

HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No. 96 of 2022

Rajesh Kumar Dudani

...Applicant

Versus

State of Uttarakhand and Another

....Respondents

Present:-

Mr. Jitendra Chaudhary, Advocate for the applicant.

Mr. Shobhit Saharia, Advocate for respondent no.2.

Hon'ble Ravindra Maithani, J. (Oral)

The applicant is running two businesses in the name of Suryanchal Furnitech and M/s Doon Trading Company. He was summoned on 12.05.2022, under Section 70 of the Central Goods and Services Tax Act, 2017 ("the Act"). He seeks anticipatory bail.

2. Heard learned counsel for the parties and perused the record.

3. Learned counsel for the applicant would argue that as soon as the applicant was summoned under Section 70 of the Act, he approached this Court and he was provided interim protection. Pursuant to the directions of the Court, the applicant appeared before the authorities under the Act. He fully cooperated and still the applicant is ready and willing to cooperate with the investigation. It is also submitted that the

applicant also produced approximately one thousand papers with the authorities. Learned counsel for the applicant raised following points also in his submission:-

(i) The respondent no.2 is also investigating with regard to a Prima and Company, which does not belong to the applicant. The applicant has nothing to do with it.

(ii) Even if the case of the respondent no.2 is accepted against the applicant, the offence, if any, made out is bailable. Reference has been made to Section 132 of the Act. Learned counsel for the applicant would argue that, according to the respondent no.2, the applicant claimed Input Tax Credit ("ITC") based on forged and fake invoices. The total amount, as alleged by the respondent no.2 does not exceed Rs. 500 Lakhs and this becomes bailable in view of Section 132 (4) of the Act.

(iii) Before arresting the applicant, the respondent no.2 has to take permission from the Commissioner under Section 69 of the Act, which it did not take even after 6 months, when the petition was filed in the Court. It is argued that the respondent no.2 has no reason to believe that the arrest of the applicant is necessary.

4. In support of the contentions, learned counsel for the applicant placed reliance on the principles of law, as laid down in the case of Directorate General of GST Intelligence (DGGI) Vs. Lupita Saluja, [2021] 128 Taxmann.com 373 (SC). It is argued that, in fact, in this case, an order of the Hon'ble Delhi High Court, passed in Bail Application No.319 of 2021 and CrI.M.B. 92 of 2021, has been upheld, wherein, in Para 18, it is observed that **“In view of the above facts, I am of the view that custodial interrogation of the applicant is not required.”**

5. Reliance has also been placed to the judgment in the case of Tarun Jain Vs. Directorate General of GST Intelligence (DGGI), [2021] 132 Taxmann.com 299 (Delhi). Reference has been made to a few paragraphs to argue that in such cases, custodial interrogation is neither warranted nor provided for by the statute. In fact, in this case, in Para 55, the Hon'ble Delhi High Court observed, **“Custodial interrogation in the instant matter is neither warranted nor provided for by the statute.”**

6. On the other hand, learned counsel for the respondent no.2 would submit that under a planned manner, the applicant evaded payment of tax. It is submitted that the respondent no.2 was investigating matters relating to a

Surendra Singh. It was revealed that prior to COVID-19 pandemic, his about 90% of the tax liabilities were settled through cash ledger, but during COVID-19 pandemic, it just reversed when the work from home started, the 90% tax liability was generated through credit ledger. According to learned counsel for the respondent no.2, when the matter was further investigated, it was revealed that Surendra Singh was trading with some 18 firms, out of which three were belonging to the applicant, two in his own name and one in the name of his wife. Fake invoices were generated. There is clear money trail. It was also detected that, in fact, the articles were shown transported in some vehicles, which had very less load bearing capacity, but huge quantity was transported through them. It was also detected that certain vehicles, on which the articles were shown to have been transported, were, at the relevant time, spotted at different States through Fastag payment.

7. The objection filed by the respondent no.2 gives much details of it. Brief facts of the case, as given by the respondent no.2 in the complaint filed against Surendra Singh are as hereunder:-

“During the scrutiny of firms under Section 61 of UKGST Act, 2017, the change in mode of tax payment came to light. It was found that some firms which were earlier paying tax through cash were later on availing and utilizing high amount of fraudulent Input Tax Credit (ITC) through a nexus of fake firms spread across multiple states. These firms were dealing in manpower supply but had shown inward purchases of iron, plywood etc. from firms registered

in Delhi and Haryana. Further, these firms had shown outward sale of iron, plywood etc. to firms registered in States such as Maharashtra and Punjab. On examination of the movement of goods from the generated E-way Bills and the RFID related Vehicle reports on the E-way Bill MIS System, it was found that either the toll plazas have not been crossed or the vehicle was crossing toll plazas in another State. In addition, it was found that certain vehicles entered in the E-way bill for movement of goods were either carrying goods far more than their capacity or were two-wheeler and three-wheeler vehicles.

Hence, it was inferred that fake invoices have been issued to avail and utilize the benefit of ITC and there is no actual movement of goods. Therefore, these firms were investigated and it was found that all the firms were operated by the accused Sh. Surendra Singh. Sh. Surendra Singh said in his statement recorded under Section 70 of UKGST Act, 2017 that these fake bills were given to him by Sh. Rajesh Dudani. The role of Sh. Rajesh Dudani is being investigated. Sh. Rajesh Dudani has been summoned; however, he has defaulted on the summons and has failed to appear before the Deputy Commissioner.”

8. According to the State, huge transactions were made by the applicant, through his firm.

9. It is also argued by learned counsel for the respondent no.2 that after protection having been given to the applicant, he did not cooperate with the enquiry. He evaded the questions. He denied answers to various questions.

10. In the matter pertaining to the Act, the provision of anticipatory bail may very well be evoked. This has been confirmed by the Hon'ble Supreme Court in the case of P.V. Ramana Reddy Vs. Union of India, (2021)2 SCC 784. In the cases cited on behalf of the applicant, as such no absolute rule

is laid down that in the matters pertaining to the Act, custodial interrogation is not required. Therefore, it cannot be said that anticipatory bail has to be granted in each and every case, in which a person is summoned under Section 70 of the Act.

11. Each case depends upon its facts and circumstances. Custodial interrogation is one of the aspects, which is considered in the matters of anticipatory bail. There are other various considerations as illustrated by the Hon'ble Supreme Court in the case of Siddharam Sitlingappa Mhetre vs. State of Maharashtra and others, (2011)1 SCC 694. In Para 112 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

“**112.** The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused 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;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

12. These facts have further been taken into consideration by the Hon'ble Supreme Court in the case of Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 SCC OnLine SC 98.

13. During enquiry, the questions, which were put to the applicant and the answers have been placed for perusal by the learned counsel for the respondent no.2. The applicant was asked as to how is it possible that in a vehicle, which has a load bearing capacity of 1550 Kg, 22750 Kg goods were transported? There was no satisfactory reply to it. With regard to the location of certain vehicles, the applicant was asked and his answers were evasive in that count also.

14. Learned counsel for the respondent no.2 would submit that the liability, which is estimated against the applicant, is about Rs. 393 Lakhs, as of now. Learned counsel for the respondent no.2 also gives a statement that the respondent no.2 would not act in any manner, which is not provided by law. In case there is any need to arrest, whatever is the requirement of law, that shall definitely be followed.

15. The allegations are much grave. It is the case of generating fake and forged invoices so as to claim ITC. In their objections, the respondent no.2 has given categorical details of such dubious transactions and has also submitted as to how in one day, the money has routed in different accounts. The applicant transferred the money in his wife's account and, subsequently, from her account, it comes to the applicant's account. It is a kind of act, which effects the economy of the

country. Added to it is the non-cooperative attitude of the applicant during enquiry. He was asked as to whether he knows one Rohil Enterprises (Question no.66). He did not reply to it. He said, "I will reply it on the next date of hearing."

16. Having considered the gravity of offence and its implications, this Court is of the view that the applicant is not entitled for anticipatory bail. Accordingly, the instant anticipatory bail application deserves to be dismissed.

17. The anticipatory bail application is dismissed.

(Ravindra Maithani, J.)
22.09.2022

Ravi Bisht