

Anticipatory bail is a statutory right and custodial interrogation is neither warranted nor provided under the CGST Act

The Hon'ble Delhi High Court in ***Tarun Jain v. Directorate General of GST Intelligence DGGI [Bail Appeal No. 3771 of 2021 & CRL.M.A. No. 16552 of 2021 dated November 26, 2021]*** granted bail to the director of the Company for alleged involvement in fraudulently availing and passing on ineligible/fake Input Tax Credit ("ITC") amounting to INR 72 crores. Held that, anticipatory bail is a statutory right, and detention in judicial custody would affect the assessee's business. Further, allowed the bail application, since the custodial interrogation is neither warranted nor provided under the Central Goods and Services Tax Act., 2017 ("**the CGST Act**").

Facts:

Tarun Jain ("**the Petitioner**") is one of the director in M/S Jetibai Grandsons Services India Pvt. Ltd ("**the Company**"), engaged in the supply of solar inverters, solar power generating units, and like products.

The Directorate General of GST Intelligence ("**the Respondent**") alleged that the Company was involved in fraudulently availing ineligible/fake input tax credit as passed on by firms that were found to be non-existent, for which several summon was issued, but the Petitioner failed to appear before the Respondent citing medical problems.

The Petitioner filed an application for anticipatory bail, but it was rejected. Being aggrieved, this application has been filed by the Petitioner submitting that the allegations levelled are false and frivolous.

Issue:

Whether bail can be granted to the Petitioner charged with economic offence?

Held:

The Hon'ble Delhi High Court in ***Bail Appeal No. 3771 of 2021 & CRL.M.A. No. 16552 of 2021 dated November 26, 2021*** held as under:

- Noted that, the Petitioner has been accused of an offence under Section 132(b) and (c) of the CGST Act and are non-bailable and cognizable. Further noted that, under Section 135 of the CGST Act, in any prosecution under the CGST Act requiring culpable mental state, the Court is bound to presume culpable mental state of the accused and the accused will have a defense to prove that he had no such mental state. Also, Section 138 of the CGST

Act states that the offences under the CGST Act shall be compoundable either before or after the prosecution.

- Observed that, the Petitioner has placed on record several documents in the petition in order to corroborate the fact of his and his mother's ill health the document supporting the factum of his ill health has also been supported via proper documents in the respective replies to summons.
- Further observed that, there cannot be any conflict with the fact that the Petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than 5 years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. Moreover, offences under the CGST Act are not grave to an extent where the custody of the accused can be held to be sine qua non.
- Opined that, anticipatory bail is a statutory right in consonance with the Right to life and personal liberty under Article 21 of the Constitution, it is essential to be alive to the various facets that form a part of rights under Article 21 of the Constitution.
- Stated that, the Court must give effect to Article 21 of the Constitution in letter as well as in spirit while deciding the anticipatory bail application. The basic tenet on which criminal justice system operates is "innocent until proven guilty" and in view of the same, the Hon'ble Supreme Court of India has time and again reiterated that "bail is the rule while jail is an exception". Such principles cannot remain a dead letter of law and this court must intervene to give effect to such principles which has been enshrined by the Hon'ble Supreme Court in numerous decisions.
- Allowed the bail application and held that, anticipatory bail is a statutory right and custodial interrogation is neither warranted nor provided under the CGST Act and detaining the Petitioner in judicial custody would serve no purpose rather would adversely impact the business of the Petitioner.
- Directed that, the Petitioner shall be released on bail on furnishing a personal bond in the sum of INR 5,00,000/- with two solvent sureties of like amount to the satisfaction of the Investigating Officer/Apprehending Authority with the terms and conditions wherein, the Petitioner shall:
 1. surrender its passport before the Investigating Officer/Apprehending Authority and under no circumstances leave India without prior permission
 2. cooperate in the investigation and appear when summoned

3. not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case
 4. provide his mobile number and keep it operational at all times
 5. drop a PIN on Google map to ensure that its location is available
 6. commit no offence whatsoever during the period of bail
- Further clarified that, it would be open to the Investigating Officer/Apprehending Authority to file an appropriate application for cancellation of the anticipatory bail granted on breach of any of the above conditions is committed.

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