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A.F.R.

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Reserved on 07.03.2024

Delivered on 19.03.2024

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2391 of 2024

Applicant :- Deepanshu Srivastava

Opposite Party :- Union Of India Thru. Deptt. Of Revenue Directorate Gst Intelligence Lko. Zonal Unit

Counsel for Applicant :- Shivanshu Goswami,Mukesh Kumar Tewari,Purnendu Chakravarty

Counsel for Opposite Party :- Digvijay Nath Dubey,Dipak Seth

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Satish Chandra Mishra, learned Senior Counsel assisted by Shri Purnendu Chakravarty and Shri Mukesh Kumar Tewari, learned counsels for the applicant and Shri Dipak Seth, learned counsel appearing on behalf of Union of India and perused the record.

2. This bail application has been moved by the accused-applicant-**Deepanshu Srivastava** for grant of bail in Case Crime No. 316 of 2024, under Section 132 of Central Goods and Services Tax Act, 2017, Police Station DGGI, Lucknow Zonal Unit, District Lucknow, during trial.

3. Learned Senior Counsel appearing for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and without any sufficient reasons and basis and without assessing any tax liability the applicant has been arrested and detained in prison since 02.02.2024.

4. While drawing the attention of this Court on Sections 69, 73, 74 and 79 as well as Section 62 of the Central Goods and Services Tax Act, it is vehemently submitted that at first the department is required to assess the tax liability to be paid by an assesse and it is only thereafter any

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proceeding under Section 69 of the Central Goods and Services Tax Act with regard to the arrest of the accused person or assesse may be undertaken. It is vehemently submitted that till date no tax liability is shown to have been assessed by the department and without there being any sufficient or cogent reasons he has been placed behind the bars.

5. While drawing the attention of this Court towards the arrest-memo, a copy of which has been placed at Page No.23 of the paper book, it is vehemently submitted that no grounds have been shown in this arrest-memo which may justify the arrest of the applicant and a vague language has been used in the arrest memo in order to show that the provisions of the Central Goods and Services Tax Act, 2017 have been violated without specifying the alleged act or omission of the applicant.

6. It is also submitted that the applicant was detained in illegal custody for three days from 30.01.2024 till 02.02.2024 by the department and thereafter he has been challaned.

7. It is further submitted that no notice has either been given under Section 74 of the G.S.T. Act and when the applicant was presented before the remand court, the offences were shown as bailable but subsequently without there being any basis many other companies have been shown to be associated with the applicant as shell companies with which the applicant is not having any connection or concern.

8. While drawing the attention of this Court towards the *'panchnama/recovery-memo',* with regard to Shalimar Mannat, Barabanki, it is stated that the recovery, as shown by the department from this house is not having any significance in the eye of law as the same has not been made in presence of the applicant and no signature of applicant has been obtained on this recovery-memo and, thus, the same is barred by Section 100 of the Cr.P.C.

9. It is also submitted that no incriminating article has been recovered from the premises of applicant and statement of some persons are shown to have been recorded by the department under duress with regard to the

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formation of some shell companies by the applicant in order to evade tax liability.

10. It is vehemently submitted that applicant is languishing in jail in this case since 02.02.2024 and while producing the applicant before the Magistrate after his illegal arrest, the department has requested for judicial remand and no custody remand was requested, which primafacie reflect that further detention of the applicant is not required by the investigating agency and despite the investigation is complete, the complaint is not being filed deliberately to deny the facility of bail to the applicant. The alleged offences against the applicant are punishable with maximum imprisonment of five years and as the investigation has almost completed, the detention of the applicant is not required anymore.

11. It is further submitted that the applicant has cooperated in the investigation and has appeared before the investigating officer as and when his presence was required. However, at the very first occasion available to him, he has retracted his statement shown to have been recorded before the investigating officer. Applicant undertakes that he will cooperate with the investigation as well as with the trial.

12. Learned Senior Counsel has relied on the law laid down by the Division Bench of this Court of date 13.07.2023 passed in ***Writ Tax No. 834 of 2023 (Ashish Kakkar vs. Union of India and another),*** a single Judge judgment of this Court dated 29.07.2022 passed in ***'Paras Jain @ Rohan Jain vs. Union of India',*** a single Judge judgment of this Court of date 10.07.2023 passed in ***Criminal Misc. Bail Application No. 26376 of 2023 (Ravindra Nath Sharma @ Ravubder Sharma vs. Union of India).***

13. Shri Dipak Seth, learned counsel appearing on behalf of Union of India vehemently opposes the prayer of bail of the applicant on the ground that the submission, which has been raised before this Court with regard to the fact that in absence of any tax liability, the criminal prosecution is not permissible, is not an argument which may have the support of the law as in all tax matters prosecution and adjudication are

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connected with each other and may go on simultaneously. In this regard reliance has been placed on the law laid down by the Hon'ble Supreme Court in ***'Radheyshyam Kejriwal vs. State of West Bengal, 2011 (266) E.L.T. 294 (S.C.).***

14. It is next submitted that the instant is not a case of under payment of tax liability or evasion of tax but it is a case of fraud where without supplying any goods the input tax has been received and misappropriated.

15. Shri Dipak Seth has drawn the attention of this Court towards the statement of the applicant recorded under Section 70 of the Goods and Services Tax Act in order to show that the applicant has admitted his involvement in the crime.

16. The attention of this Court has also drawn by Shri Dipak Seth on the statement of the applicant recorded on 26.02.2024 while he was confined in prison in order to show that the applicant is not at all cooperating with the investigation.

17. It is further submitted that on 30.01.2024 and 31.01.2024 statement of many persons have been recorded, which reveals that applicant has opened various shell companies in order to receive input tax illegally and none of these persons whose statements have been recorded has retracted his statement.

18. While drawing the attention of this Court towards the C.A.-5 (Page No.116) of the counter affidavit/objections filed by the Union of India, it is submitted that the reasons for arrest have been recorded by the authority concerned before causing the arrest of the applicant.

19. The attention of this Court has also been drawn towards the statement of Shubham Singh, extract of which, has been placed at Page No.71 of the paper book, in order to show that the applicant has opened many bogus firms and companies in order to claim input tax illegally. The statement of Gaurav Tripathi placed at Page No. 119 of the objections is also highlighted in order to show that the Flat No. B-2

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situated at Shalimar Mannat, Barabanki was taken on rent by Shri Gaurav Tripathi on the instigation of the applicant.

20. While drawing the attention of this Court towards the law laid down by the Hon'ble Supreme Court in ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation (2013) 7 SCC 439***, ***Nimmagadda Prasad vs. C.B.I. (2013) 7 SCC 466*** and ***Devchand Kalyan Tandel vs. State of Gujarat and another (1996) 6 SCC 255,*** it is submitted that economic offences are of a class of their own and they have to be taken up at a different pedestal as they are causing irreparable injury to the economic health of the country and are required to be dealt with iron hands. In this regard, the law laid down by the Hon'ble Supreme Court vide order dated 07.11.2023 passed in ***Criminal Appeal No. Nil of 2023, arising out of S.L.P. (Crl.) No. 10810 of 2023, 'The State of Jharkhand vs. Dhananjay Gupta @ Dhananjay Prasad Gupta'*** has been highlighted, wherein it is opined that at any rate mere claim of innocence or undertaking to participate in the trial or absence of specific allegation cannot be assigned as reasons for grant of bail in case of offences of serious nature. It is requested that having regard to the magnitude of the crime wherein the State has been inflicted loss of crores of rupees of input tax, the applicant is not entitled to be released on bail.

21. In rebuttal, learned Senior Counsel appearing for the applicant has drawn the attention of this Court towards Section 69 of the Central Goods and Services Act and submits that custody remand of the applicant has not been sought at the time of remand of accused by the department and also that the cooperation in the investigation doesn't mean that applicant should confess his guilt as proposed by the department and it should be taken as enough cooperation if the applicant had appeared before the investigating officer in response to the summons issued to him and the applicant in this case has remained present before the investigating officer as and when he was summoned and ultimately arrested illegally. It is again reiterated that the offences is punishable with upto 05 years' of imprisonment and keeping in view the fact that

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still no assessment of tax has been calculated and no formal complaint or F.I.R. has been lodged, applicant is entitled for bail.

22. Having heard learned counsel for the parties and having perused the record, the case of the prosecution, as is emerging from the record is to the tune that the Director General of G.S.T. Intelligence, Lucknow Zonal Unit is investigating a case of fraudulent availment and passing of input tax credit of G.S.T, by preparing fake invoices without any actual supply of goods by several firms created, managed and run by the applicant and it is found that the applicant has created a number of bogus firms for the purpose of issuing fake invoices to facilitate their clients in availing and utilizing fake input tax credit and allegations are to the tune that applicant is the master mind of the entire racket and input tax credit of high magnitude has been obtained without supplying of any goods.

23. The counter affidavit filed by the Department would further reveal that initially the input tax credit illegally taken by applicant was found to be of Rs. 90 crores and the number of fake firms were about 53 as on 17.02.2024 and on further investigation till 29.02.2024 the number of fake firms created, managed and run by the applicant has reached 271 and the investigation is still going on. The allegations are that without paying a single penny to the government as tax huge amount of input tax credit has been availed. It is also alleged that 09 places belonging to the applicant were searched on 30.01.2024 and consequent to these searches huge number of incriminating documents and electronic devices showing creation of fake firms were found from the premises including the residence of the applicant and his offices.

24. It is further alleged that 18 Laptops, 14 Pen drives, 24 SIM Cards, 44 mobile phones, 74 credit/debit cards, six hard disk drives, 251 stamps of various fake firms, 26 cheque books of various fake firms and more than 500 files, record books of fake firms, bilty books and other fake documents have also been found. The statement of the applicant was recorded under Section 70 of the CGST Act on 30.01.2024, 01.02.2024 and 02.02.2024, wherein he alleged to have confessed his guilt and by

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creating false/shell companies and without paying any tax, input tax credit to the magnitude of Rs. 14.87 crores is confessed to have been earned and utilized. It is also alleged that during the course of investigation, the statement of one Mohit Singh and Shubham Singh, proprietors of shell firms were recorded, wherein they admitted that these shell firms were established and managed by the applicant. During physical verification, 14 major suppliers and 06 transporters were also found to be non-existent and various *Dharmkanta's* also accepted that the weighing slips found during preliminary investigation were not issued by them. It is stated in para no.9 of the counter affidavit that till now the amount of fraud found by the investigation has reached Rs. 122.99 crores.

25. Learned Senior counsel appearing for applicant vehemently submits that without adopting the procedure, as provided under Section 74 of the CGST Act, no further proceedings including the arrest of the applicant may be undertaken and also that the alleged offences are punishable with upto 05 years of imprisonment.

Reliance has also been placed on the law laid down by the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and others*** *: (2021) 10 SCC 773,* while learned counsel appearing for the Department has placed reliance on the law laid down by the Hon'ble Supreme Court in ***Radheyshyam Kejriwal (supra)*** in order to show that the proceedings of prosecution and adjudication may go on simultaneously, it is vehemently submitted by learned counsel appearing for Union of India that it is not a case of paying less tax or any discrepancy in the payment of tax rather it is a case where without supplying any goods the input tax credit has been illegally taken and misappropriated.

26. Learned Senior counsel appearing for the applicant has drawn the attention of this Court towards the memo of arrest of the applicant in order to show that no ground of arrest has been mentioned therein while learned counsel appearing for the Department has drawn the attention of

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this Court towards C.A.-5 (Page No.116) of their counter affidavit in order to show that the reasons for arrest has been recorded by the appropriate authority and the law provides only of recording of reasons and not of communicating the same. It is also highlighted on behalf of Department that applicant is not cooperating in the investigation and when he was interrogated in jail, he did not cooperate in the investigation and has not given replies.

27. Learned Senior counsel appearing for applicant on the other hand while relying on the law laid down by the Division Bench of this Court of date 13.07.2023 passed in ***Writ Tax No. 834 of 2023 (Ashish Kakkar vs. Union of India and another)***, ***'Paras Jain @ Rohan Jain vs. Union of India'*** and in ***Ravindra Nath Sharma @ Ravubder Sharma (supra),*** submits that the law leans in favour of bail and when the offence is punishable with upto five years' of imprisonment, the further detention of the applicant would be a futile exercise.

28. Learned counsel appearing for Union of India, however, relied on ***Y.S. Jagan Mohan Reddy (supra)*** and ***Nimmagadda Prasad (supra)*** in order to show that the economic offences are of a class of their own and, therefore, are to be dealt with differently and applicant is not entitled for bail.

29. Perusal of the provisions contained under Section 73 and 74 of the CGST Act would reveal that a mechanism has been provided therein with regard to the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilfull mis-statement or suppression of facts. Section 74 of the CGST Act provides for assessment of tax by the proper officer by issuing a notice to the assesee, however, sub-section 11 of Section 74 of the CGST Act would suggest that if the tax, which has been calculated along with the interest payable or the penalty is deposited, all proceedings in respect of the said notice shall be deemed to be concluded. However, perusal of explanation one attached with Sub-section 11 of Section 74 of the 'Act' would reveal that the expression 'all

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proceedings' in respect of the said notice emerging under Sub-section 11 shall not include proceedings under Section 132 of the 'Act'. Thus, it may be inferred that even if all the tax liability including penalty, etc. has been deposited, it would be only the 'notice' which would be discharged and the proceedings with regard to Section 132 of the CGST Act shall remain alive. Thus, there seems force in the submissions made by learned counsel for the Department that the process of prosecution and assessment may go on simultaneously.

30. In ***P.V. Ramana Reddy and Ors. vs. Union of India and Ors., MANU/TL/0064/2019*****,** which has also been approved by the Hon'ble Supreme Court **vide order dated 27.05.2019 passed in Special Leave Petition (Crl.) No. 4430 of 2019** and also in ***The State of Gujarat Vs. Choodamani Parmeshwaran Iyer and Ors., MANU/SC/0992/2023,*** a Division Bench of Telangana High Court repelled the similar contention raised by an accused in following words;-

"50. The contention of the petitioners is that the CGST Act, 2017 prescribes a procedure for assessment even in cases where the information furnished in the returns is found to have discrepancies and that unless a summary assessment or special audit is conducted determining the liability, no offence can be made out under the Act. Therefore, it is their contention that even a prosecution cannot be launched without an assessment and that therefore, there is no question of any arrest.

51. It is true that CGST Act, 2017 provides for (i) self assessment, under Section 59, (ii) provisional assessment, under Section 60, (iii) scrutiny of returns, under Section 61, (iv) assessment of persons who do not file returns, under Section 62, (v) assessment of unregistered persons, under Section 63, (vi) summary assessment in special cases, under Section 64 and (vii) audit under Sections 65 and 66.

52. But, to say that a prosecution can be launched only after the completion of the assessment, goes contrary to Section 132 of the CGST Act, 2017. The list of offences included in sub-Section (1) of Section 132

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of CGST Act, 2017 have no co-relation to assessment. Issue of invoices or bills without supply of goods and the availing of ITC by using such invoices or bills, are made offences under clauses (b) and (c) of sub-Section (1) of Section 132 of the CGST Act. The prosecutions for these offences do not depend upon the completion of assessment. Therefore, the argument that there cannot be an arrest even before adjudication or assessment, does not appeal to us."

Thus, there appears no substance in the submissions raised by learned senior counsel appearing for the applicant that before proceeding under 74 of the Act the applicant should not have been arrested or prosecuted.

31. Chapter XIV of the CGST Act deals with inspection, search, seizure and arrest. It comprises 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 shall have 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 what sub-section (1) of section 70 provides is the conferment of 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 akin to power exercised by a civil court under the Civil Procedure Code, 1908. Sub-section (2) clarifies that every enquiry in which summons is 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 Indian Penal Code, 1860.

The power to arrest has been provided in section 69 of the Act. As per sub-section (1), where the Commissioner has reasons to believe that the 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

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the said section, he may by order authorize any officer of central tax to arrest such person. Therefore, what sub-section (1) provides is that Commissioner may by order authorize any officer of the department to arrest a person if he has reasons to believe that the said person has committed any offence under clauses (a) or (b) or (c) or (d) of sub-section (1) of section 132. The expression 'reasons to believe' as appearing in subsection (1) of section 69 is of crucial importance because the same is the sine qua non for exercise of power to arrest by the Commissioner. It is also to be highlighted that under sub-section (3) of section 69, arrest under sub-section (1) has been made subject to the provisions of Cr.P.C., which would include section 41 and 41-A thereof.

Chapter XIX of the CGST Act deals with offences and penalties. Section 132 is part of Chapter XIX. It 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 the instant 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 thereunder 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) are

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punishable under clause (i) of that section are cognizable and non-bailable.

32. Reverting to the facts of the present case, it appears to be not disputed that summons were issued to the petitioner under section 70 of the CGST Act and responding to the summons, applicant had appeared before the investigating officer where after his statements were recorded on 31.01.2024,01.02.2024 and on 02.02.2024. I have perused the statements of the applicant which have been produced with the counter affidavit filed by Union Of India. It may also be noticed that on 02.02.2024 the applicant was arrested and produced before the Magistrate on 03.02.2024 and no custody remand was requested by union of India and the applicant was remanded to judicial custody for 14 days. It is admitted in para no. 17 of the counter affidavit filed by the respondent that the custody remand of the applicant was not sought as the same was not required. It is also evident that thereafter permission was taken by the department for further interrogation of the applicant in jail on 23.02.2024 and the applicant was further interrogated in jail on 26.02.2024. It is not evident as to why the applicant was not interrogated prior to 26.02.2024 when his statements have already been recorded on three days when he had appeared before the department and when according to the department he was not cooperating why his custody remand was not sought. This primafacie suggests that perhaps the department was not requiring the further interrogation of the applicant as his statements have already been recorded. It is alleged by the department that On 26.02.2024 applicant has not cooperated and when his statement was recorded in Jail he stated that he will not tender his statement without consulting his counsel.

33. Recently, Hon'ble Supreme Court in order dated March 06, 2024 passed in ***Bijender Vs State Of Haryana passed in Criminal Appeal No. Nil OF 2024, (Arising from SLP(Crl.)No(s). 1079/2024)***, while considering the plea of prosecution pertaining to the non cooperation of

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accused applicant who was granted Anticipatory Bail subject to the condition of cooperation in the investigation, has opined as under :-

"The learned counsel for the State opposed his plea for pre-arrest bail by filing a counter affidavit. In our order passed on 05.02.2024 giving the appellant interim protection, it was directed that the said protection was subject to the appellant's cooperation with the investigating agency. It is not in dispute that the appellant has joined the investigation but the main reason for opposing the prayer of the appellant for pre-arrest bail has been disclosed in paragraph 13 of the counter affidavit, which we quote below:-

"13. That the petitioner/accused had though joined investigation on dated 10.02.2024, as per order passed by this Hon'ble Court but the petitioner did not cooperate with the police nor got recovered the amount of bribe received by him nor disclosed the other facts of this case properly. Therefore, the custodial interrogation of petitioner/accused is required in the present case for thorough investigation."

34. We cannot treat the behavior attributed to the appellant to be instances of non-cooperation justifying dismissal of his appeal for pre-arrest bail. An accused, while joining investigation as a condition for remaining enlarged on bail, is not expected to make self-incriminating statements under the threat that the State shall seek withdrawal of such interim protection."

35. Thus the cooperation in the investigation may not be taken that accused applicant while under interrogation must make statements in favour of the department or make statements which are self incriminatory.

36. In order to canvass the necessity of the further detention of the applicant in prison the Department has relied on the statements of the applicant in order to show that there is clear admission on the part of the

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applicant to the wrong doing and thus committing offences under section 132(1)(c) and (b) of the CGST Act and, therefore, his arrest has been justified. Though section 25 of the Indian Evidence Act, 1872 is not attracted to recording of statements by revenue officers under the CGST Act, nonetheless at this stage section 136 of the CGST Act may be recalled which , in the considered opinion of this Court may have a bearing on this aspect. Section 136 of the CGST Act says that a statement made and signed by a person on appearance in response to any summons issued under section 70 of the CGST Act shall be relevant for the purpose of proving in any prosecution, an offence under the CGST Act, the truth of the facts which it contains when a person who made the statement is examined as a witness in the case before the court and the court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. Section 136 of the CGST Act will only come into play at the time where the trial commences and thus the admission made by a person before the revenue officials under the CGST Act would not be per se admissible in evidence unless it receives the approval of the Court.

37. Section 69 of the CGST Act provides that the Commissioner may authorize arrest of a person only if he has reasons to believe that such a person has committed any offence under the clauses mentioned therein. The expression 'reasons to believe' is an expression of considerable import and in the context of the CGST Act, confers jurisdiction upon the Commissioner to authorize any officer to arrest a person, thus the expression 'reasons to belief' postulates belief and the existence of reasons for that belief. The belief must be held in good faith and it cannot be merely a assumption and the same must be based on reasons. It contemplates existence of reasons on which the belief is founded and such belief must not be based on mere suspicion rather the same must be founded upon information and sound reasons. Such reasons to believe can be formed on the basis of material/evidence but not on mere suspicion or rumour. It is open for a court to examine whether the reasons for the formation of such belief have a rational connection with

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the arrest. There must be a direct connection or nexus or live link between the material coming to the notice of the officer and the formation of his belief.

35. In this regard the law laid down by the Supreme Court in ***Arnesh Kumar Vs. State of Bihar, MANU/SC/0559/2014 : (2014) 8 SCC 273***, is also important where the Supreme Court having referred to section 41 Cr.P.C. held that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, with or without fine, cannot be arrested by a police officer only on his satisfaction that such person has committed the offence punishable as aforesaid. A police officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the case or to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or to the police officer or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. In this context, Supreme Court also referred to section 41-A Cr.P.C. particularly sub-section (3) thereof which says that where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. Supreme Court emphasized that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C. for effecting arrest be discouraged and discontinued.Relevant portion of the judgment of the Supreme Court in ***Arnesh Kumar (supra)*** is extracted hereunder:-

"5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson;

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the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

39. Honble Supreme Court in ***The State of Gujarat Vs. Choodamani Parmeshwaran Iyer and Ors., MANU/SC/0992/2023*** observed as under:-

"18. In the aforesaid context, we may refer to a Division Bench decision of the High Court of Telangana which ultimately came to be affirmed by this Court in the ***Special Leave Petition (Crl.) No. 4430 of 2019 order dated 27.05.2019****. We are referring to a decision in the case of* ***P.V. Ramana Reddy v. Union of India Writ Petition Nos. 4764 of 2019 and allied petitions decided on 18th April, 2019****. There are few important observations made by the High Court and we are in complete agreement with the said observations. The observations of the High Court fell in the context of certain incongruities noticed in Section 69(1) and Section 132 reply of the CGST Act, 2017. We quote the relevant observations hereunder:*

39. It is important to note that Under Sub-section (4) of Section 132 of the CGST Act, 2017, all offences under the Act except those under Clauses (a) to (d) of Section 132(1), are made non-cognizable and bailable, not-withstanding anything contained in Code of Criminal Procedure In addition, Section 67(10) of the CGST Act, 2017 makes the provisions of Code of Criminal Procedure relating to search and seizure, apply to searches and seizures under this Act, subject to the modification

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that the word "Commissioner" shall substitute the word "Magistrate" appearing in Section 165(5) of Code of Criminal Procedure, in its application to CGST Act, 2017.

40. Therefore, (1) in the light of the fact that Section 69(1) of the CGST Act, 2017 authorizes the arrest only of persons who are believed to have committed cognizable and non-bailable offences, but Section 69(3) of the CGST Act, 2017 deals with the grant of bail and the procedure for grant of bail even to persons who are arrested in connection with non-cognizable and bailable offences and (2) in the light of the fact that the Commissioner of GST is conferred with the powers of search and seizure Under Section 67(10) of the CGST Act, 2017, in the same manner as provided in Section 165 of the Code of Criminal Procedure, 1973, the contention of the Additional Solicitor General that the Petitioners cannot take umbrage Under Sections 41 and 41A of Code of Criminal Procedure may not be correct.

41. Though for the purpose of summoning of witnesses and for summoning the production of documents, the Proper Officer holding the enquiry under the CGST Act, 2017 is treated like a Civil Court, there are four other places in the Act, where a reference is made, directly or indirectly, to the Code of Criminal Procedure They are (1) the reference to Code of Criminal Procedure in relation to search and seizure Under Section 67(10) of CGST Act, 2017, (2) the reference to Code of Criminal Procedure Under Sub-section (3) of Section 69 in relation to the grant of bail for a person arrested in connection to a non-cognizable and bailable offence, (3) the reference to Code of Criminal Procedure in Section 132(4) while making all offences under the CGST Act, 2017 except those specified in Clauses (a) to (d) of Section 132(1) of CGST Act, 2017 as non-cognizable and bailable and (4) the reference to Sections 193 and 228 of Indian Penal Code in Section 70(2) of the CGST Act, 2017. Therefore, the contention of learned Additional Solicitor General that in view of Section 69(3) of the CGST Act, 2017,

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the Petitioners cannot fall back upon the limited protection against arrest, found in Sections 41 and 41A of Code of Criminal Procedure, may not be correct. As pointed out earlier, Section 41-A was inserted in Code of Criminal Procedure by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008. Under Sub-section (3) of Section 41A Code of Criminal Procedure, a person who complies with a notice for appearance and who continues to comply with the notice for appearance before the Summoning Officer, shall not be arrested. In fact, the duty imposed upon a Police Officer Under Section 41A(1) Code of Criminal Procedure, to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in Section 70(1) of the CGST Act. Though Section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporated in Section 41 and 41A of Code of Criminal Procedure, we think Section 70(1) of the CGST Act takes care of the contingency.

42. In any case, the moment the Commissioner has reasons to believe that a person has committed a cognizable and non-bailable offence warranting his arrest, then we think that the safeguards before arresting a person, as provided in Sections 41 and 41A of Code of Criminal Procedure, may have to be kept in mind.

43. But, it may be remembered that Section 41A(3) of Code of Criminal Procedure, does not provide an absolute irrevocable guarantee against arrest. Despite the compliance with the notices of appearance, a Police Officer himself is entitled Under Section 41A(3) Code of Criminal Procedure, for reasons to be recorded, arrest a person. At this stage, we may notice the difference in language between Section 41A(3) of Code of Criminal Procedure and 69(1) of CGST Act, 2017. Under Section 41A(3) of Code of Criminal Procedure, "reasons are to be recorded", once the Police Officer is of the opinion that the persons concerned ought to be arrested. In contrast, Section 69(1) uses the phrase "reasons to believe". There is a vast difference between "reasons to be recorded" and "reasons to believe."

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40. The department in its Counter Affidavit has enclosed the copy of the order of arrest passed by the Principal Additional Director General authorizing the intelligence officer to arrest the applicant the reasons recorded by the Principal Additional Director General while authorizing arrest of the applicant are placed as CA5 to the Counter Affidavit. Perusal of this order will reveal that what has weighed with the Principal Additional Director General is only and only the gravity of the offence as it has been stated that applicant is the master mind of the racket and is required to be arrested immediately. Thus the arrest of the applicant has not been done for his non cooperation in the investigation or for further investigation. Nowhere it is stated that the applicant while at liberty may hinder the smooth progress of investigation and in this order it has also not been mentioned as to why the applicant is being arrested, which was required to be stated.

41. At this stage the following observations of Hon'ble Supreme Court in **Arnesh Kumar (supra)** are also required to be recalled:-

"6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the

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recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

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7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

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7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is

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necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C."

42. Thus the requirement under sub-section (1) of section 69 of CGST Act is reasons to believe that not only a person has committed any offence as specified but also as to why such person needs to be arrested. From a perusal of the reasons recorded by the Principal Additional Director General, it is reflected that no incident has been mentioned therein recording any act of the applicant or his conduct of threatening any witnessor even of not co-operating with the investigation or of fleeing from investigation. It is true that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail, because such offences pose serious threat to the financial health of the country, but there has to be a sound reason or belief for curtailing the liberty of a person, specially in the offences punishable with up to seven years of imprisonment.

43. In the case of ***Satender Kumar Antil versus Central Bureau of Investigation, MANU/SC/0851/2022***, the Hon'ble Supreme Court opined as under:-

"66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of ***P. Chidambaram v. Directorate of Enforcement, MANU/SC/1670/2019 : (2020) 13 SCC 791****, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:-*

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• ***P. Chidambaram v. Directorate of Enforcement, MANU/SC/1670/2019 : (2020) 13 SCC 791:***

23. 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.

• ***Sanjay Chandra v. CBI, MANU/SC/1375/2011 : (2012) 1 SCC 40:***

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"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi.

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Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

44. Thus, keeping in view the fact that applicant has appeared before the department on 30, 31 January 2024 and on 01st February and his statements have been recorded on these days and he was arrested on 2nd February, 2024 and produced before the magistrate and no custody remand was sought by the department and it was after many days i.e. on 26.02.2024 the department has taken the permission from the Court concerned for interrogation of the applicant in jail and also that applicant has retracted his confessional statements and in the orders of arrest no reason has been mentioned as to why after recording of the statements of the applicant for many days his arrest is required and also keeping view that applicant is in jail in this case since 02.02.2024 and investigation appears to have reached an advanced statge and nothing has been shown before this Court which mey justify the further detention of the applicant in prison and also considering that the alleged offence is punishable with up to 5 years maximum punishment and still no formal accusation in the form of FIR or complaint has been filed by the department and also keeping in view that in such circumstances continuing the detention of the petitioner may not at all be justified and it appears justified for this court to strike a fine balance between the need for further detention of the applicant when even custodial interrogation has not been claimed at all by the Department and considering the right of an accused to personal liberty, applicant may be released on bail, however subject to certain conditions.

45. In result, the instant bail application moved by the applicant is, hereby, **allowed.**

46. Let the accused/applicant- **Deepanshu Srivastava** involved in above-mentioned case, be released on bail on his furnishing a personal

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bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) **The applicant shall deposit his passport before the Trial Court.**

(ii) The applicant shall not sell any property of himself or of any of the companies in which he has a substantial interest and which are under investigation.

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iv) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

47. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

48. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

49. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date: 19.03.2024/Praveen

Digitally signed by :-
PRAVEEN KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench