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

% **Reserved on : 12th November, 2021**
Pronounced on: 26th November, 2021

\+ BAIL APPLN. 3771/2021 & CRL.M.A. 16552/2021

TARUN JAIN ..... Petitioner

Through: Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastava, Mr. Rajiv Tuli, Advocates

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE DGGI ..... Respondent

Through: Mr. Harpreet Singh, Special Public Prosecutor for DGGI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The petitioner has approached this Court by way of the instant application under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred to as "Code") seeking anticipatory bail in a matter pertaining to Section 132 of the Central Goods and Services Act, 2017 (hereafter referred to as the "CGST Act") in File Number DZU/INV/A/GST/894/2021. Another Application bearing CRL. M.A. - 16552/2021 has also been filed before this Court under Section 438 read with Section 482 of the Code seeking *ad-interim* protection from coercive

action that might be taken by the Respondent during the pendency of the Anticipatory Bail Application.

2. Before adverting to the submissions made by learned counsel for the parties, it is essential to highlight the factual background of the matter.

FACTUAL MATRIX

3. The petitioner is one of the directors in M/S Jetibai Grandsons Services India Pvt. Ltd (hereinafter, referred to as "Company"), a company incorporated in August 2019. The company was initially involved in the supply of services however, it subsequently started manufacturing and supplying solar inverters, solar power generating units and like products.

4. The respondent has alleged that the Company of which the petitioner is a director, along with other firms namely M/s Microlyte Energy (P) Limited, M/s Sun Automation Limited, M/s Urja Global Limited and M/s NYX Industry India (P) Ltd. are involved in fraudulently availing and passing on ineligible/fake Input Tax Credit amounting to Rs. 72,00,00,000/- (Rupees Seventy Two Crores).

5. The respondent has alleged that the Company made most of its purchases from three firms namely - M/s Microlyte Energy (P) Limited, M/s Sun Automation Limited, and M/s Urja Global Limited. It has been alleged that these three firms further received these goods from various firms, most of which have been found to be non-existent at their official

addresses and had no inward supplies. The respondent has thus alleged that these firms have availed the ineligible Input Tax Credit amounting to Rs. 72,00,00,000/- (Rupees Seventy-Two Crores) and fraudulently passed on the same to the Company within a short span of five months from November 2020 to March 2021.

6. Based on the above analysis of the respondent, several summons had been issued to the petitioner in order to give evidence and record his statement. The first among these were issued on 21st July, 2021 directing the petitioner to appear before the department on 26th July, 2021 for the aforesaid purpose. It is stated by the petitioner that he could not attend the same because of this mother's illness.

7. Another summons dated 27th July, 2021 was issued to the petitioner to appear in person and to produce certain documents in relation to alleged wrongful utilization of the Input Tax Credit. On 5th August, 2021, the Petitioner submitted the required documents, however he failed to appear to tender his statement citing personal difficulty.

8. The failure of the petitioner to appear in person on these occasions led the respondent to issue another summons dated 7th August, 2021 for the third time. This time, the summons was issued for directing the petitioner to appear in person for the purpose of tendering statement and for providing details of purchase and sales transactions. The petitioner tendered reply to the summons via letter dated 12th August, 2021, expressing his incapacity to appear in person due to his medical

condition. In reply to the same, the petitioner also reiterated that the documents as requested were already submitted with the respondent.

9. Similar summons were again issued on 18th August, 2021 which solicited a similar reply via letter dated 24th August, 2021 again citing medical problems. Thereafter, summons were issued on 1st September, 2021 *inter alia* directing the petitioner to appear and tender his statement. Petitioner submitted a request via letter dated 8th September, 2021 for the presence of the counsel in the interrogation and videography while recording the statement, which was not acceded to by the Respondent.

10. The petitioner then filed a W.P. (C) No. 10647/2021 regarding the Input Tax Credit amounting to Rs. 19,65,000/- which the petitioner was forced to deposit. The matter was listed before the High Court on 24th September, 2021 for hearing, wherein the Court allowed withdrawal of the petition with liberty to file appropriate proceedings in accordance with law. In the course of same proceedings, an assurance was given by the learned counsel of the petitioner that the petitioner will appear before the officers of the respondent on 8th October, 2021. However, subsequently, it was brought on record that the assurance was made by the learned counsel for the petitioner without taking instruction from the petitioner.

11. The petitioner subsequently filed an application for Anticipatory Bail bearing Bail Application No. 2037/2021 before the Court of Additional Sessions Judge, Patiala House Court, New Delhi. The Additional Sessions Judge rejected the application vide order dated 9th

October, 2021 *inter alia* observing that the petitioner's role in the formation of shell companies seem to be apparent and that there was nothing on record to indicate that the alleged transactions were carried out with genuine firms. It was also observed that the investigation was at the nascent stage and there was a possibility of the accused tampering with the investigation process.

12. Aggrieved by the said order and to seek anticipatory bail, the instant applications have been filed before this Court.

SUBMISSIONS

13. Dr. G. K. Sarkar, learned counsel for the petitioner vehemently argued that the allegations leveled against the petitioner are false and frivolous and the petitioner has not at all availed and utilized the input tax credit as being alleged fraudulently.

14. The learned counsel for the petitioner submitted that the petitioner has clean antecedents, belongs to a respectable family, has deep roots in the society and hence there are no chances of his absconding.

15. While countering the allegations as to non-compliance with the summons issued by the respondent, learned counsel appearing on behalf of petitioner submitted that on 21st July, 2021, summons were issued to petitioner to appear before the concerned authority. The petitioner could not attend the same due to medical condition of his mother who also happens to be one of the directors in the company of the petitioner. Another summon was issued on 27th July, 2021 directing respondent to

appear and produce certain documents as mentioned therein. The petitioner has submitted the said required documents vide letter dated 5th August, 2021 and also stated his difficulty in appearing in person. Three other summons dated 7th August, 2021, 18th August, 2021 and 1st September, 2021 respectively were issued to the petitioner for appearing before the authority concerned.

16. The court further enquired as to the reasons for non-appearance before the respondent that the health condition was a one-time affair and why the petitioner failed to appear on other occasions. The counsel for the petitioner submitted that he was apprehending arrest and had he gone before the authorities concerned, he would have been arrested. Thus, in order to protect himself, he chose not to appear before the authorities and filed the present application.

17. Learned counsel appearing on behalf of petitioner submitted that the offences under the CGST Act are compoundable and thus not serious in nature. Learned counsel for the petitioner further submitted that the offences of fiscal nature like the present case do not require custodial interrogation and in view of this, the prayer for anticipatory bail may be granted.

18. Learned counsel appearing on behalf of petitioner submitted that the power of arrest is an extreme provision and should be exercised with utmost care and not arbitrarily. The learned counsel further submitted that the apprehension for arrest arises from the fact that three persons related with suppliers and buyer company of the petitioner were arrested despite

appearing regularly and furnishing all the relevant documents/information as required by the respondent.

19. Learned counsel appearing on behalf of petitioner submitted that since the entire evidence present in the case is based on documents and therefore, his custodial interrogation is not required. It is also submitted that the other co-accused has already been enlarged on the bail vide order dated 30th September, 2021 by the Coordinate Bench of this Court.

20. On instructions, learned counsel appearing on behalf of petitioner also undertakes that the petitioner shall appear before the concerned authority whenever it is required. He also undertakes that the petitioner shall abide by any condition imposed by this Court while granting anticipatory bail.

21. The learned counsel for the petitioner for buttressing his arguments placed reliance on various decisions of High Courts and the Hon'ble Supreme Court, which have been dealt with under Analysis Section of this judgment.

22. *Per contra*, Mr. Harpreet Singh, SPP, learned counsel for the Respondent vehemently opposed the present application on the ground that the amount of tax evasion in the instant matter is of 72,00,00,000 (Rs. Seventy Two Crores Only) and the petitioner till now has been evading investigation by avoiding summons by the respondent.

23. It has also been argued by the respondent in the status report dated 23rd October, 2021 that the petitioner has been evading investigation

repeatedly on various occasions. It has been vehemently argued that seven summons have been served upon the petitioner and he has not been complying with them on several occasions which exhibits the appalling conduct of the petitioner and if allowed to go unchecked will set a wrong precedent.

24. The learned counsel appearing on behalf of the respondent further submitted that it is imperative for the investigating authorities to examine the accused on other aspects like money laundering, hawala and circular trading in which the petitioner might be involved. The respondent placed reliance on the decision of ***P.V. Rammanna Reddy v. Union of India*** **(2019 SCC Online TS 3332)** to contend that assessment need not be finalized prior to taking action for arrest under Section 69 of the Act.

25. It has also been argued by the learned counsel for respondent that the petitioner is involved in an economic offence of serious nature, and he is trying to influence investigation by planting fake witnesses. For this argument, the Petitioner has placed reliance on the following extract of decision of Delhi High Court in ***P. Chidambaram v. Directorate of Enforcement*** **2019 SCC Online Del 11129, which reads as follows:**

> *"Also submitted, as a part of its international obligation, India also has a robust statutory mechanism for detection, investigation, prosecution and prevention of money laundering and connected offences. Such mechanism also provides creation of Financial Intelligence Unit [FIU] in other countries by the Indian investigation agencies from which help/information/ assistance/inputs is regularly received by the investigating agency in cases under its*

> *investigation. When the international community is taking the offence of money laundering seriously and India is a Member of international Forum viz. "Financial Action Task Force" and has committed itself to the global resolve of being firm with money laundering offence, irrespective whether petitioner-accused is the former Finance Minister and former Home Minister or an ordinary citizen of India, it will be travesty of justice if this Court considers the prayer made by the petitioner and grant him protection of pre-arrest bail, without examining the case records, investigation material maintained in regular course of the present statutory investigation conducted and which contains the evidence which is incapable of being fabricated as loosely alleged on behalf of the accused."*

Upon perusal it came to the notice of the Court that the aforementioned decision has been reversed by the Hon'ble Supreme Court in the case of ***P. Chidambaram v. Directorate of Enforcement*** **(2020) 13 SCC 791**. Further, the extracted portion as being cited is not the observation of the court but a submission made by the counsel in the case, and hence cannot be entertained by this Court.

26. In their reply to the status report, apart from reiterating the submissions earlier made, it has been stated by the petitioner that he has been complying with the various filings under the Act along with those mentioned under the Companies Act, 2013. While citing various documents it has been stated that it is wholly misconceived to contend that the suppliers and the petitioner's Company are non-existent rather the aforementioned entities are duly registered with the GST Department as

well as possess bank accounts, both of which require a prior verification of their credentials.

27. The rival submissions now fall for consideration of this Court.

28. Heard the counsels at length, perused the record at length, and analysed the arguments, provisions of statute and case laws.

ANALYSIS AND FINDINGS

29. Before adverting to the arguments and case laws cited, it is essential to analyse the scheme of the CGST Act. The Act was introduced to harmonise the indirect tax regime in the country. In furtherance to this, several powers have been conferred on the authorities under the Act. One such power is the power of inspection, seizure and arrest under Chapter XIV of the Act. Under Section 69 of the Act, when the person has reasons to believe that the person has committed any offence under section 132, the commissioner may by order authorize any officers of the central tax to arrest such person.

30. Section 132 of the CGST Act is reproduced hereunder:

> ***"132. Punishment for certain offences***.— *(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—*
>
> *(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised 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;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause

(f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

31. Chapter XIX deals with offences and penalties. Section 132 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 there under 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. 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.

32. Section 132 of the Central Goods and Services Tax Act, 2017 ('CGST Act') lists a total of twelve offences that are punishable by

imprisonment and/or a fine. The term of imprisonment and the amount of fine, is dependent on the amount involved in the offence, or in some cases, the act committed by the offender. The provision further categorises certain offences as cognizable and non-bailable, if the amount involved exceeds Rupees five hundred lakhs. These offences relate to persons who supply goods or services without issuing invoices, or issue invoices without supplying goods or services and thus wrongfully availing input tax credit; or to persons who collect tax but fail to pay it to the Government beyond a period of three months from date on which payment becomes due. All other offences listed under the Act have been categorised as non-cognizable and bailable.

33. Section 138 of the CGST Act further dilutes the heinousness of offences under the Act. The said section makes every offence under the Act compoundable except for certain circumstances which have been specified under different clauses to the proviso of Section 138. The relevant section has been reproduced hereunder:

> ***"138. Compounding of offences:****(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:*
>
> *Provided that nothing contained in this section shall apply to—*
>
> > *(a) a person who has been allowed to compound once in respect of any of the offences*

specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated."

34. Sections 69 & 70 of the CGST Act are reproduced hereunder:

69. Power to Arrest-

(1) Where the Commissioner has reasons to believe that a 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, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 174)—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents.:

(1) The proper officer under this Act shall have 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 inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908."

35. Chapter XIV of the CGST Act deals with inspection, search, seizure and arrest. It consists of sections 67 to 72. Section 70 deals with power to summon persons to give evidence and produce documents. As per sub-section (1), the proper officer under the CGST Act has 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, Section 70 (1) confers the 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 similar to the powers exercised by a civil court under the Civil Procedure Code, 1908.

Sub-section (2) further clarifies that every inquiry in which summons are 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 Penal Code, 1860.

36. There is no embargo under the CGST Act restraining the petitioner from seeking pre-arrest bail. Economic offences such as tax evasion, money laundering, etc. affect the economy of the country and thus are considered grave in nature. To deter persons from indulging in such economic offences, criminal sanctions are required to be imposed. One of the most prominent criminal sanctions imposed with regard to economic offences is that of arrest. It is widely acknowledged that arrests result in deprivation of liberty of a person. Thus, while it is imperative to maintain law and order in society, the power to arrest must also always be subject to necessary safeguards. Against this backdrop, analysing the arrest provisions under the Goods and Services Tax Law, with a view to study the adequacy of the safeguards and authorisation built into the text of the statute, the interplay between these provisions and the standards of arrest has to be established through judicial precedents, as well as other sources such as the Constitution of India and general statutes such as the Code of Criminal Procedure.

37. Having analysed the Scheme of the Act, it is pertinent to refer to the relevant case laws.

38. The question of bail under the Act remains unsettled, rather we have at hand various conflicting decisions of different High Courts. In

similar matters pursued under various provisions of the Act, bail applications have been filed before various High Courts, the judgments of which have been relied upon by the learned counsel for the parties. All the judgments have been broadly analysed hereunder.

39. In the case of ***P.V. Ramana Reddy v. Union of India*** *(supra)* pre-arrest bail in a similar matter was refused. This was a case arising out of petition under Article 226 of the Constitution. Therein, the court rejected pre-arrest protection to the petitioner in view of the special circumstances of the case. The court there distinctly noted that in view of several decisions of the Hon'ble Supreme Court, pre-arrest protection being akin to anticipatory bail needs to be sparingly exercised under Article 226. No such constraint can be read into the present application, since the present application has been filed under Section 438 of the Code, which specifically calls for decision on anticipatory bail. The Special leave petition against this decision has been dismissed by the Hon'ble Supreme Court.

40. On the other side, the case of ***Shravan. A Mehra v. Superintendent of Central Tax, Anti evasion, Commissionerate*** **Manu/KA/0875/2019** is the one that squarely applies to the present case. In this matter, bail was granted in relation to offences under the Act in view of the fact that the offences were not punishable with imprisonment for more than five years. In this case, the petitioner was alleged of having obtained Invoices from the Company of the respondent without delivery of the goods and thereby evading payment of tax and committing an offence under Section 132(1)(b) of the Act. Therein, the petitioner once

appeared before the authorities concerned but on a subsequent summon, they were apprehending arrest because another witness who was called to tender statement was arrested by the police. Thus, an application for anticipatory bail was filed before the court. The court after analysing the provisions of the Act held as under:

> *"On close reading of the above said Sections, the maximum punishment provided under the Act is five years and fine and if that is taken into consideration, the magnitude of the alleged offence and it is not punishable with death or imprisonment for life. Even as per the said provision, the alleged offence is also compoundable with the Authority, who has initiated the said proceedings. The only consideration which the Court has to consider while releasing the petitioners on anticipatory bail is, that whether the petitioners can be secured for the purpose of investigation or for the purpose of trial. Under such circumstances, I feel that by imposing stringent conditions if the petitioners are ordered to be released on anticipatory bail, it would meet the ends of justice."*

41. In a similar matter, bail was granted by this Court in the case of ***Raghav Agrawal v. Commissioner of Central Tax and GST Delhi North*** **Bail Application 4019/2020** vide order dated 21st December, 2020.

42. Again, in a similar vein, the Bombay High Court also granted ad-interim relief to the petitioner by directing the investigative authorities not to take any coercive steps against the petitioner in ***Sapna Jain v. Union of India*** **2020 SCC Online 13064.** This was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not interfere with the order and tagged it along with other matters that were listed

before a three-judge bench in the case of ***Union of India v. Sapna Jain*** **(2021) 2 SCC 782.**The matter is pending before the three-judge bench and has not been decided till date. Thus, the question regarding anticipatory bail while dealing with offences under CGST Act is yet unsettled. Hence, it falls before this court to decide the present matter by exercising its discretion as per intention of the Act along with analyzing the factors necessary for the grant of anticipatory bail.

43. It is true to contend that the economic offences are grave in nature however the same does not mean that the bail needs to be denied in every case. The same has been reiterated by the Hon'ble Supreme Court in the case of ***P. Chidambaram v. Directorate of Enforcement*** **(2020) 13 SCC 791** as follows:

> *"Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the*

> *accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."*

44. In the present case, there cannot be any conflict with the fact that petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than five years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view the offences under the Act are not grave to an extent where the custody of the accused can be held to be *sine qua non.*

45. Before analysing the application for anticipatory bail, it is essential to take note of the approach that is expected from the High Courts in such applications as observed by the Hon'ble Supreme Court in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra*** **(2021) 2 SCC 427*:***

> *"More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand [State of Rajasthan v. Balchand, (1977) 4 SCC 308 : 1977 SCC (Cri) 594] , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is "bail, not jail" [These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are: State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] . The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or*

> *resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system". Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."*

46. The Constitution Bench judgment in the case of ***Gurubaksh Singh Sibbia v. State of Punjab*** **(1980) 2 SCC 565** has been serving as an encyclopedia for the cases in relation to anticipatory bail. Therein, the court also called for a similar approach when it observed:

> *"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he*

> *seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned."*

47. The Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** **(2011) 1 SCC 694** concerning grant of anticipatory bail after exhaustively analyzing the rights under Article 21 held as under:

> *"A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."*

48. A three-judge bench of the Hon'ble Supreme Court in the case of ***Nathu Singh v. State of U.P.*** **(2021) 6 SCC 64** has called for a liberal interpretation in the cases relating to grant of anticipatory bail, when it observed:

> *"**19.** At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of the provision is incomplete. It is no longer res integra that any interpretation of the provisions of Section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life*

> *and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief."*

49. Since, the genesis of the statutory right to anticipatory bail can be found under Article 21 of the Constitution, it is essential to understand the true import of rights under Article 21 of the Constitution. The Hon'ble Supreme Court has held that such right to life does not merely mean animal like existence but includes wider connotations to make the life meaningful. One such ingredient of right to livelihood has been accepted as a part of Article 21 in the case of ***Centre for Environment & Food Security v. Union of India*** **(2011) 5 SCC 676.** Therein the Hon'ble Supreme Court observed as under:

> *"The Framers of the Constitution, in the Preamble to the Constitution, guaranteed to secure to its citizens justice social, economic and political as well as equality of status and opportunity but the "right to employment" was not incorporated in Part III of the Constitution as a fundamental right. By judicial pronouncements, the Courts expanded the scope of Article 21 of the Constitution of India and included various facets of life as rights protected under the said article despite the fact that they had not been incorporated by specific language in Part III by the Framers of the Constitution. Judgments of this Court in Olga Tellis v. Bombay Municipal Corpn.[(1985) 3 SCC 545] and Narendra Kumar Chandla v. State of Haryana [(1994) 4 SCC 460 : 1994 SCC (L&S) 882 : (1994) 27 ATC 616] expanded the scope of Article 21*

and held that "right to livelihood" is an integral part of the "right to life.""

Since, anticipatory bail is a statutory right in consonance with the Right to life and personal liberty under Article 21, it is essential to be alive to the various facets that form a part of rights under Article 21 of the Constitution. It is in this background, that this court ventures upon to decide the present application.

50. Equally important is to take into considerations the factors that the court ought to take into account while granting or refusing anticipatory bail. In a fairly recent judgement, the Constitutional bench of the Hon'ble Supreme Court had the occasion to consider some important aspects of anticipatory bail in the case of ***Sushila Aggarwal v. State(NCT of Delhi)*** **(2020) 5 SCC 1.** The principal question before the Hon'ble Court was whether the grant of anticipatory bail operates for a limited time period or not. The court analysed the concept of anticipatory bail at great length and held as under:

*"**92.3** Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other*

> *restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*
>
> ***92.4.*** *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."*

51. The learned counsel for the petitioner has also placed reliance on a Supreme Court order dated 20th August, 2018 arising out of the case of ***C. Pradeep V. Commissioner Of GST And Central Excise Selam*** **Special Leave to Appeal (Crl.) No. 6834 of 2019.** The Hon'ble Supreme Court therein was concerned with a case where the assessment under the Act was not complete, and the Petitioner therein agreed to deposit 10 percent of the amount that the department therein had alleged to be wrongfully utilised by the Petitioner therein. It was on this condition of payment of the amount before the court that the court thought it fit to grant the interim protection to the accused.

52. In the present case, the Petitioner has been accused of wrongfully utilizing the Input Tax Credit amounting to Rs. 72 Crores, an offence

under Section 132(b) and (c). Since the alleged amount exceeds five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under the Act are bailable and non-cognizable except for the offence under Section 132(5) of the Act. Additionally, under Section 135 of the Act, in any prosecution under the Act requiring culpable mental state, the court is bound to presume culpable mental state of the accused. The section further states that the accused will have a defense to prove that he had no such mental state. Also, section 138 of the Act states that the offences under the Act shall be compoundable either before or after the prosecution.

53. The task before this Court is two-fold, *first* being to ensure that no unwarranted abuse of process is allowed to impinge upon life and liberty of the petitioner, and *second* to ensure that the investigation is not hampered, procedure of administration of justice is not adversely impacted and ultimately the guilty is prosecuted.

54. These are competing interests included in an anticipatory bail application i.e., the liberty of the accused and the interest of the investigative authorities for discovering the particular of offence. It is the case of the Petitioner that he failed to appear due to his ill health, which evidently no more exists. The other ground pertains to apprehension of arrest, which can be removed by allowing the present application. It is very well possible that the respondent department might get the information as required if the Petitioner cooperates with the authorities concerned and arrest might not be necessary.

55. Custodial interrogation in the instant matter is neither warranted nor provided for by the statute. Detaining the petitioner in Judicial Custody would serve no purpose rather would adversely impact the business of the petitioner.

56. It is without an iota of doubt that the Petitioner needs to be more cooperative in investigation, joining the same as and when required for, by the Respondent. In the present case, the Petitioner has not appeared before the Respondent department on various occasions due to two main reasons mainly i.e., due to his own ill health on some occasions while on one occasion, he failed to appear due to the ailing heath of her mother. On several other occasions, the Petitioner was apprehending his arrest and thus did not submit himself before the Respondent Department. It is equally important to take note of the fact that Petitioner has placed on record several documents in the petition in order to corroborate the fact of his and his mother's ill health the document supporting the factum of his ill health has also been supported via proper documents in the respective replies to summons.

57. The apprehension of arrest of the Petitioner is also not bereft of factual evidence. It was this apprehension that forced him to make a request to the authorities concerned for recording the statement in the presence of the counsel via letter dated 8th September, 2021. Also, this apprehension forced him to apply for the grant of anticipatory bail in the Sessions Court, which was refused via order dated 9th October, 2021.

58. This court must give effect to Article 21 of the Constitution in letter as well as in spirit while deciding the anticipatory bail application. The basic tenet on which our criminal justice system operates is – "innocent until proven guilty" and in view of this the Supreme Court has time and again reiterated that "bail is the rule while jail is an exception". Such principles cannot remain a dead letter of law and this court must intervene to give effect to such principles which has been enshrined by the Hon'ble Supreme Court in numerous decisions.

59. In view of these facts and circumstances and in light of the provisions of law, this Court is inclined to allow the anticipatory bail application with some stringent conditions in view of the prior conduct of the Petitioner.

CONCLUSION

60. This Court allows the instant application under section 438 of Code of Criminal Procedure. In the event of arrest, the petitioner be released on bail on his furnishing a personal bond in the sum of Rs. 5,00,000/-(Rupees Five Lakhs only) with two solvent sureties of like amount to the satisfaction of the Investigating Officer/Apprehending Authority with the terms and conditions as follows:

i. he shall surrender his passport before the Investigating Officer/Apprehending Authority and under no circumstances leave India without prior permission of the Investigating Officer/Apprehending Authority, and, if he does not possess

any passport, he shall file an affidavit to that effect before the Investigating Officer /Apprehending Authority;

ii. he shall cooperate in the investigation and appear before the Investigating Officer /Apprehending Authority as and when summoned;

iii. he shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;

iv. he shall provide his mobile number and keep it operational at all times;

v. he shall drop a PIN on Google map to ensure that his location is available to the Investigating Officer /Apprehending Authority; and

vi. he shall commit no offence whatsoever during the period he is on bail.

61. If breach of any of the above conditions is committed, it would be open to the Investigating Officer/Apprehending Authority to file an appropriate application for cancellation of the Anticipatory Bail granted.

62. Accordingly, the petition and pending application stand disposed of.

63. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

November 26, 2021
gs