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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**ANTICIPATORY BAIL APPLICATION NO. 1800 OF 2021**

Premprakash Laxminarayan Bansal . . . Applicant

V/s.

The State of Maharashtra . . . Respondent

\* \* \* \*

Mr. Subodh Desai a/w. Ms. Uma Sharma and Mr. K.S. Garg  
i/by. Dharam & Company, Advocate for the  
applicant.

Mr. H.J. Dedhia, APP for State.

Ms. K.H. Rajani for Original Complainant-Intervenor.

Ms. Archana Chirte, PSI, APMC Police Station, Navi  
Mumbai present.

**CORAM : SANDEEP K. SHINDE, J.**

**10TH AUGUST, 2021.**

**P.C. :**

1. Apprehending arrest in connection with Crime  
No. 0178/2021 registered with APMC Police Station, Navi

Mumbai for the offences punishable under Sections 420, 406 and Section 34 of the Indian Penal Code, the applicant seeks pre-arrest bail.

2. The subject crime was registered at the instance of one, Mahendra Pukhraj Parmar, owner of M/s. Esjaypee Mercantile Global Private Limited. This company is engaged in the trading of dry-fruits and spices on wholesale basis. Co-accused, Sarfaraz Jaliyawala, a broker in Agricultural Produce Marketing Committee (APMC) is known to the informant. In March, 2020, co-accused Sarfaraz introduced the applicant to the complainant and informed him that applicant requires, large quantities of cloves. Applicant is trading in spices under the name and style of M/s. Bansal Traders. Both Sarfaraz and applicant, allegedly agreed to make payments for the goods within few days after delivery. At the relevant time, complainant's goods were stocked at, All India Storage and Warehousing situated at Navi Mumbai. The complainant sent an email to the Cold Storage and Warehousing on 2<sup>nd</sup> March, 2020

asking the Warehouse Manager to transfer 100 bags of cloves worth Rs.22,90,842/- to applicant's firm and vide another email dated 3<sup>rd</sup> March, 2020 asked the Manager to transfer 200 bags of cloves worth Rs.51,30,777/- to applicant's firm. Pursuant to the emails, Cold Storage and Warehousing service provider, transferred 300 bags of cloves in the name of applicant's firm, M/s. Bansal Traders. On 4<sup>th</sup> March, 2020, 150 bags of cloves were delivered at Godown No.G-39 of Sarfaraz, spice market premises. On 5<sup>th</sup> March, 2020, the second consignment of 150 bags of cloves were delivered to Sarfaraz at his godown. Soon thereafter, complainant has drawn the invoices. He filed the GST returns. Since the complainant did not receive the payment, notice was issued to the applicant and the co-accused, Sarfaraz and were called upon to make the payment. Applicant replied the notice through his Advocate stating that, he had not received the goods from the complainant. After which on a written complaint, crime in question came to be registered on 8<sup>th</sup> May, 2021.

3. Mr. Desai, learned Counsel for the applicant, has denied the entire transaction and submitted that, applicant had never entered into transaction with the complainant, nor applicant availed Input Tax Credit. Mr. Desai, submitted that applicant has raised a grievance with the GST Officer thereby bringing to his notice, the fraudulent invoices were raised by the complainant. Mr. Desai invited my attention to a Certificate issued by M/s. Rahul Pramod & Co. Chartered Accountants, to submit that, M/s. Bansal Traders has not availed the credit of CGST and SGST in GSTR-9 of Financial Year 2019-20 filed on 5<sup>th</sup> February, 2021 from the available credits in GSTR-2A returns. Mr. Desai, submitted that, neither the delivery challans nor the invoices were ever acknowledged or received by the applicant and a false case has been filed against him. Mr. Desai, further submitted that, custodial interrogation of the applicant is not required since the prosecution is largely relying on the documentary evidence. It is submitted that, applicant is a permanent resident of Mumbai and his presence for investigation and trial can be secured by

imposing appropriate conditions. On these grounds, the applicant seeks bail.

4. Mr. Dedhia, learned APP, on the other hand, would submit that, statement of the Warehouse Keeper, Mr. Mishra, and the relevant documents collected in the course of investigation, indeed show that, after receiving the stock transfer request from the company of the complainant, clove bags were transferred from Lot No.1333 in the name of M/s. Bansal Traders, vide receipt No. 2667. The statement of Mishra, shows that, Keshav Prem Prakash Bansal, son of the applicant had called him on mobile asking him to deliver 300 bags of cloves in vehicle Nos. MH-04-DS-4070 and MH-04-AL-9188. Owner of these vehicles, Mr. Yadav, told the police that, on 4<sup>th</sup> March, 2020 of M/s. Bansal Traders called him on mobile and asked to make available two vehicles for transporting 300 bags of cloves. The statements of drivers, reveals that, on 4<sup>th</sup> March, 2020 and 5<sup>th</sup> March, 2020, they had delivered 300 bags (150 +150) of cloves at Godown G-39 at spice market, Navi Mumbai. Mr. Dedhia, submitted that

the Investigating Officer called for the information from the Assistant Commissioner, (Anti Evasion), CGST and C.Ex, Belapur in relation to the invoices raised by the complainant to ascertain whether the applicant has availed the Input Tax Credit (ITC) on these invoices. Mr. Dedhia, has placed before me response dated 1<sup>st</sup> September, 2020 received by the Investigating Officer from the office of the Assistant Commissioner, (Anti Evasion), CGST & C.Ex, Belapur. I have perused it.

5. Para-2 of the response reads as under :

“Also, M/s. Bansal Traders having GSTIN-27AAAPB332Q1ZG registered under CGST & C.Ex., Mumbai East Commissionerate and falling in our jurisdiction, it is observed that the tax payer has availed the Input Tax Credit (ITC) of CGST of Rs.1,76,705.2/- and SGST of Rs.1,76,705.2/- against the Invoices no.EMGPL/MH/19/106 dated 2.03.2020 and EMGPL/MH/19/107 dated 03.03.2020 issued by M/s. Esjaypee Mercantile Global Pvt. Ltd. A photo copy of the GSTR 2A enclosed of the said tax payer is enclosed herewith. As

regards outward supplies made by M/s. Bansal Traders, please find enclosed herewith a copy of the Form GSTR-I, returns filed by the said tax payer during the period from March 2020 to June 2020 as it is not possible to ascertain at our end to which customer the impugned goods have been supplied.”

6. It may be stated that in terms of the GST, Input Tax Credit Rules, that for availing the Input Tax Credit Invoices issued by the supplier of the goods is a mandatory document. Herein, the response of the Assistant Commissioner, CGST in clear terms says, that M/s. Bansal Traders has availed the ITC against Invoices No.106 and 107. Besides, the statements of the Manager of the Warehouse, owner of the trucks and the statements of drivers, prima-facie, show that goods were delivered at the request of M/s. Bansal Traders to and at the godown premises of Sarfaraz. In consideration of the facts of the case and the evidence collected in the course of investigation, I have reason to believe that, goods were supplied by the complainant to the applicant. In my view, no case is made

out for granting pre-arrest protection to the applicant. The application is rejected.

7. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of rejecting bail only and the same shall not, in any way, influence the trial in other proceedings.

**(SANDEEP K. SHINDE, J.)**