

(2021) 04 KL CK 0146
In the High Court Of Kerala
Case No : Bail Application No. 220 Of 2021

Abdul Shaji

APPELLANT

Vs

Commissioner Of Central Tax And Central Excise And Ors

RESPONDENT

Date of Decision : 22-04-2021

Acts Referred:

Scheduled Castes And Tribes (Prevention Of Atrocities) Act, 1989 — Section 18, 18(A)
Central Goods And Services Tax Act, 2017 — Section 69, 70, 132
Code Of Criminal Procedure, 1973 — Section 49
Constitution Of India, 1950 — Article 22

Citation : (2021) 04 KL CK 0146

Hon'ble Judges : Ashok Menon, J

Bench : Single Bench

Advocate : K. Seena, V.K. Sunil, Sreelal N. Warriar

Final Decision : Allowed

Judgement

1. Application for anticipatory bail under Section 438 Cr.P.C
2. The applicant apprehends arrest for an offence of alleged non payment of GST to the tune of Rs 17.53 Crores and non -filing of GSTR 3B returns for the period from October onwards. Initiated against M/s A.R. Agencies, Eyyal Thrissur in a proceedings initiated by the Head Quarters, Anti Evasion Unit of Cochin Commissionerate. The proprietor of the aforesaid agency, Shri. Rajoob P.A, and his primary colluder, Shri. Abdul Saleem of Ittonam, Palakkad were proceeded against and their business and residential premises searched. Both of them were arrested and remanded to judicial custody. When questioned, Abdul Saleem stated that he had shared the GST login credentials of M/s A.R. Agencies with the applicant, who is conducting 'PSM Super Market' at Karukaputhur in Palakkad District. It is also stated that it was the applicant who had filed the GSTR-I returns for A.R Agencies. It was also contended that the applicant had prepared GST invoices valued at Rs. 348.7 crores using the credentials of the Agency. Accordingly, search of the applicant's residence was also conducted. Certain

blank cheques and documents which were incriminating were recovered from his house. He was not present. But his father was present, and was informed. Consequent to that, a summons was sent to him under Section 70 of the CGST Act, directing him to appear before the Superintendent of Central Tax and Central Excise with the relevant documents.

3. The applicant states that he is innocent and has nothing to do with M/s A.R Agencies, and does not even know its proprietor Rajoob. He admits of having acquaintance with Abdul Saleem, who has visited PSM Super market, Karukaputhur, which is a partnership firm belonging to his wife and others. He used to do arecanut business sometime ago. It has since been wound up. The applicant states that he has no business at present, and is not having any GST registration. When Abdul Saleem came to his wife's Supermarket, he had helped the applicant to procure stocks from his uncle's shop at Vadakkencheri. That apart, he has no connection with him. The applicant denies of having received the login credentials of A R. Agencies or filing the GST returns for the proprietorship. He had approached this court with W.P(C) 26593/2020 consequent to the illegal search conducted by the respondents in his house during his absence, and on receipt of the notice under Section 70, to get that notice quashed. He was asked to produce documents pertaining to the A.R Agencies, which he is incapable of producing owing to the fact that he has nothing to do with that Agency. The respondents had appeared in the aforesaid Writ petition and admitted having conducted the search of his house in the objections filed by them. Even though the respondents state that they have discovered incriminating documents from the residence of the applicant, the nature of those documents are not detailed except by stating that those are some blank cheques. The applicant is willing to cooperate with the investigation, but apprehends that he may be incarcerated and subjected to torture to extract incriminating evidence. Hence, he seeks anticipatory bail.

4. Heard the learned counsel Sri. V.K. Sunil, appearing for the applicant, and Sri. Sreelal N. Warriar, the learned Central Government Standing Counsel for the respondents. Records perused.

5. There is no embargo under the CGST Act restraining the applicant from seeking pre-arrest bail. There is no analogous provision under Sections 18 and 18A of the SC/ST(Prevention of Atrocities) Act, 1989, preventing grant of anticipatory bail. Economic offences such as tax evasion, money laundering, etc. are considered as grave in nature, as they affect the economy of the country as a whole, thereby posing a serious threat to its financial health. To deter persons from indulging in such economic offences, criminal sanctions are often 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.

6. Section 132 of the Central Goods and Services Tax Act, 2017 ('CGST Act') lists 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 lakh. These offences relate to persons who supply goods or services without issuing invoices, or issue invoices without supplying goods or services and thus wrongfully avail 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.

7. Section 69 of the CGST Act appears to empower the Commissioner to authorise any officer to arrest persons who he believes to have committed some of the aforementioned offences. From a perusal of the aforementioned provisions, it appears that certain safeguards against abuse of the powers to arrest have been inserted under the CGST Act itself. The power to arrest has been granted only in respect of certain specific offences. These offences include cases where the act in question is committed with an intention to evade tax or where it results in monetary loss to the Government exchequer. In addition to the nature of the offences, the legislature has also added an additional layer of restriction on the power to arrest for most first time offenders by stating that such power can only be exercised when the aforementioned offences involve an amount exceeding Rupees one hundred lakh or more. Notably, the aforementioned monetary threshold is not applicable to all offences. In certain cases, the amount involved in the offence is not relevant. For instance, in cases where any of the specified offences are committed for the second time, the power to arrest is applicable regardless of the amount involved. Similarly, in cases where one commits or abets the commission of offences such as falsification of records, or obstructing an officer from conducting his duty, or tampering or destruction of material evidence, the amount involved is immaterial, and the power to arrest exists regardless. Therefore, it appears that the grant of such powers under the CGST Act have been allowed based on the combined assessment of the severity of the offence and the amount involved therein. The safeguards in the form of pre-arrest authorisation have also been inserted in the text of the CGST Act itself. As noted above, Section 69 of the CGST Act permits the Commissioner GST to authorise arrests in certain cases, based on the seriousness and the amount involved, but in all other cases, arrests are to be conducted according to provisions of the Code of Criminal Procedure ('Cr.PC'). There appears to be an inversely proportional relationship between the

gravity of the offence in question and the safeguards applicable thereon. However, the provisions still appear to comply with basic standards as even in cases of the grave offences under the Act, the Commissioner who is a Senior GST official is permitted to authorise arrest only if he has reason to believe that a person has committed an offence. The Senior Intelligence Officer is not permitted to conduct arrests under the CGST Act till the Commissioner records his satisfaction on 'reasons to believe' authorizing him to arrest the assessee. The scope of the expression 'reason to believe' has been examined in several cases. The expression 'reason to believe' must not be purely subjective satisfaction and must have a rational connection with, or a relevant bearing on the formation of the belief. The insertion of the phrase 'reason to believe' demonstrates the legislature's intention to make an affirmative attempt to circumscribe the discretionary powers and permit their exercise only in a bona fide manner, to further the interest of revenue. Thus, the discretion of the Commissioner to authorise arrest is in the most serious offences listed under the CGST Act. The CGST Act also provides the process to be followed once arrests are conducted by a central tax officer on the authorisation of the Commissioner. The officer in question is required to inform the arrested person of the grounds of his arrest and must produce such person before the Magistrate within twenty four hours of arrest. This is in line with the safeguards provided under Section 49 of the Cr.PC and Article 22 of the Constitution of India.

8. Coming back to the facts of the instant case, the applicant has not yet been made an accused. On the basis of the alleged statement given by Abdul Saleem, the applicant has allegedly dealt with the filing of returns of the Agency. He had allegedly made false invoices. But as of now, no concrete evidence sufficient either to implicate him as an accused or proceed against him has been collected. Admittedly, A.R Agencies is a proprietorship belonging to Rajoob. He alone is to answer for anything done by the agency. Applicant has nothing to do with the Agency and has not gained any income from that business. His Bank accounts are available for scrutiny, and the applicant is willing to cooperate by producing those documents. His custodial interrogation may not be necessary under the circumstances. The CGST officials had sufficient power to implicate the applicant in case they had the required materials with them. The fact that they have not arraigned him as an accused indicates lack of material. The applicant's apprehension of arrest is reasonable, because Abdul Saleem, who is also not a proprietor, has been arrested. In the objections filed by the respondents before this court in the Writ Petition also do not disclose any incriminating material against the applicant. Merely by stating that they recovered incriminating materials may not suffice. It is settled position that the applicant apprehending arrest need not be made an accused in a crime to seek the relief of anticipatory bail. It is sufficient in case he succeeds in establishing that his apprehension of arrest is reasonable.

9. Under the circumstances, the applicant is entitled to the relief of anticipatory bail.

In the result, the bail application is allowed and the applicant is directed to appear before the investigating officer within three weeks. He is directed to cooperate with the investigation and produce all documents called for. After interrogation, in the event of his arrest, he shall be released on bail on execution of a bond for Rs 5,00,000/- (Rupees five lakhs only) with two solvent sureties each for like sum to the satisfaction of the arresting officer, and on further conditions that he shall appear before for investigating officer as and when called for, and shall refrain from tampering with evidence or witnesses.