons inducing the belief. The belief must not be based on mere suspicion; it must be founded upon information. Such reasons to believe can be formed on the basis of direct or circumstantial evidence but not on mere suspicion, gossip or rumour. It is open for a court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief. A rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the officer and the formation of his belief. Courts have also held that recording of reasons distinguishes an objective from a subjective exercise of power and is a check against arbitrary exercise of power.

28. Having noticed the above, we may now examine the reasons

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recorded by the Principal Additional Director General while authorizing arrest of the petitioner.

28.1. From the note sheet dated 21.01.2021, we find that Principal Additional Director General has recorded her reasons after going through the facts and the arrest proposal put up before her. She recorded that she had reasons to believe that the petitioner had committed the two offences as mentioned above, which are cognizable and non-bailable. Thereafter she noted that during the course of the investigation, petitioner had not co-operated with the department and had tried to mislead the investigation. Offences were committed with full disregard to the statutory provisions with intent to defraud Union of India of its legitimate revenue. Therefore, she agreed with the proposal to arrest the petitioner in order to ensure that he does not tamper with crucial evidence and does not influence the witnesses as well as does not hamper in the investigation process.

29. In *Arnesh Kumar Vs. State of Bihar*, **(2014) 8 SCC 273**, Supreme Court was examining a plea of pre-arrest bail by the petitioner accused of committing an offence under section 498A of the Indian Penal Code, 1860 as well section 4 of the Dowry Prohibition Act, 1961. While laying down various guidelines and expressing its opinion, Supreme Court clarified that the directions issued would not only be applicable to cases under section 498A of the Indian Penal Code, 1860 or section 4 of the Dowry Prohibition Act, 1961 but would also cover such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine.

29.1. Supreme Court referred to section 41 Cr.P.C. and held that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, with or without fine, cannot be arrested by a police officer only on his

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satisfaction that such person has committed the offence punishable as aforesaid. A police officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the case or to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or to the police officer or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

29.2. In this context, Supreme Court also referred to section 41-A Cr.P.C. particularly sub-section (3) thereof which says that where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. Supreme Court emphasized that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

29.3. Relevant portion of the judgment of the Supreme Court in **Arnesh Kumar** (*supra*) is extracted hereunder:-

> "5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police

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corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

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7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

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> 7.3. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C."

30. We may also mention that in **Makemytrip (India) Private Limited** *(supra)*, Delhi High Court also recorded that decision to arrest a person must not be taken on whimsical grounds. Reasons to believe must be based on 'credible material'. Of course, that was a case under sections 90 and 91 of the Finance Act, 1994 regarding allegation of evasion of service tax by the petitioner but the fact remains that under section 91 also, the Commissioner was required to have reason to believe that any person had committed an offence as specified to clothe him with the jurisdiction to arrest such person.

31. The requirement under sub-section (1) of section 69 is reasons to believe that not only a person has committed any offence as specified but also as to why such person needs to be arrested. From a perusal of the reasons recorded by the Principal Additional Director General, we find that other than paraphrasing the requirement of section 41 Cr.P.C., no concrete incident has been mentioned therein recording any act of tampering of evidence by the petitioner or threatening / inducing any witness besides not co-operating with the investigation, not to speak of fleeing from investigation. In such circumstances, we are of the view that the Principal Additional Director General could not have formed a reason to believe that the petitioner should be arrested.

32. Before dilating on the decision of the Telangana High Court and

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the observations of the Supreme Court in **Sapna Jain** (*supra*), we may also mention that under section 138(1) of the CGST Act, any offence under the said act either before or after institution of prosecution, may be compounded by the commissioner on payment by the person accused of the offence to the central government or to the state government, as the case may be, of such compounding amount in such manner as may be prescribed. This provision only highlights the fact that CGST Act is primarily an enactment for collection of revenue which is the primary objective of the said legislation. Arrest is only incidental to achieve the above objective. Therefore, we find in sub-section (3) of section 138 that on payment of the compounding amount, no further proceeding *shall* be initiated against the accused person in respect of the same offence under the CGST Act and any criminal proceedings if already initiated *shall* stand abated. Use of the word “shall” is quite instructive as it conveys the legislative intent that once compounding takes place, no further proceeding shall be initiated against the accused person in respect of the same offence and if any criminal proceeding has been initiated, the same would stand abated.

33. In **P. V. Ramana Reddy** (*supra*), a Division Bench of the Telangana High Court was examining the challenge to the summons issued by the GST Commissionerate under section 70 of the CGST Act and invocation of the penal provisions under section 69 thereof. Writ petition was basically in the nature of a pre-arrest bail application. After holding that even in case of a pre-arrest bail, a writ petition cannot be said to be not maintainable, the question posed by the Telangana High Court was whether in the facts and circumstances of that case, petitioners were entitled to protection against arrest. After detailing the facts of that case, Telangana High Court concluded that despite its finding that the writ petitions were maintainable; that the protection under sections 41 and 41A Cr.P.C. may be available to the persons said to have committed cognizable and non-bailable offences under the CGST Act; despite the finding that there are incongruities within section

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69 on the one hand and between sections 69 and 132 of the CGST Act on the other hand, relief against arrest was denied to the petitioners in view of the special circumstances of that case which the Telangana High Court highlighted.

33.1. SLPs filed against the decision of the Telangana High Court were dismissed by the Supreme Court.

34. In the S.L.P. filed by the Union of India against the decision of the Bombay High Court granting pre-arrest bail to Sapna Jain, Supreme Court while issuing notice on 29.05.2019 observed that while it did not interfere with the privilege of pre-arrest bail granted by the High Court, in future while entertaining such request for pre-arrest bail, High Court should keep in mind that Supreme Court had dismissed the S.L.P. filed against the decision of the Telangana High Court.

34.1. We have carefully perused and given our thoughtful consideration to the decision of the Telangana High Court and the observations of the Supreme Court as alluded to hereinabove.

35. Facts in **P. V. Ramana Reddy** (*supra*) are clearly distinguishable from the facts of the present case. While in the former summons issued under section 70 were challenged, in the present case there is compliance to such summons by the petitioner who co-operated in the investigation. Notwithstanding that he was arrested. On the other hand in **P. V. Ramana Reddy** (*supra*), the prayer was for pre-arrest bail which was declined considering the special circumstances of that case.

36. It is true that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail, because such offences pose serious threat to the financial health of the country.

37. Having said that we may mention that in the recent case of *Arnab Manoranjan Goswami Vs. State of Maharashtra*, **AIR 2021 SC 1**,

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Supreme Court culled out the various factors which should be considered by the High Court while considering an application for grant of bail under Article 226 of the Constitution of India. It was held as under:-

> "57. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarized as follows:
>
> (i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
>
> (ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses;
>
> (iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
>
> (iv) The antecedents of and circumstances which are peculiar to the accused;
>
> (v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
>
> (vi) The significant interests of the public or the State and other similar considerations."

37.1. Supreme Court observed that the above principles have evolved over a period of time and emanate from a series of decisions. Such principles are equally applicable to the exercise of jurisdiction under article 226 of the Constitution when the Court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the Cr.P.C.

38. Bail jurisprudence which has evolved over the years stands on a different footing altogether. This is more so in the present case when admittedly respondents have not lodged any first information before the police under section 154 Cr.P.C. Respondents have also not filed any

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complaint before the competent magistrate under section 200 Cr.P.C. In fact there was no formal accusation against the petitioner prior to arrest. The first time such accusation has been placed on record was after arrest that too in the form of remand application. A remand application by its very nature cannot be construed to be a first information or a complaint as is understood in law. If the remand application is excluded, then till today after 26 days of custody of the petitioner, there is still no formal accusation against the petitioner.

39. Reverting back to **Arnab Manoranjan Goswami** (*supra*), Supreme Court has once again reminded us that the basic rule of our criminal justice system is 'bail not jail'. In cases at the under-trial stage not involving heinous offences like rape, murder, terrorism etc., it is bail and not jail which is the norm. In so far the present case is concerned, notwithstanding the allegation of serious financial impropriety against the petitioner, the case against him is not even at the under-trial stage; it is at the pre-trial stage i.e., at a stage where even formal accusation in the form of a first information or a complaint has not been made.

40. In such circumstances, we feel that continuing the detention of the petitioner may not at all be justified. In a case of this nature, it is the duty of the constitutional court to strike a fine balance between the need for custodial interrogation and the right of an accused to personal liberty.

41. In the light of the above discussions and having reached the conclusion as above, we direct that the petitioner Mr. Daulat Samirmal Mehta shall be enlarged on bail subject to the following conditions:-

1) petitioner shall be released on bail on furnishing cash surety of Rs.5,00,000.00 before the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai and within two weeks of his release, to furnish two solvent sureties of the like amount before the said authority;

2) petitioner shall co-operate in the investigation and shall not

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make any attempt to interfere with the ongoing investigation;

3) petitioner shall not tamper with any evidence or try to influence or intimidate any witness;

4) petitioner shall also deposit his passport before the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai.

5) within 15 days of his release, petitioner or any of the companies in which he has a substantial interest and which are under investigation, shall deposit a sum of Rs.10 crores with respondent Nos.2 and 3 which shall be without prejudice to his rights and contentions;

6) after the said amount is deposited, the petitioner or any of the companies in which he has a substantial interest and which are under investigation shall deposit a further amount of Rs.15 crores before respondent Nos.2 and 3 within 30 days of the first deposit which again shall be without prejudice to his rights and contentions;

6.1) However, the last two conditions shall be executed by the petitioner upon his release which shall not be a ground for delaying his release.

42. We make it clear that any default by the petitioner may compel us to take an adverse view of the matter.

43. The record in original is returned back to Mr. Mishra.

44. Stand over to 20.04.2021.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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