

Bail Application No. 419/21
Navneet Singh Vs Commissioner of Central Tax (GST)

23.02.2021

Present: Sh. Satish Aggarwala, Ld. SPP for department/Commissioner of Central Tax (GST) along with IO Insp. Ajab Singh.
Sh Ramesh Gupta, Ld. Sr counsel along with Sh Vibhooti Malhotra, Sh Bharat Sharma, Sh Shailendra Singh and Sh Bhuvnesh Satija, Ld. counsels for accused Navneet Singh.

Ld. counsel for accused filed rejoinder.

Arguments heard.

Put up for orders at 3.30pm.

(Ajay Kumar Jain)
Spl. Judge, NDPS/N. Delhi
23.02.2021

At 3.15pm

Present: IO Insp Ajab Singh for department/Commissioner of Central Tax (GST).
None for applicant/accused Navneet Singh.

Vide separate order, the present anticipatory bail application of the accused Navneet Singh stands dismissed.

The application is disposed of accordingly.

Copy of the order be given dasti to parties.

Copy of the order be uploaded on the website of New Delhi

District.

(Ajay Kumar Jain)
Spl. Judge, NDPS/N. Delhi
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ORDER

Vide this order, I shall decide the application u/s 438 CrPC for anticipatory bail filed on behalf of applicant/accused Navneet Singh.

Brief averments of the facts as per the bail application filed is that accused is Director of SPNN Business Services Pvt Ltd. and company is engaged in the business of providing strategic recruitment support in sectors like E-commerce, Retail, Engineering, Media and Entertainment, FMCG & Logistics and applicant employs nearly 15000 individuals which provided delivery services to E-commerce companies and present applicant is liable for provision of monthly remuneration of 15000 individuals. On 12.03.2020, search was conducted u/s 67 by CGST officers and summons were issued to Director Prateek Jha. On 03.02.2021 another search was conducted at the premises of company and director Prateek Jha was arrested on 03.02.2021 and taken in judicial custody. The allegations in the remand application is that there is mismatch in the returns which led to short fall in the payment of GST to the tune of Rs 24,96,42,318/-. As per the remand application, accused Prateek Jha was alone responsible for taking final decision in the company and not the present accused. The summons were also sent to present accused u/s 70 of CGST Act seeking his personal attendance to tender statement and the documents. The applicant sought exemption on the ground that he had returned from international travel from Dubai on 07.02.2021 and was on mandatory home quarantine. The documents i.e. copy of balance sheet and copy of form 26AS has already been supplied.

In reply, the respondent stated that the accused company had collected CGST from the clients of his company to the tune of Rs 24.96 crores but do not deposit with the government and till date total GST liability is Rs 20.22 crores apart from penalty and present accused had not

joined inquiry despite service of summons and virtually absconding. The bail application of co accused Prateek Jha was rejected by Ld CMM on 08.02.2021 and second bail application is still pending before Ld. CMM and during investigation till date it has been found that accused company had willfully understated the declared liability and evaded the tax to the tune of Rs 24.96 crores. The personal attendance of accused is required to unearth all the links of evasions.

Ld. Sr counsel for the accused submitted that department in the reply categorically stated that till date they had not even sought of arresting the present accused however the summons were already been issued and there is all likelihood if the accused will appear that they will arrest the present accused. There is hardly any time taken in taking approvals which is writ large from the case of co accused who on being summoning appeared on 03.02.2021 and arrested on same day by taking all the approvals. Ld. Sr counsel submits that therefore the plea that present application is premature is not at all tenable. Ld. Sr counsel submits that as per remand application, co accused Prateek Jha categorically stated that he is only responsible for financial aspect of the company and present accused is not dealing over financial part of the company. Furthermore Rs 7.7 crores of total liability till date has already been deposited. Ld. Sr counsel submits that till date there is no determination or assessment therefore no coercive measures could be taken against accused (relied upon *Makemytrip (India) Pvt Ltd Vs Union of India, 2016 (73) taxmann.com 31 (Delhi)* which is affirmed by Supreme Court in *Union of India Vs Make My Trip (India) Pvt Ltd, 2019 (104) taxmann.com 245 (SC)*). Ld. Sr counsel submits that even the first information report is not essential for seeking bail u/s 438 CrPC, mere summons are sufficient (relied upon *Gurbaksh Singh Sibbia Vs State of Punjab, 1980 (2) SCC 565, Siddharam Satlingappa Mhetre Vs State of Maharashtra, 2011 (1) SCC 694, Bhadresh Bipinbhai Sheth Vs State of Gujarat, 2016 (1) SCC 152, Samrat Singh Nirula & Ors. Delhi High Court.*

Ld. Sr counsel submits that in Siddharam Satlingappa Mhetre's case, the Apex court has declared the case of Adri Dharan Das per incuriam. Ld Sr counsel submits that there is concrete apprehension that in case accused appeared then the department is likely to arrest him, therefore, accused be released on anticipatory bail.

Ld. Sr SPP for the respondent submitted that the present application is not at all maintainable as ingredients of section 438 CrPC are not attracted. For affecting the arrest, written approval of commissioner is required and so far there is not such proposal, what to speak of the approval of commissioner/ Director General. Ld. SPP submits that till today, the respondent even not thought for arresting the accused and requires his presence for investigation of case. Ld. SPP submits that for grant of anticipatory bail, the applicant must show the reason to believe that he may be arrested in non bailable offence however there is no occasion for said belief as department only issued summons to seek the information and not thought of arresting the accused. Ld. Sr SPP submits that there could not be any order of protection of arrest in this case because there is no apprehension and interim protection is also against law (relied upon *Union of India Vs V Padam Narayan, Crl Appeal No. 1575/2008, Gurbaksh Singh Sibbia Vs State of Punjab, 1980 (2) SCC 565, Adri Dharan Das Vs State of West Bengal, 2005 (4) SCC 303*). Ld. SPP submits that Hon'ble Supreme Court in case titled *Union of India & Anr Vs Ravi Nayar, Crl Appeal No. 815/2017 dated 28.04.2017* had set aside the impugned order granting 07 days notice prior to initiation of proceedings. Ld. SPP submits that accused has not joined the inquiry despite receipt of summons and investigation is still under progress, and mere deposit of Rs 7.7 crores at the time of search do not entitle the accused anticipatory bail, and investigation is still going on and tentative amount may likely to increase. Ld. Sr SPP submits that there is no question of adjudication or assessment prior to arrest (relied upon *P V Ramana Reddy Vs Union of India,*

WP No. 4764/2019 dated 18.04.2019, Hon'ble High Court of Telangana) and this judgment was upheld by Apex court in its order dated 27.05.2019 in SLP No. 4430/2019. Ld. SPP submits that the department is going legally without any abuse of power by following the law and the plea that the applicant attempt to discharge the tax liability shall be hampered his misconceived. Ld. Sr SPP further submits that mere arrest of other director is no ground to grant relief to present accused as till date there is no apprehension of his arrest and department had not even thought of arresting the accused till today. Ld. SPP submits that in present kind of economic offences where there is a loss of govt revenue, the accused persons are not entitled for anticipatory bail (relied upon *Malwinder Mohan Singh Vs State* dated 10.08.2020 (DHC), *Vijay Verma Vs State* dated 11.03.2015 (DHC), *Monu Kapoor Vs DRI*, Bail Application No. 2381/2019 dated 11.12.2019)

Heard.

In present case, the allegations against the accused company is that they had collected the CGST from the clients of the company to the tune of Rs 24.96 crores and not deposited the same with the government, thus committed offence u/s 132 CGST Act which is non bailable offence. Merely depositing of Rs 7.7 crores do not in any manner drop the offence in bailable category. As far as the allegations against the present accused is concerned, he is director of company who is also responsible for affairs of company and matter is yet to be investigated from him. The huge economic loss to exchequer is caused and this practice appears writ large in business community. P&H High Court in *Vikas Goel Vs DDGST, 2019 (18) GSTL 590* found the offence of using bogus billing adjusting the amount without any actual transportation to the tune of Rs. 80 crores is very serious thus not inclined to release the accused even on regular bail. The Apex court also upheld the judgment of P.V. Ramannareddy case passed by the Hon'ble High Court of Telangana as the offence as committed u/s 132

is not dependent upon adjudication proceedings. Merely on the basis of the fact that department has the power to arrest no apprehension can be inferred at this stage when the department admittedly saying that they have not even thought of arresting the accused. The co accused is still in custody and have not released on bail. The bonafide of the department cannot be doubted at this stage. Therefore, the present application of anticipatory bail is dismissed.

Application disposed of accordingly.

Copy of the order be given dasti. Order be uploaded on Delhi District Courts website.

(Ajay Kumar Jain)
Spl. Judge, NDPS/N. Delhi
23.02.2021