

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 4th OF JULY, 2023

MISC. CRIMINAL CASE No. 26215 of 2023

BETWEEN:-

MOHIT JAIN S/O SHRI MUKESH JAIN,
AGED ABOUT 34 YEARS, OCCUPATION:
BUSINESS R/O 103 SIDDHIVINAYAK
GRANDE VIDYA NAGAR SAPNA
SANGEETA INDORE (MADHYA PRADESH)

.....APPLICANT

*(BY SHRI RAVINDRA SINGH SENIOR ADVOCATE ALONGWITH
MUDIT MAHESHWARI-ADVOCATE)*

AND

UNION OF INDIA THROUGH OFFICE OF
THE COMMISSIONER CGST AND
CENTRAL EXCISE MANIK BAGH
PALACE POST BOX NO. 10 INDORE
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PRASANNA PRASAD-ADVOCATE)

*This application coming on for orders this day, the court passed
the following:*

ORDER

The applicant apprehends his arrest in a case registered for the offences punishable under 132 of the Central Goods and Service Tax Act, 2017 in connection with Crime No. Nil at Office of the Commissioner & Central Excise.

2. According to the applicant, he is the proprietor of M/s

Manchan Overseas and which is his partnership concerned, and he is also the Director of Shankheshwar Impex Pvt. Ltd. Both firms have GSTIN and regularly submit GST returns and Income Tax returns. The office of Additional Police Commissioner, Indore received a complaint through email on 27.03.2023 from one Shri Krushna Das, Export Manager of Seven Seas Global Freight System Private Limited alleging that one Akash Singh Proprietor of M/s Akash Chemicals had exported goods through them to Dubai but no one came to collect goods at Dubai. The company had to pay shipping charges amounting Rs. 52,00,000/-. It is further alleged that M/s Akash Chemicals illegally obtained a GST refund on the export amount of Rs. 1,47,30,914/-. Another complaint of similar nature was received from the Manager of Translink Logistics Private Limited Company, Vadora Gujrat through an email dated 10.04.2023 in respect of a consignment exported by Rakesh Prajapati proprietor of M/s Ruday Chemicals in which the shipping charges are Rs. 8,00,000/-. An FIR was registered at Crime No.23/2023. An investigation has revealed that a refund of GST amounting Rs.1,47,30,914/- was credited to the account of co-accused Meherban Singh proprietor of ABC Exports and the mobile number of the present applicant was found linked in the aforesaid bank account. This Applicant was added accused in FIR No.23/2023 , arrested on 26.04.2023 and sent to police remand for 13 days. The family members of the applicant decided to settle the dispute with the complainant. That bail application M.Cr.C. No.22925/2023 has been allowed vide order dated 29.05.2023, by granting bail to the applicant basically on the ground of compromise. The applicant was released on bail on 30.05.2023.

3. The non-applicant moved an application before the Judicial Magistrate First Class on 01.06.2023 seeking the formal arrest of this applicant for interrogation in the matter of CGST refund in these transactions. Since the applicant had already been released, therefore, he could not be formally arrested by the Non-applicant. Thereafter, the non-applicant issued summons dated 05.06.2023, 07.06.203 and 09.06.2023 under Section 70 of the Central Goods and Service Tax Act, 2017 calling upon the applicant to appear before the GST Investigation Wing. Instead of appearing before the GST Investigation Wing, the applicant has rushed before this Court by way of the present application.

4. Shri R S Chhabra, learned Senior Counsel appearing on behalf of the applicant submits that for the offence punishable under 132 of the Central Goods and Service Tax Act, 2017, guidelines have been issued by the Revenue Department, GST Investigation Wing , the Non-applicant is trying to arrest the applicant without following these guidelines hence he is entitled to the protection. It is further submitted by the learned senior counsel that the applicant is ready to cooperate with the investigation and he will not leave the city without informing the GST Investigation Wing. It is further submitted that this applicant was in Jail from 26.04.2023 to 30.05.2023 but he was never arrested by the non-applicant, therefore, in order to harass the applicant, now they are trying to arrest him. In support of his contention, the learned Senior Counsel is relying on the judgment passed by different High Courts in the case of (i) *Shravan A. Mehra Vs. Superintendent of Central Tax, Anti Evasion, GST Commissionerate, Bangalore, (2019) 23 GSTL 449*, (ii) *Nitin Verma Vs. State of U.P. and another (2021) 49*

GSTL and (iii) in Bail Application No.3771/2021 & CRL. M.A. No.16552/2021 by High Court of Delhi At New Delhi decided on 26.11.2021 in which similar facts and circumstances, anticipatory bail has been granted. At last Shri Chabra learned senior counsel submits that the maximum sentence is 5 years under section 132 of the CGST Act hence arrest of the applicant is not mandatory.

5. Non-applicant has filed a reply seeking dismissal of this bail application. According to the non-applicant Central Board of Indirect Tax and Customs has developed Business Intelligence and Fraud Analytics (BIFA) tools to grab fake firms who are involved in the evasion of GST. After analyzing the data the BIFA found that certain firms procured the goods on which they passed on /availed the Government ITC to M/s Aneesha Thenix, M/s Rudhra Thenix, M/s Leary Thenix and M/s Grey Medico Pharma Private Limited, Shankheshwar Impex Pvt. Ltd., M/s Vinay Chemical etc. Out of 17 firms 9 have utilized ITC to export goods and obtained IGST return which is

6. The BIFA analyzed that M/s Ultra Medico Pharma Private Limited procured the goods on which CGST refund is estimated at Rs. 7.8 crores. In maximum cases above amount was credited to the account of M/s ABC Export in HDFS Bank in which the mobile number of the present applicant is linked. The non-applicant took remand (PR) of Meharban Singh . His statement was recorded in which he disclosed that he is only 12th pass and working as a salesman in various Pharma Companies, he has also disclosed how this applicant procured his documents and opened various firms without his knowledge. According to him at the command of applicant Suresh Bhargav, Mukesh Kushwaha, and Chetan Narwani

also formed the firms.

7. Shri P. Prasad, learned counsel appearing on behalf of the non-applicant submits that without taking this applicant on remand, the effective interrogation cannot be done in the matter. Not only Meharban Singh but other persons have named this applicant for opening bogus firms to claim GST refunds. The Magnitude of GST refund may cross more than 80 crores. The guidelines have been followed. The Joint/Additional Commissioner has approved the superintendent in this investigation and arrest. The non-applicant is investigating within the purview of the GST Act and the guidelines. In support of his contention, he has placed reliance judgment passed in case of **P. Chidambaram Vs. Directorate of Enforcement (2019) 9 SSC 24**. Learned counsel further submits that so far bail granted to the applicant by this High Court vide M.Cr.C. No.22925/2023 is concerned, the State of Madhya Pradesh has filed an application for cancellation of bail bearing M.Cr.C. No. 25415/2022 in which notice has been issued on 23.06.2023, thus no case for anticipatory bail is made out.

I have heard learned counsel for the respective parties and perused the case diary.

8. Looking at the material collected against the present applicant so far and coupled with the fact the applicant did not appear before the GST Investigation Wing despite service of three summons under Section 70 of the Central Goods and Service Tax Act, 2017. Meharban Singh is still in custody. The statement of Meharban Singh, Shubham Singhal, Chetan Narwani, Kapil Manglani, Akash Singh Kushwaha and Rakesh Prajapati, reveals that the applicant is the main accused in these GST refunds by forming fake firms . GST-RI and GST-3B sales and purchase of as many as

25 bogus firms are liable to be investigated, hence, looking to the gravity of the offence and huge amount of refund of GST through bogus firms, no case is made out for grant of anticipatory bail. Hon'ble Apex Court in the case of *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation*, (2013) 7 SCC 439 in Para Nos. 15 & 16, held as under:—

“15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations”

Accordingly, M.Cr.C. is dismissed.

(VIVEK RUSIA)
JUDGE

Praveen