(VIA VIDEO-CONFERENCING)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 24.05.2021
% Pronounced on : 04.06.2021

\+ **BAIL APPLN. 458/2021 & CRL.M.A. 2101/2021**

PAWAN GOEL & ANR.

…....Petitioners

Through: Mr. Shubhankar Jha, Adv.

Versus

DIRECTORATE GENERAL OF GST INTELLIGENCE GURUGRAM

..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present application U/s 438 of Cr.P.C has been preferred by the petitioners challenging the order dated 04.02.2021 passed by the Ld. A.S.J., Patiala House Court, New Delhi by virtue of which anticipatory bail application of the petitioners had been rejected.

2. It is submitted by the Ld. counsel for the petitioners that the investigation against the company M/s KMG Industrial Traders Pvt. Ltd. in

which the applicants are directors by GST department started in June 2018 and since then the investigation is still continuing. It is further submitted that the investigation in the present case pertains to availment of wrongful ITC to the tune of Rs. 22.42 Crores on the strength of certain invoices received from companies namely Galux International, M/s Shriram Overseas, M/s Delta Agrotech Pvt. Ltd. which were controlled by brothers Sanjay Dhingra and Gulshan Dhingra. It is further submitted that it is alleged against M/s KMG Ltd. that the company did not receive goods and only received invoices against which ITC was wrongly availed and the said invoices were not genuine. Rather, it has been argued that it is the case of the petitioners that they are not the creators of the said alleged documents but are bonafide recipients/purchaser of the said goods as all the payments against the said purchases were made through bank transfers which are duly reflected in the books of accounts. It is further submitted that there is sufficient evidence like Dharamkata slips, stocks in hand of over 7 crores on the business premises of the petitioners which primafacie establishes that during the search of GST department on 28.06.2018 no discrepancy in the stock was found by the officers of GST.

3. It is further submitted that the value of the goods at the time of search was around 7 crores as per the petitioner's books of accounts. It is further submitted that the petitioners were issued summonses U/s 70 of GST Act to appear before the GST department on 06.08.2018. It is further submitted that on the said date Mr. Pawan Goel who was looking after the business of the company, tendered his statement U/s 70 of GST Act and further submitted documents like balance sheets, bank ledger statements etc. to the

respondent (department). It is further contended that the summonses were duly attended by Sr. accountant, who also submitted more documents which could not be submitted earlier. It is further submitted that the department resorted to coercive measures by blocking the bank account of the petitioners vide order dated 07.08.2020 in terms of Section 83 of CGST Act. It is further submitted that the pending ITC credit of Rs. 1.25 Crores was also blocked with the department which lead to the losses to the petitioners. It is further submitted that the steps were taken by the petitioners to get the bank account defreezed in order to discharge liabilities such as salaries, EMIs, TDS, GST etc. It is further submitted that it was agreed with the respondent (GST Department) that account will only be defreezed on the condition of depositing Rs. 2.5 crores and also credit will be opened.

4. It is further submitted that the said amount was deposited on 08.09.2020. However, bank debit was partially allowed to discharge liabilities towards salary of 70% and also no credit was allowed to be used. It is further submitted by the counsel for the petitioners that the petitioners have co-operated in the investigation and even deposited the amount as agreed but despite that the department is harassing the petitioners with the sole objective of arresting them but no purpose would be served by keeping the petitioners in custody.

5. It is further submitted that other co-accused persons who are the creators of the alleged documents namely Sanjay Dhingra and Gulshan Dhingra are on regular bail and now the investigation has been completed and show cause notice have been issued to them, wherein the amount

alleged to be wrongly availed by M/s KMG is already sought to be demanded from the said people. It is further submitted that in the case of petitioners no show cause notice or final assessment has been done which could conclusively determine the liability of the company in which the applicants/petitioners are directors.

6. It is further submitted that there has been no investigation of the subsequent manufacturers to whom the said goods have been sold in the normal course of trade and business. It is further submitted by the counsel for the petitioners that the department has wrongly alleged that no goods have been received by the petitioners under the alleged invoices on the strength of which Rs. 22.42 crores have been availed. The entire case is based on documents which are all in the custody of the department. It is further submitted by the counsel for the petitioners that the company M/s KMG is a 40 years old company which is carrying on its trade business of non ferrous metals and there has not been any discrepancy in any of their stocks.

7. It is further submitted that the applicants/petitioners are not habitual offenders and have deep roots in the society and they do not have any other case against them. It is further submitted that it will be unfair to arrest the applicants/petitioners after three years when show cause notice has already been issued to the main person. It is further submitted that the petitioners were summoned by the IO on 15.02.2021, 18.02.2021, 26.02.2021, 05.03.2021 and 25.03.2021 and all the above said summonses were duly

attended by the petitioners and the petitioners have fully co-operated in the investigation.

8. On the other hand, it is submitted by the Ld. Sr. Standing Counsel for the respondent (Department) by relying on the counter affidavit dated 17.03.2021 that the said three firms in relation to which the transactions with the petitioners were found to be non genuine, certain statements of transporters have been recorded to show missing chain of transportation. It is further submitted by the Ld. Sr. Standing Counsel for the respondent (department) that no goods have been received by M/s KMG from the said three firms, therefore, the credit availed by M/s KMG is not admissible. It is further submitted by the Ld. Sr. Standing Counsel that during the investigation one more firm has been unearthed namely M/s Sant Overseas from which ITC credit of Rs. 2.9 crores was availed.

9. It is further submitted by the Ld. Sr. Standing Counsel for the respondent (department) that statement of Pawan Goel was recorded on 18.02.2021 and he was asked about M/s Everest Road Lines and he showed ignorance about the whereabouts of the transporter and stated that the payment of the transporter was done by his vendors and as regard purchase from M/s Sant Overseas, he stated that they deal with Gulshan Dhingra and Sanjay Dhingra. It is further submitted by the Ld. Sr. Standing Counsel that during the course of investigation, statement of one Suresh Bansal of M/s Balaji Roadways was recorded who stated that he has never transported any goods to M/s Sant Overseas, however, he further stated that he had provided bilties to Sanjay Dhingra, who is the owner of M/s Kwality

Limited who used to pay him transportation commission and after the transfer of money in his bank account, the said Sanjay Dhingra used to take money in cash from him. It is further submitted that as far as Everest Road Lines is concerned, it is a proprietorship concern of M/s Ashok Kumar Dhingra, who runs this proprietorship firm from his residential house and search was conducted but nothing was found in relation to transportation of these supplies.

10. It is further submitted that the relevant statements of the witnesses have been recorded in regard to the premises from where these transport business was run and according to these statements no such transport firms ever existed or goods transported. It is further submitted by the counsel for the respondent that Sant Overseas existed only on papers and the transporters involved in the supply from Sant Overseas to M/s KMG have also denied transportation, which clearly shows that the supplies to M/s KMG and other suppliers are fake and actual movement of goods has not taken place. It is further submitted that the fake ITC availed by M/s KMG now stand at approximately Rs. 2.5 crores. Reliance has been placed on ***Bharat Raj Punj Vs. Commissioner of CGST, Jaipur***, ***Vimal Yashwantgiri Goswami Versus State of Gujrat*** and ***P.V. Ramana Reddy Vs. UOI & Ors.*** (2019) 104 taxmann.com 407 (Telangana), ***Ashish Jain Vs. UOI***, 2019 (29) GSTL 6 (Bom.).

11. The Punjab and Haryana High Court passed a judgment in **C.W.P. No. 24195 of 2019 (O & M), Akhil Krishan Maggu & Anr. Versus. Deputy Director, Directorate General of GST Intelligence & Ors**. which

has considered the relevant judicial pronouncements from paragraph no.7 onwards which are as follows :-

> 7. Before adverting to present controversy, it would be profitable to look at judicial pronouncements relating to the issue involved. The provisions of CGST Act, 2017 qua arrest and prosecution are para materia with provisions of Finance Act, 1994 (Service Tax). While dealing with power of arrest prior to determination of tax liability, Delhi High Court in the case of Make My Trip Vs. Union of India 2016 (44) STR 481 (Del.) has thoroughly examined scheme of the Act and concluded in Para 116 as below:
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> "116. To summarise the conclusions in this judgment:
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> (i) The scheme of the provisions of the Finance Act, 1994 (FA), do not permit the DGCEI or for that matter the Service Tax Department (ST Department) to by-pass the procedure as set out in Sections 73A(3) and (4) of the FA before going ahead with the arrest of a person under Sections 90 and 91 of the FA. The power of arrest is to be used with great circumspection and not casually. It is not to be straightway presumed by the DGCEI, without following the procedure under Sections 73A(3)and (4) of the FA, that a person has collected service tax and retained such amount without depositing it to the credit of the Central Government.
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> (ii) Where an assessee has been regularly filing service tax returns which have been accepted by the ST Department or which in any event have been examined by it, as in the case of the two petitioners, without commencement of the process of adjudication of penalty under Section 83A of the FA, another agency like the DGCEI cannot without an SCN or enquiry straightway go ahead to make an arrest merely on the suspicion of

evasion of service tax or failure to deposit service tax that has been collected. Section 83A of the FA which provides for adjudication of penalty provision mandates that there must be in the first place a determination that a person is "liable to a penalty", which cannot happen till there is in the first place a determination in terms of Section 72 or 73 or 73A of the FA.

(iii) For a Central Excise officer or an officer of the DGCEI duly empowered and authorised in that behalf to be satisfied that a person has committed an offence under Section 89(1) (d) of the FA, it would require an enquiry to be conducted by giving an opportunity to the person sought to be arrested to explain the materials and circumstances gathered against such person, which according to the officer points to the commission of an offence. Specific to Section 89(1)(d) of the FA, it has to be determined with some degree of certainty that a person has collected service tax but has failed to pay the amount so collected to the Central Government beyond the period of six months from the date on which such payment is due and further that the amount exceeds Rs. 50 lakhs (now enhanced to Rs. 1 crore).

(iv) A possible exception could be where a person is shown to be a habitual evader of service tax. Such person would have to be one who has not filed a service tax return for a continuous length of time, who has a history of repeated defaults for which there have been fines, penalties imposed and prosecutions launched, etc. That history can be gleaned only from past records of the ST Department. In such instances, it might be possible to justify resorting to the coercive provisions straightaway, but then the notes on file must offer a convincing justification for resorting to that extreme measure.

(v) The decision to arrest a person must not be taken on whimsical grounds; it must be based on 'credible material'.

The constitutional safeguards laid out in D.K. Basu's case (supra) in the context of the powers of police officers under the Cr PC and of officers of Central Excise, Customs and enforcement directorates, are applicable to the exercise of powers under the FA in equal measure. An officer whether of the Central Excise department or another agency like the DGCEI, authorised to exercise powers under the CE Act and/ or the FA will have to be conscious of the constitutional limitations on the exercise of such power.

(vi) In the case of MMT, without even an SCN being issued and without there being any determination of the amount of service tax arrears, the resort to the extreme coercive measure of arrest followed by the detention of Mr. Pallai was impermissible in law.

(vii) In terms of C.B.E. & C.'s own procedures, for the launch of prosecution there has to be a determination that a person is a habitual offender. There is no such determination in any of these cases. There cannot be a habitual offender if there is no discussion by the DGCEI with the ST Department regarding the history of such assessee. Assuming that, for whatever reasons, if the DGCEI does not talk to ST Department, certainly it needs to access the service tax record of such assessee. Without even requisitioning that record, it could not have been possible for the DGCEI to arrive at a reasonable conclusion whether there was a deliberate attempt of evading payment of service tax. In the case of MMT, the decision to go in for the extreme step of arrest without issuing an SCN under Section 73 or 73A(3) of the FA, appears to be totally unwarranted.

(viii) For the exercise of powers of search under Section 82 of the FA,

(i) an opinion has to be formed by the Joint Commissioner or Additional Commissioner or other officers notified by the Board that "any documents or books or things" which are useful for or relevant for any proceedings under this Chapter are secreted in any place, and (ii) the note preceding the search of a premises has to specify the above requirement of the law. The search of the premises of the two petitioners is in clear violation of the mandate of Section 82 of the FA. It is unconstitutional and legally unsustainable.

(ix) The Court is unable to accept that payment by the two petitioners of alleged service tax arrears was voluntary. Consequently, the amount that was paid by the petitioners as a result of the search of their premises by the DGCEI, without an adjudication much less an SCN, is required to be returned to them forthwith.

(x) It was imperative for the DGCEI to first check whether the entity whose employees are sought to be arrested has regularly been filing service tax returns or is a habitual offender in that regard. It is only after checking the entire records and seeking clarification where necessary, that the investigating agency can possibly come to a conclusion that Section 89(1)(d) is attracted. None of the above safeguards were observed in the present case. The DGCEI acted with undue haste and in a reckless manner.

(xi) Liberty is granted to the officials of MMT and IBIBO to institute appropriate proceedings in accordance with law against the officers of the DGCEI in which the supplementary affidavits filed in these proceedings and the replies thereto can be relied on. This holds good for the officials of the DGCEI as well when called upon to defend those proceedings in accordance with law.

(xii) The Court cannot decline to exercise its jurisdiction and clarify the legal position as regards the interpretation of the scope and ambit of the powers under Sections 89, 90 and 91 of the FA. This is clearly within the powers of this Court. That is why this Court has decided to proceed with these petitions notwithstanding that the criminal petitions may be pending in the criminal jurisdiction of this Court.

(xiii) The Court is satisfied that in the present case the action of the DGCEI in proceeding to arrest Mr. Pallai, Vice President of MMT, was contrary to law and that Mr. Pallai's Constitutional and Fundamental Rights under Article 21 of the Constitution have been violated. The Court is conscious that Mr. Pallai has instituted separate proceedings for quashing of the criminal case and, therefore, this Court does not propose to deal with that aspect of the matter.

Delhi High Court in Para 80-82 has carved out exceptions where power of arrest may be resorted. Para 80-82 are extracted below:

" 80. One caveat, however, may be where a person is shown to be a habitual evader of service tax. Such person would have to be one who has not filed a service tax return for a continuous length of time, who has a history of repeated defaults for which there have been fines, penalties imposed and prosecutions launched, etc. That history can be gleaned only from past records of the ST Department. In such instance, it might be possible to justify resorting to the coercive provisions straightaway. But then the notes on file must offer a convincing justification for resorting to that extreme a measure. What, however, requires reiteration is that the potent power of arrest should not be lightly and casually exercised to induce fear into an assessee and the consequential submission to the unreasonable demands made by officers of the investigating agency during the interrogation and while in custody. To again quote the

Bombay High Court in ICICI Bank Ltd. v. Union of India (supra) :

> "At the cost of repetition we may say that if a tax payer fraudulently or with the intention to deprive Revenue of its legitimate dues evades payment thereof not only that, if the Central Excise Officer is of the opinion that for the purpose of protecting the interest of the Revenue it is necessary provisionally to attach any property belonging to the person on whom the notice is served under Section 73 or Section 73A of the Act, he is empowered to do so, however with the previous approval of the Commissioner of Central Excise. However, at the same time, law enforcers cannot be permitted to do something that is not permitted within the four corners of law."

81. In Technomaint Contractors Ltd. v. Union of India- 2014 (36) S.T.R. 488 (Guj.), the Gujarat High Court held that Section 73C of the FA cannot be activated for making a recovery even before adjudication.

82. In the context of the provisions for arrest under the Central Excise Act, 1944, the DGCEI has published a Manual in 2004 containing guidelines to the CE Officers on when and in what circumstances resort should be had to the coercive step of arrest. In Chapter X Para 7 of the said Manual, it is stated that arrest can be made prior to the issue of an SCN but only "where fraudulent intent is clear (prima facie there is evidence of mens rea) or where the evidence is enough to secure a conviction or where the person is likely to abscond, tamper with evidence or influence the witnesses if left at large. Arrest at the investigation stage should be resorted to only when it is unavoidable."

(Emphasis supplied) Concededly, Hon'ble Supreme Court vide order dated 23.01.2019 has upheld aforesaid decision of Delhi High Court.

7.1 Relying upon decision of Delhi High Court, in the case of Jayachandran Alloys (P) Ltd. Vs. Superintendent of GST & C. Ex., Salem 2019 (25) G.S.T.L. 321 (Mad.), Madras High Court has concluded, in the relevant Paras as below:

" 36. Though the discussions and conclusions therein have been rendered in the context of Chapter V of the Finance Act, 1994, levying service tax, I am of the view that they are equally applicable to the provisions of the CGST Act as well. Section 132 of the Act as extracted earlier, imposes a punishment upon the Assessee that 'commits' an offence. There is no dispute whatsoever that the offences set out under [clauses] (a) to (l) of the provision refer to those items, that constitute matters of assessment and would form part of an order of assessment, to be passed after the process of adjudication is complete and taking into account the submissions of the Assessee and careful weighing of evidence found and explanations offered by the Assessee in regard to the same.

37. The use of words 'commits' make it more than amply clear that the act of committal of the offence is to be fixed first before punishment is imposed. The allegation of the revenue in the present case is that the petitioner has contravened the provisions of Section 16(2) of the Act and availed of excess ITC in so far as there has been no movement of the goods in the present case as against the supplier and the Petitioner and the transactions are bogus and fictitious, created only on paper, solely to avail ITC. The manner of recovery of credit in cases of excess distribution of the same is set out in Section 21 of the Act. This section provides that where the Input Service Distributor distributes credit in contravention of the provisions contained in Section 20 resulting in excess

distribution of credit to one or more recipients, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of Section 73 or Section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

38. Thus, 'determination' of the excess credit by way of the procedure set out in Section 73 or 74, as the case may be is a pre-requisite for the recovery thereof. Section 73 and 74 deal with assessments and as such it is clear and unambiguous that such recovery can only be initiated once the amount of excess credit has been quantified and determined in an assessment. When recovery is made subject to 'determination' in an assessment, the argument of the department that punishment for the offence alleged can be imposed even prior to such assessment, is clearly incorrect and amounts to putting the cart before the horse.

39. The exceptions to this rule of assessment are only those cases where the assessee is a habitual offender, that/who has been visited consistently and often with penalties and fines for contraventions of statutory provisions. It is only in such cases that the authorities might be justified in proceedings to pre-empt the assessment and initiate action against the assessee in terms of Section 132, for reasons to be recorded in writing. There is no allegation, either oral or in writing in this case that the petitioner is an offender, let alone a habitual one.

40. In the present case, the Department does not dispute that action was intended or envisaged in the light of Section 132 of the CGST Act, the counter fairly stating that the provisions of Section 132 of the CGST Act were 'shown' to the Assessee. There is thus no doubt in my mind that the Department intended to intimidate the petitioner with the possibility of punishment under 132 and this action is contrary to the scheme of the Act. While the activities of an assessee contrary to the scheme of the Act are liable to be

addressed swiftly and effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the statute. I am of the considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post-determination of the demand due from an assessee, that itself has to necessarily follow the process of an assessment.

41. I draw support in this regard from the decision of the Division Bench of the Delhi High Court in the case of Make My Trip (India) (supra), as confirmed by the Supreme Court reiterating that such action, as in the present case, would amount to a violation of Constitutional rights of the petitioner that cannot be countenanced.

42. The decision of this Court in Criminal Original Petition No. 30467 of 2018 (batch case), dated 12-2-2019 is relied upon by the respondents. The Learned Single Judge states that 'in the light of the grave position put forth by the prosecution and also the fact that the investigation was at very early stages', the request for Anticipatory Bail should be rejected and proceeds to do so. This decision does not take into consideration the decision of the Delhi High Court in the case of Make My Trip (India) Pvt. Ltd., (supra), confirmed by the Supreme Court and also does not take into account the relevant statutory provisions of the Revenue enactment, that in my view are necessary to appreciate the lis in proper perspective. The decision is thus distinguishable on facts and in law.

43. As far as the decision rendered by the Rajasthan High Court is concerned, it is distinguishable on facts, as at Paragraph 20 thereof, the Learned Judge records that the petitioner therein did not controvert the claim that the claim of Input Tax Credit is made based on fake invoices. Thus,

no defence was put forth by the petitioner to the allegation of Bill Trading in that case, which is not so in the case before me. This decision is also distinguishable on facts.

44. The Learned Single Judge of the Bombay High Court, in Anticipatory Bail Application, in the case of Meghraj Moolchand Burad v. Directorate General of GST (Intelligence), Pune and Another, Anticipatory Bail Application No. 2333 of 2018 [2019 (21) G.S.T.L. 125 (Bom.)] has considered a similar case and has rejected the Anticipatory Bail taking into consideration the conduct of the applicant, gravity of offence and the serious allegations made. This order has travelled to the Supreme Court in Petition for Special Leave to Appeal Crl. Nos. 244/2019, dated 9-1-2019 [2019 (24) G.S.T.L. J82 (S.C.)] by the petitioner therein, wherein the Bench has issued notice and granted interim protection in the following terms :-

> ' Issued notice.
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> In the meantime, the petitioner shall not be arrested, provided he appears before the Directorate General of GST Intelligence and in the event of his arrest, he shall be released on bail on furnishing security to the satisfaction of the competent authority.
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> Learned Counsel for the petitioner has submitted that the petitioner shall regularly appear, as and when he is called. '

45. Moreover, the High Court of Karnataka at Bengaluru in Criminal Petition No. 979 of 2019 c/w Criminal Petition No. 980/2019, dated 19-2- 2019 [2019 (23) G.S.T.L. 449 (Kar.)] while considering the grant of Anticipatory Bail, in circumstances very similar to the matter before me, has allowed the petition and granted bail in favour of the Assessee with conditions.

46. Issue (ii) is answered in favour of the petitioner. Issue (iii) is allowed, directing the respondents to conclude the process of adjudication within a period of twelve (12) weeks from today, after issuing show cause notice to the petitioner setting out the proposals for assessment, affording full opportunity to the petitioner to respond to the same and advance submissions in person, and pass a reasoned and speaking order, in accordance with law. "

(Emphasis Supplied)

7.2 Gujarat High Court in the case of VIMAL YASHWANTGIRI GOSWAMI Vs STATE OF GUJARAT 2019-TIOL-1746-HC-AHMGST has concluded in relevant Para as below:

" 3.1 To put it in other words, the powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection.

Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is "liable to a penalty". Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee. In the two decisions referred to above, emphasis has been laid on the safeguards as enshrined under the Constitution of India and in particular Article 22 which pertains to arrest and Article 21 which mandates that no person shall be deprived of his life and liberty for the authority of law. The two High Courts have extensively relied upon the decision of the 10 Supreme Court in the case of D.K. Basu vs. State of West Bengal reported in 1997 (1) SCC 416 = 2002-TIOL-230-SCMISC.

" 7.3. Gujarat High Court in the case of CLEARTRIP PVT LTD MUMBAI & ORS Vs THE UNION OF INDIA 2016-TIOL-863-HCMUM-ST has concluded in relevant para as below:

" 16. We are clear in our minds and from the scheme of the Act and the Law as a whole that coercive measures, including effecting any arrest, would arise only when investigation has been completed and on launching the prosecution. If the prosecution is a criminal prosecution, then, there is no question of deviating or defeating from the Criminal Law. The Criminal Law contains several provisions including protective measures, which would enable the Petitioners to resist any arrest, as apprehended. In the scheme of the Criminal Law and particularly the Finance Act, 1994 as well, if it contains any penal provisions, it is not as merely because the investigations are underway that the arrest would be effected. Eventually, all that the Respondents are presently contemplating is to investigate the matter. The Petitioners do not dispute the right to investigate and in accordance with law. That they have already attended the offices of the concerned Respondents and once the statement of the Petitioners was recorded goes without saying that on further summons being issued and on called upon to attend the Officers of the Respondents, they will attend and co-operate in these investigations by producing all the documents and answering the requisite queries, subject, ofcourse, to their rights in law. It is only when these investigations conclude that the authorities would be in a position to take a decision whether to launch any prosecution. In such a prosecution as well, if the provisions of the Criminal Law, which enable arrest in cases of cognizable offences and non bailable, that the Petitioners can have an apprehension and which also can be taken care of by approaching a competent Criminal Court. Secondly, there is no question of any recovery of tax by coercive means, unless the investigation results into issuance of a show cause notice, an opportunity to the Petitioner to resist the demand, a adjudication thereof by a reasoned order and protective remedies such as appeals. We do not think that any recovery by coercive measures is straightway permissible and particularly in the given facts and circumstances of the case.

17. Once we also note the stand of the Respondents as not precipitating the matter particularly harming the life and liberty of those, who are in-charge of Petitioner No.1-Company, then, all the more, any detailed discussion by referring to the arguments in-depth, consideration of the case law becomes unnecessary."

" 7.4 Hon'ble Supreme Court in the case of C. PRADEEP Petitioner(s) VERSUS THE COMMISSIONER OF GST AND CENTRAL EXCISE SELAM & ANR. Special Leave to Appeal (Crl.) No(s). 6834/2019 has passed interim order as below:

" Learned counsel for the petitioner submits that indisputably assessment for the relevant period has not been completed by the Department so far. In which case, invoking Section 132 of the Central Goods and Services Tax Act, 2017 does not arise. He further submits that, even if, the alleged liability of Rs. 19 crores as is assumed by the Department is accepted, it is open to the petitioner to file appeal after the assessment order is passed; and as per the statutory stipulation, such appeal could be filed upon deposit of only 10% of the disputed liability. In that event, the deposit amount may not exceed Rs. 2,00,00,000/- (Rupees Two Crores), which the petitioner is willing to deposit within one week from today without prejudice to his rights and contentions in the assessment proceedings and the appeal to be filed thereafter, if required.

Issue notice on condition that the petitioner shall deposit Rs. 2,00,00,000/- (Rupees Two Crores) to the credit of C.No. IV/16/27/201HPU on the file of the Commissioner of GST & Central Excise, Salem, Tamil Nadu and produce receipt in that behalf in the Registry of this Court within ten days from today, failing which the special leave petition shall stand dismissed for non prosecution without further reference to the Court.

Subject to the above, notice returnable within three weeks. Dasti, in addition, is permitted.

> For a period of one week, no coercive action be taken against the petitioner in connection with the alleged offence and the interim protection will continue upon production of receipt in the Registry about the deposit made with the Department within one week from today, until the disposal of this Special Leave Petition.

7.5. Telangana High Court in the case of P.V. RAMANA REDDY Vs. UNION OF INDIA 2019 (25) G.S.T.L. 185 (Telangana) relied upon by the Respondent has concluded in relevant Para as below:

> " 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.

12. After considering the aforesaid authorities, the Punjab and Haryana High Court has concluded in aforesaid judgment as follows :-

> 122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:
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> > 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 the 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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication 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.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

125. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

126. Irrational and Indiscriminate arrest are gross violation of human rights. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

127. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

13. The judgments cited on behalf of the Ld. Sr. Standing Counsel for the respondent (department) has not considered any of the relevant authorities on the point. In the present case, there is no allegation of prior tax evasion against the petitioners and they have joined the investigation as and when required. The petitioners have also not been avoiding any notices issued to them.

14. Relying upon the judgment of Punjab and Haryana High Court, in the case of **Akhil Krishan Maggu (supra)** and the Judgment of Allahabad High Court in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 4116 of 2020, Nitin Verma Vs. State of U.P. and Another decided on 05.01.2021, this Court finds that the petitioners have no prior criminal antecedents brought on record. In the present case, the petitioners have not challenged any section or procedure relating to GST or applicability of Cr.P.C. and this is a simple application for grant of anticipatory bail with the contention that there is no need for custodial interrogation of the present petitioners.

15. In the instant case**,** the investigation relates to the period of 2018 and prior to it**,** the petitioners have joined the investigation and their statements have already been recorded; the premises of the petitioners have also been searched; the employees of the petitioners have also joined the investigation; the main accused was arrested and granted bail; the petitioners have further joined the investigation at least 4 times after the filing of this bail application; the bank accounts of the petitioners have already been freezed; the petitioners have already deposited Rs. 2.5 crores with the department;

there are no allegations of any threat to any of the witnesses or tampering with the evidence and the documents are in the custody of the department; it is not the case of the department that the petitioners are flight risk or there are any chances of their absconding; it is not the case of the department that the petitioners have not co-operated during the period they have joined the investigation on the receipt of the summonses. Therefore, in these circumstances, the present anticipatory bail application is allowed and it is ordered that in the event of arrest, the petitioners be released on bail on their furnishing a personal bond in the sum of Rs. 5,00,000/- each with one surety each of the like amount subject to the satisfaction of the IO/court concerned, subject to the following conditions:

(i) The applicants/petitioners shall make themselves available for interrogation by the proper officer as and when required;

(ii) The applicants/petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any officer;

(iii) The applicants/petitioners shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the proper officer concerned;

(iv) In case the applicants/petitioners fail to appear on any date fixed by the Proper Officer under the C.G.S.T. Act, for any reason whatsoever, this anticipatory bail application shall stand

automatically rejected and the protection given to the applicants/petitioners will cease to have any effect.

16. With these observations, the present anticipatory bail application is disposed of. All pending applications (if any) are also disposed of.

17. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JUNE 04, 2021
Sumant