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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 06.07.2022

Order delivered on:14.07.2022

+ BAIL APPLN. 1144/2022

SH. AISHWARYA ATTREY

..... Petitioner

Through: Mr. Mohit Chaudhary and Mr.
Kunal Sachdeva, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr.Nikhil Goel, SPP with
Mr. Kartik Kaushal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. By way of present petition under Section 438 Cr.P.C., petitioner Aishwarya Attrey seeks anticipatory bail in RC-DAI-2022-A-0012 under Section 7/7A/12 of PC Act read with Section 120B I.P.C. registered at Police Station: CBI, ACB, New Delhi.

2. The facts of the case along with core contentions raised by the petitioner were noticed in detail at the time of granting interim protection to the petitioner vide order dated 12.04.2022 and may be reproduced for reference:-

“3. In brief, as per the case of the petitioner, he was working as an Inspector/Intelligence Officer with GST Department at DGGI Unit and was involved as Investigating Officer in case F. No. DGGI/INT/INTL/

1402/2021, registered at Ghaziabad Regional Unit. DGGI Unit received intelligence that a group of unscrupulous persons with some custom house agents are involved in availing fraudulent Input Tax Credit by making exports from some nonexistent firms. One Tinku Yadav, allegedly the mastermind in the creation of numerous fake firms was arrested on 29.11.2021 and in January, 2022 statements of Satish Jain and Govind Sharma were recorded wherein they claimed that one Yogesh Mittal and his son Saurabh Mittal along with other persons were involved in creation of bogus firms. Based upon the aforesaid information, searches were conducted at the premises of Yogesh Mittal and Saurabh Mittal and summons were issued to both under Section 70 of CGST Act, 2017, pursuant to which Yogesh Mittal appeared and was arrested under Section 69 CGST Act. However, Saurabh Mittal, despite summons being issued, did not appear at the office of DGGI.

4. It is further the case of the petitioner that on 25.01.2022, senior officers of Director General of GST, Ghaziabad Regional Unit instructed 3-4 teams for carrying out search at different locations in connection with F. No. DGGI/INT/INTL/1402/2021. Further on the strength of search warrants, search was conducted at the residence of Yogesh Mittal and Saurabh Mittal under the supervision of the petitioner's senior Mohit Dhankar (Senior Intelligence Officer). The petitioner joined the proceedings only about 11:00 AM on the instructions of his senior Mohit Dhankar. The search was conducted and a panchnama was prepared in terms of Section 100 (6)/165 of Cr.PC containing the description of articles and signatures of Saurabh Mittal and Yogesh Mittal were appended thereto. Further, in February, 2022, Crl. M.C. No.644/2022 was filed by Saurabh Mittal before the High Court of Delhi raising grievance with regard to various actions taken by GST officials in F. No. DGGI/INT/INTL/ 1402/2021 registered at Director General of GST, Ghaziabad Regional Unit and matter was heard in detail on 11.02.2022.

5. Thereafter, on 19.03.2022, a handwritten complaint was given by Saurabh Mittal to CBI, Anti Corruption Branch, New Delhi levelling allegations of demand against the Senior Officer of the petitioner i.e. Mohit Dhankar. A paragraph was also added in the end that on 25.01.2022 during search proceedings, approximately 73 gold coins, 4x50 gram gold bar, 2x100 gram gold bar were also taken by Aishwarya Attrey (petitioner) of the record and was one of the team member that day.

6. At this stage, learned SPP for CBI has further clarified that acting on the aforesaid complaint, a trap was laid and co-accused Rakesh was arrested while another co-accused Praveen escaped from the spot. Further efforts were made to arrest Mohit Dhankar but in effort to escape, he sustained some injuries. Search warrants were thereafter taken against the present petitioner by the CBI and further investigation is underway.”

3. Interim protection was further granted to the petitioner after considering the detailed contentions made on behalf of the petitioner, as observed in para 7 of the order dated 12.04.2022:-

“7. It is vehemently contended by the learned counsel for the petitioner that it has been recorded in the panchnama dated 25.01.2022 in the proceedings against Yogesh Mittal and Saurabh Mittal that the petitioner had joined the proceedings only subsequently during the course of raid and therefore the signatures of the petitioner as well as Ritesh were never obtained on the panchnama which was conducted in presence of two independent panch witnesses namely Randhir Singh and Raj Kumar. It is further contended that in the aforesaid panchnama, there is no reflection of seizure of 73 gold coins, four gold bars of 50 gms each and two gold bars of 100 gms each which is subsequently alleged by the complainant Saurabh Mittal only on 19.03.2022 to have been seized but not reflected in the panchnama/seizure memo by the officers of GST. It is also submitted

that from 25.01.2022 till 19.03.2022 though the complainant Saurabh Mittal was represented through Lawyer in the proceedings before the High Court, not a whisper was made regarding any allegation of seizure of gold by the GST Officers. Learned counsel for the petitioner further submits that the petitioner who happens to be a Senior Officer and was only subsequently associated during the course of panchnama, cannot be taken into custody merely on the basis of counter allegations, which was as a vengeance to proceedings initiated against the complainant and Yogesh Mittal.”

4. Status report has now been filed on record.

Learned SPP for CBI opposes the bail application and it is submitted that during investigation, search of the residential premises of the petitioner was conducted at Bulandshahar, UP. However, he fled away from the residence before arrival of CBI team. Further, the rental premises of the petitioner located at Raj Nagar Extn., Ghaziabad was found locked and sealed on 21.03.2022. On searching the said premises, incriminating documents, laptop, pen drive and cash of Rs.11 lacs was seized. Reference is also made to the searches conducted at the house of the main accused Mohit Dhankar from where incriminating documents and cash of Rs.28 lacs was seized. Apart from above, it is also contended that the petitioner was found to be non-cooperative after joining the investigation and the recovery of the gold is to be made. As such, it is submitted that anticipatory bail application be dismissed since custodial interrogation is required.

5. On the other hand, learned counsel for the petitioner submits that case of the petitioner is completely distinct from that of the main accused Mohit Dhankar. It is submitted that the petitioner has duly joined the investigation

on four occasions and has been thoroughly examined. It is denied that the petitioner had been non-cooperative during investigation.

It is also vehemently contended that no evidence has been gathered by the prosecution to substantiate the existence of gold at the time of raid conducted by the officials at the house of Yogesh Mittal, in respect of which a belated allegation had been made. It is also urged that in the eventuality the gold had been allegedly recovered, all the team members would have been implicated as an accused, as it could not have been exclusively possible for the petitioner to illegally remove the gold, as alleged by the complainant. It is further contended that alleged allegation of the complainant cannot be blindly accepted as the petitioner had joined the raiding party only in compliance to the directions of the senior officers subsequently in discharge of his official duty and the allegations have been concocted only as a counter being member of the raiding party.

6. I have given considered thought to the contentions raised.

It has already been observed that no whisper was made on behalf of the complainant from 25.01.2022 till 19.03.2022 despite being represented through counsels in proceedings initiated by him, with reference to raid conducted on 25.01.2022. The signatures of Yogesh Mittal are duly appended on copy of panchnama which had been produced on 12.04.2022 during course of submissions by counsel for petitioner. In view of above, it cannot be assumed that Yogesh Mittal or Saurabh Mittal (son of Yogesh Mittal) were not aware of the contents of panchbama dated 25.01.2022. Even otherwise, during the course of proceedings, the petitioner Aishwarya Attrey as well as Ritesh only subsequently joined the proceedings as referred in

panchnama.

It may further be observed that no evidence has been brought on record to substantiate that any gold was available at the house of Yogesh Mittal at the time of alleged raid conducted by the officials. Further, the petitioner could not have individually removed the gold illegally. Admittedly, all the members of the raiding party have not been impleaded as accused for illegal removal of gold by the petitioner, as alleged by the complainant.

Further, no recovery of the gold has been effected despite joining of the investigation by the petitioner pursuant to the interim protection granted by this Court vide order dated 12.04.2022. On the basis of recoveries effected from the residential/rental premises of the petitioner, no incriminating evidence pertaining to the proceedings conducted by the raiding party have been brought on record except to the extent that a cash of Rs.11 lacs was recovered from the premises. The explanation for the same is stated to have been given by the petitioner during the course of investigation and can be duly investigated in accordance with law.

Considering the facts and circumstances of the case, in the event of arrest, the petitioner be admitted to bail subject to furnishing of personal bond in the sum of Rs.1 lac (Rupees One Lac Only) with one surety in the like amount to the satisfaction of the Investigating Officer/learned Trial Court concerned and subject to following conditions:-

- (i) The petitioner shall provide his mobile number to the Investigating Officer (IO)/SHO concerned at the time of release, which shall be kept in working conditions at all times. The

petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;

- (ii) The petitioner/applicant shall not leave the country without the prior permission of this court;
- (iii) The petitioner shall not indulge in any criminal activity or any illegal activities during the bail period;

The petitioner is further directed to join the investigation as and when directed and also surrender his passport with the Investigating Agency.

Application is accordingly disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

JULY 14, 2022/SD

