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MCRC-40741-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 15th OF JANUARY, 2026MISC. CRIMINAL CASE No. 40741 of 2025*DHEERAJ GUPTA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Sankalp Kochar - Advocate for the applicant.

Shri A. Rajeshwar Rao - Advocate for the respondent.

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ORDER

This is the first application filed by the applicant under Section 482 of BNSS, 2023 for grant of anticipatory bail relating to Crime No.102/2025 registered at Police Station - Economic Offences Wing, Bhopal District Bhopal (M.P.) for commission of offence under Sections 420, 467, 468, 471 read with Section 120-B of the IPC and Section 66-D of the IT Act. Applicant is apprehending his arrest in the aforesaid offence has filed this application for grant of anticipatory bail.

2. According to the story of prosecution as enunciated in the FIR dated 21.06.2025, the genesis of the case is a complaint submitted by one Pratap Singh Lodhi, an agriculturist and resident of Village Dhaneta, Tehsil Patan, District Jabalpur. The complainant alleged that he was in need of a loan and approached co-accused N.K. Khare alias Vinod Kumar Sahay, who induced him by stating that only a small loan could be availed on agricultural land,



but a larger loan could be secured if he formed a proprietorship firm and obtained GST registration in the name of the said firm. Acting on this inducement and false assurance, the complainant registered a firm in the name of Maa Narmada Traders for which documents such as Aadhaar, PAN, bank statements, land records and loan books were handed over to the co-accused. It is further alleged that without the complainant's consent, the co-accused got registered an email ID jdrealities99@gmail.com in the GST records and also registered the complainant's son's mobile number for GSTOTP verifications. That subsequently, GST Registration No.23ALLPL1056B1ZM was issued in the name of Maa Narmada Traders. However, the complainant never carried out any business through the said registration. Later, when GST authorities visited the complainant, he was informed that tax dues to the tune of Rs 72,66,408/- were outstanding against the said firm. This came as a shock to the complainant, as bogus transactions of crores of rupees had been shown in the name of Maa Narmada Traders without his knowledge or involvement. It is further stated that, co-accused N.K. Khare and Satyam Soni had fraudulently filed GST returns in respect of Maa Narmada Traders by misusing OTPs and documents of the complainant. Further probe disclosed that apart from Maa Narmada Traders, several other bogus firms were floated, namely Namami Traders, Maa Rewa Traders, and Abhijeet Traders, all allegedly used to generate fake GST returns and fraudulent transactions. It is further stated that, through these bogus firms, the accused persons, including the present applicant, carried out fictitious transactions in collusion with various entities, such as K.D. Sales



Corporation, Dilip Traders, Ankita Steel & Maa Jagdamba Coal Carriers, Mahak Enterprises, Koraj Technic, Mahamaya Traders, Ambar Coal Depot, and Anam Traders. Forged documents were used to support these fraudulent GST returns, causing a wrongful loss of approximately Rs 33.80 Crores to the State exchequer.

3. Learned counsel for the applicant has drawn attention of this Court to the chronology of events which is as follows:

In the year 2009 : applicant was granted employment at Ms. Kamdhenu Cement Ltd. and has been continuously with the said company;

on 14.02.2020: Rent Agreement executed whereby applicant accused had leased out the godown situated at Plot No.790, scheme No.114, Part -I Indore, to Pramod Kumar Namdev for the purpose of running his business (K.D. Sales);

On 06.07.2021: Search was conducted by the GST Department at the premises of Ms. K.D. Sales Corporation whereupon Pramod Kumar Namdev deputed one Hemant Pahariya to participate on his behalf;

On 23.07.2021: Search was conducted by the GST Department at the office premises of Ms. Kamdhenu Cement Ltd.;

On 30.07.2021: Applicant was arrested in connected with offences punishable under Sections 132 (1) (b) and Section 132 (1) (c) of the Central Goods and Services Tax (CGST) Act, 2017, as well as under Sections 471 and 120-B of the IPC pursuant to action initiated by the office of the Director General of GST Intelligence, Pune;

On 13.08.2021: Bail was granted to the applicant by Additional



Sessions Judge;

On 30.12.2022: Assessment order has been passed by the Income Tax Department whereby the income of the applicant has been assessed as Rs.1,24,80,004/- on the ground that he allegedly derived a commission of 1% from Ms. Hella Infra Market Pvt. Ltd.;

On 15.03.2024 Show-cause notice was issued by Additional Commissioner, Goods and Services Tax (GST) regarding the allegation that Ms. K.D. Sales Corporation, Proprietor Shri Pramod Kumar Namdev, Indore was a non-existent entity created solely for the purpose of availing and passing on ineligible/fraudulent Input Tax Credit (ITC);

On 25.07.2024: Applicant duly submitted his reply to the impugned show cause notice and had categorically stated that the entire show cause notice against the applicant is totally misconceived and unsustainable in law;

On 29.10.2024: The applicant preferred an appeal against the assessment order dated 30.12.2022, whereby an arbitrary addition of Rs.1,19,83,144 has been made;

On 21.06.2025: First Information Report has been registered bearing crime number 102/2025 at the Economic Offences Wing Police Station - Bhopal, MP for offences punishable under Section 467, 468, 471 read with Section 120-B of the IPC and Section 66-D of the IT Act.

4. Learned counsel appearing for the applicant submits that the present applicant - Dheeraj Gupta was already arrested in connected with offences punishable under Sections 132 (1) (b) and Section 132 (1) (c) of the Central Goods and Services Tax (CGST) Act, 2017, as well as under Sections 471



and 120-B of the IPC pursuant to action initiated by the office of the Director General of GST Intelligence, Pune and, therefore, again prosecution on the same count of allegation cannot be permitted to continue in view of the decisions of the Supreme Court in the cases of *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181; *Amitbhai Anilchandra Shah v. CBI*, (2013) 6 SCC 348; and *Arnab Ranjan Goswami v. Union of India*; (2021) 1 SCC 1.

5. It is further submitted that various High Courts have considered the case in view of Section 132 of the GST Act and have held that if the amount involved is more than Rs.5 Crores then maximum punishment prescribed is five years and there is no embargo under the GST Act for consideration of application for grant of anticipatory bail. It is contended that considering the chain of events and considering the fact that GST authority have also resorted for offences punishable under the IPC, such practice adopted by the GST authorities is not approved by various High Courts and even some of the complaints have been quashed.

6. It is put forth that in the case of *Akram Pasha v. Senior Intelligence Officer* (Crl. Pet. No.15066/2025, High Court of Karnataka at Bengaluru), the facts of that case are almost identical to the facts of the present case and considering the nature of allegation that the applicant has taken wrong benefit of Input Tax Credit, the case of the applicant is required to be considered.

7. In support of his submissions, counsel for the applicant has placed reliance on the decisions in the cases of *Sharat Babu Digumarti v. Government of NCT of Delhi*, (2017) 2 SCC 18; *Deepak Singhal v. Union of*



India, WP No.21641/2024; *Sushil Kumar Singla v. State of UT Chandigarh*, CRM - M 28701/2023 (O & M); *Shalini Singhal v. State of MP*, (M.Cr.C. No.5759/2024 decided on 09.02.2024). By referring to these decisions, it is contended that the applicant should be granted anticipatory bail as no custodial interrogation is required as GST is itself a self contained Code and necessary procedure shall be followed as per that Code itself.

8. Per contra, learned counsel appearing for the respondent has opposed the contentions raised by the counsel for the applicant and by referring to Section 131 of the GST Act submits that offences are serious in nature and custodial interrogation is required as further interrogation may reveal many more scam and fraud which might have been committed by the present applicant and other co-accused persons. It is further contended that figure of such fraudulent amount may increase with further interrogation. It is vehemently urged that provisions of GST Act generates asset for the nation and these activities carried out by the persons like the present applicant jeopardize the national interest on that count also the Court should take a serious view in such matters and should not exercise discretion in favour of the applicant especially looking to the fact that prima facie case is made out against the applicant.

9. I have considered the rival submissions made by learned counsel for the parties at the Bar.

10. It is relevant to note that various High Courts as well as the Apex Court have considered similar types of matters in favour of the applicants therein. In this context it is appropriate to refer to certain relevant decisions



in the field:

In the case of *Sharat Babu Digumarti* (supra) in paragraphs 32 and 33 it has been held by Apex Court as follows:

"32. Section 81 of the IT Act also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply.

33. In this regard, we may refer to *Sarwan Singh v. Kasturi Lal* [*Sarwan Singh v. Kasturi Lal*, (1977) 1 SCC 750] . The Court was considering Section 39 of the Slum Areas (Improvement and Clearance) Act, 1956 which laid down that the provisions of the said Act and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any



other law. The Delhi Rent Control Act, 1958 also contained non obstante clauses. Interpreting the same, the Court held : (SCC pp. 760-61, para 20)

“20. ... When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us, arose in *Ram Narain v. Simla Banking & Industrial Co. Ltd.* [*Ram Narain v. Simla Banking & Industrial Co. Ltd.*, AIR 1956 SC 614] the competing statutes being the Banking Companies Act, 1949 as amended by Act 52 of 1953, and the Displaced Persons (Debts Adjustment) Act, 1951. Section 45-A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act, 1951 contained each a non obstante clause, providing that certain provisions would have effect “notwithstanding anything inconsistent therewith contained in any other law for the time being in force ...”. This Court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing : (AIR p. 622, para 7)

‘7. ... It is, therefore, desirable to determine the overriding



effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.’

As indicated by us, the special and specific purpose which motivated the enactment of Section 14-A and Chapter III-A of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them. Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act.”

11. Indore Bench of this Court in the case of *Deepak Singhal (supra)* has held in paragraphs 9 and 10 as follows:

"9. In the considered opinion of this court, GST Act, 2017 is a special legislation which holistically deals with procedure, penalties and offences relating GST and at the cost of repetition this court cannot emphasise more that the GST Authorities cannot be permitted to bypass procedure for launching prosecution under GST Act, 2017 and invoke provisions of Indian Penal Code only without pressing into service penal provisions from GST Act and that too without obtaining sanction from commissioner under Section 132(6) of GST Act especially when the alleged actions



squarely fall within the precincts of offence as enumerated under GST Act, 2017. This would defeat the very purpose of enacting a special statute such as GST Act, 2017, as the GST Authorities instead of conducting search and seizure and conducting proceedings as prescribed under GST Act, 2017 themselves would be delegating the same to local police authorities which cannot be said to be the intent of the legislature while enacting GST Act, 2017.

10. In view of the above, this court has no hesitation in holding that GST Authorities cannot bypass procedure prescribed under GST Act for launching prosecution by simply invoking penal provisions under IPC without invoking penal provisions under GST Act especially when the allegations so revealed as a result of search and seizure conducted by GST Authorities constituted offence covered under the penal provisions of GST Act as that would amount to bypassing procedural safeguards as provided under Section 132(6) of GST Act which requires sanction of the commissioner prior to initiation of prosecution, which is to the prejudice of the petitioner herein. Letting GST Authorities to adopt such course of action would amount to abuse of process of law which cannot be permitted by this court."

12. In this context it is apposite to refer to the judgment of High Court of Karnataka in the case *Akram Pasha* (supra) on which heavy reliance is placed by counsel for the present applicant. In paragraphs 18 to 20



of the said judgment, High Court of Karnataka has held thus:

"18. Sections 69 and 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 sub-section (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 ball, forwarded to the custody of the magistrate;

b) in the case of a non-cognizable and bailable offence, the Deput 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."

19. 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.

20. 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."

13. In *Sushil Kumar Singla (supra)* in paragraphs 18 to 21 it has been held as under:

"18. In *State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772,



the question before the Apex court was whether the provisions contained in Section 21, 22 and other sections of Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) operate as bar against prosecution of a person who has been charged with allegation under Section 379 of IPC? The Apex court after reading the act in a minute manner has held that if an offence which is mentioned in MMDR Act is executed by the accused, then such offence can be tried only under such act by the procedure laid under the said act. However, if an act or offence which constitutes an offence under IPC, then the provisions of MMDR Act shall not stand in a way to stop the applicability of IPC and such offence can be prosecuted under IPC without waiting or following the procedure under the MMDR Act.

19. In the case of Institute of Chartered Accountants of India vs. Vimal Kumar Surana and another, (2011) 1 SCC 534, the Apex Court has elaborately dealt with the provision under the Chartered Accountants Act, 1949. In that case, the respondent, who passed the Chartered Accountant examination but was not a member of the appellant's Institute of Chartered Accounts, allegedly represented before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing



forged seals and thereby impersonated himself as Chartered Accountant. He was accordingly prosecuted and charge was framed against him under Sections 419, 468, 471 and 472, IPC. The respondent challenged the order by filing revision under Section 397 CrPC. The Additional Sessions Judge set aside the order of the Magistrate and remanded the case to the trial court with a direction to decide whether there are sufficient grounds for framing charges under Sections 419, 468, 471 and 473, IPC read with Sections 24 and 26 of the C.A. Act. After remand, the trial court passed an order holding that there was no basis for framing any charge against respondent under the IPC. The Magistrate further held that cognizance of offences under Sections 24 and 26 of the C.A. Act cannot be taken because no complaint had been filed by or under the order of the Council before the Magistrate. The High Court while referring to Sections 2, 4, 5 and Section 195(1), Cr.P.C. held that in the absence of a complaint the Magistrate was not competent to frame charges against the respondent and in view of the special mechanism contained in the C.A. Act for prosecution of a person violating Sections 24, 24A and 26 of the Act, he cannot be prosecuted under the IPC. When the matter finally came to the Supreme Court, wherein after considering a catena of judgments, it was held as under:-

24. Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in



view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrongdoer by filing the first information report or complaint under the relevant provisions of CrPC."xxxxxxxxxx

42. The submission of Shri Gupta that the respondent cannot be prosecuted for the offences defined under IPC because no complaint had been filed against him by the court concerned or authority as per the requirement of Section 195(1)(b)(ii) CrPC sounds attractive but lacks merit. The prohibition contained in Section 195 CrPC against taking of cognizance by the court except on a complaint in writing made by the court concerned before which the document is produced or given in a proceeding is not attracted in the case like the present one because the officers of the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995 before whom the respondent is alleged to have acted on the basis of power of attorney or as legal representative or produced audit report do not fall within the ambit of the term "court" as defined in Section



195(3) CrPC. Such officer/authorities were neither discharging the functions of a civil, revenue or criminal court nor could they be treated as tribunal constituted by or under the Central or State Act, which is declared to be a court for the purpose of Section 195."

In case of Sharat Babu Digumarti vs. Govt. Of NCT of Delhi AIR 2017 SC 150 the facts were different. It is the case in which the Magistrate had taken cognizance against the Director of a company for offences punishable under Sections 292 and 294 of IPC and Section 67 of IT Act It was in such background, the Supreme Court was of the view that Section 67 read with Section 67A and 678 of the IT Act were a complete code and for the sune set of allegations, the provisions of Section 292 of IPC cannot be invoked.

(21) A close reading of the above cited case laws would lead to only the conclusion that the offence alleged against the petitioner is one punishable under the UTGST Ac/CGST Act, which are the special statutes and are a complete code in itself and in view of the special mechanism contained in Chapter XIX of the CGST Act which clearly provides for offences and penalties, for prosecution of a person violating 122 & 132 of the Act, the petitioner cannot be prosecuted under the general provisions of IPC especially in view of the facts that in the FIR itself it has been stated that the resort has already been taken for recovery of the tax by assessing tax and imposing interest and penalty thereon. Since



as per the mechanism under the GST legislations has been pressed into aid, continuation of the proceedings under the general penal provisions of IPC and subject the petitioner to face trial thereunder would amount to double jeopardy under Article 20(2) of the Constitution of India. Furthermore, there is non-compliance of mandatory provision of Section 132(6) of the CGST Act as no previous sanction of the Commissioner has been taken."

14 Indore Bench of this High Court in the case of *Shalini Singhal (supra)* after considering the following submissions of the parties in paragraphs 4 and 5, in paragraph 6 held that custodial interrogation is not required. The aforesaid paragraphs reads as follows:

"4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the case. It is alleged that the applicant is a Director of the Agrawal Soya Extract Pvt. Ltd. along with co-accused persons and all of them entered into a criminal conspiracy and prepared bogus invoice, bill T and Soybean DOC in order to demonstrate sale and purchase of soyabean on paper in order to get the benefit of GST Input Tax Credit on sham transactions. It is further alleged that the bank account of the aforesaid company was opened in IndusInd Bank, Indore which was being operated by co-accused Navneet Garg which is evident from the letter issued by the bank. All the cheques were issued under the signature of co-accused Navneet Garg. Learned counsel for the applicant contended that the



applicant is the wife of co-accused Deepak Singhal and is a dormant partner in the company who has nothing to do with the day-to-day affairs of the company. The applicant is ready to cooperate in the investigation. There is no likelihood of applicant's absconsion or tampering with the prosecution evidence if she is released on anticipatory bail. She is ready to abide by the terms and conditions as may be imposed by this Court. With the aforesaid submissions prayer for grant of anticipatory bail is made.

5. Per contra, learned Government Advocate has opposed the bail application and submitted that the applicant as well as other co-accused persons are active directors of the company and are involved in various cases of such nature and are in the habit of issuing forged bills for getting false benefits of input tax credit. Applicant has committed white-collar crime. Investigation is pending and custodial interrogation may be required. Therefore, the applicant may not be enlarged on anticipatory bail and the application deserves to be dismissed.

6. The crime appears to have been committed prior to/during the year 2020 whereafter the revenue authorities have conducted a detailed investigation and thereafter lodged FIR. Therefore, it appears that custodial interrogation is not required."

15. In the case at hand, there is no doubt that the offence is essentially punishable under Section 132 of the GST Act but there are provisions of CGST Act, 2017 which can be considered as complete Code



itself. Section 132 of the Act reads as under:

"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;

*

(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;

*

*

(l) attempts to commit, or abets the commission of any of the offences mentioned in [clauses (a) to (f) and clauses (h) and (i)] 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 [an offence specified in clause (b), 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) ***, 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."

16. Moreover, the present applicant has already faced one proceeding pursuant to action initiated by the office of the Director General of GST Intelligence, Pune and, therefore in view of the decisions of the Supreme Court in the cases of *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181; *Amitbhai Anilchandra Shah v. CBI*, (2013) 6 SCC 348; and *Arnab Ranjan Goswami v. Union of India*; (2021) 1 SCC 1, prima facie it appears that the action of the respondent would amount double jeopardy to the applicant. At this stage, it is apt to refer to the decision of the Apex Court in the case of *Sushila Aggarwal and Others v. State (NCT of Delhi) and Another*, (2020) 5 SCC 1 wherein factors have been enumerated which shall be taken into consideration while granting anticipatory bail and that aspect has been discussed by the Apex Court in paragraphs 92.3 and 92.4 which read as follows:



"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."

17. Considering and applying the same principles in the present case, the applicant is an accused of wrongful utilisation of input tax credit. Considering the allegation in the FIR that a total sum of about Rs.10 Crores is involved and if the alleged amount is more than Rs.5 Crores, then maximum sentence which can be awarded is five years. There is also provision under Section 138 of the Act which provides for compounding of offences before or after prosecution. Therefore, possibility of compounding can also not be ruled out. Hence, custodial interrogation is not warranted and also detaining of the applicant will adversely affect the business of the applicant. Accordingly, this Court is inclined to allow this application under Section 482 of the BNSS, 2023 (438 of the Cr.P.C.) and grant anticipatory bail to the applicant.

18. It is directed that in that event of arrest applicant be released on bail on his furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lacs Only)** with two sureties in the like amount to the satisfaction of the Arresting Officer. At stage of filing of charge-sheet by police, applicant shall furnish fresh bail bond of same amount before trial Court. Applicant shall also comply with the following conditions:

(i) He shall co-operate in the investigation and appear before the investigating officer/apprehending authority as and when summoned;



(ii) He shall not indirectly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;

(iii) He shall provide his mobile number and keep it operational at all times:

(iv) He shall drop a PIN on google map to ensure that his location is available to the investigating an officer/apprehending authority to file appropriate application for cancellation of the anticipatory bail granted;

(v) He shall commit no offence during the period he is on bail;

(vi) 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.

It is being made clear that in case of bail jump and in violation of any of conditions imposed herein above, this order shall become ineffective and Investigation Officer/Trial Court shall be at liberty to proceed against the applicant as per law.

19. Accordingly, the M.Cr.C. is allowed and disposed of.

Certified copy as per rules.

(SANDEEP N. BHATT)
JUDGE