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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2391/2023**

SHRI JATIN GUPTA @ PARUL

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with
Mr. Bharat Gupta, Mr. Ankit Rana Mr.
Rohan Wadhwa, Mr. Harsh Gautam,
Advs.

versus

**DIRECTORATE GENERAL OF GST INTELLIGENCE UNIT
DELHI**

..... Respondent

Through: Mr. Harpeet Singh, Sr. Standing
counsel with Ms. Suhani Mathur, Mr.
Jatin Gaur, Adv.

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Date of Decision: 23rd August, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 22521/2023 (exemption)

Exemption is allowed subject to all just exceptions.



W.P.(CRL) 2391/2023

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 of Cr. PC seeking following prayer:

“I. Writ of Mandamus directing the Respondent to not arrest the Petitioner in relation to the summons dated 16.08.2023 under section 70 of the Central Goods and Services Tax Act, 2017 served to the Petitioner for his personal appearance on 23.08.2023 before the office of the Respondent.

II. Pass any other Writ, Order or Direction as this Hon’ble Court may deem fit in the interest of justice.”

2. Sh. Mohit Mathur, learned senior counsel for the petitioner submits that in the present case, though the summons were purported to have been issued by the respondent but none of the summons were served upon the petitioners. It has further submitted that thereafter a complaint was filed under Section 174 and 175 IPC wherein the petitioner appeared through VC and duly represented by the counsel. Learned senior counsel submits that in the Court proceedings, a notice was issued to the petitioner for appearance for joining the investigation.
3. Learned senior counsel submits that in compliance of direction, the petitioner is appearing before the competent authority/officer/department for the purpose of investigation.
4. Issue notice.
5. Mr. Harpreet Singh, Senior Standing counsel accepts notice.



6. Mr. Harpeet Singh, senior standing counsel submits that the present petition is not maintainable at all in view of the order of the Hon'ble Supreme Court in ***The State of Gujrat Etc. v. Choodamani Parmeshwaran Iyer & Anr. Etc.*** Learned senior counsel standing has relied upon the observations made by the Hon'ble Supreme Court in Para 16 and 17 which are reproduced herein below;

“16. Thus, the position of law is that if any person is summoned under Section 69 of the CGST Act, 2017 for the purpose of recording of his statement, the provisions of Section 438 of Criminal Procedure Code, 1908 cannot be invoked. We say so as no First Information Report gets registered before the power of arrest under Section 69(1) of the CGST Act, 2017 is invoked and in such circumstances, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. The only way a person summoned can seek protection against the pre-trial arrest is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India.

Undoubtedly, this is exactly what the respondents did in the present case. What the respondents sought by filing two criminal applications under Article 226 of the Constitution before the High Court was the direction to the appellant herein not to arrest them in exercise of the power conferred by Section 69(1) of the GST Act, 2017. This, in essence, is key to prayer for anticipatory bail. However, as we have explained aforesaid, at the stage of summons, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure.

17. This Court in Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569, has, in no uncertain terms, observed that a claim for pre-arrest protection is neither a statutory right nor a right guaranteed under Articles 14, 19 and 21 reply of the Constitution of India.



*Although the Constitution Bench of this Court held that there is no bar for the High Court to entertain an application for pre-arrest protection under Article 226 of the Constitution of India, yet it was held that such power should be exercised sparingly. There is a fundamental distinction between a petition for anticipatory bail and the writ of mandamus directing an officer not to effect arrest. A writ of mandamus would lie only to compel the performance of the statutory or other duties. No writ of mandamus would lie to prevent an officer from performing his statutory function. When a writ application is filed before the High Court under Article 226 of the Constitution, the writ court owes a duty to examine the fact of the case and ascertain whether the case of the writ applicant falls under the category of exceptional cases as indicated in *Kartar Singh (supra)*. The writ court should also ensure whether by issuing the writ of mandamus, it would be preventing the competent authority or proper officer from performing any of their statutory functions.”*

7. Senior standing counsel for GST submits that there is no ground to issue writ of mandamus or to the petitioner and the petitioner is liable to be rejected out rightly.
8. Learned senior counsel for the petitioner submits that even in the ***The State of Gujrat Etc.(Supra)*** the 14 summons had already been issued to the respondents but still the Hon’ble Supreme Court granted an opportunity to the respondents to appear before the competent authority for the purpose of recording of their statement. Thus, learned senior counsel for the petitioner submits that therefore, some protection may be granted to the petitioner.
9. Learned senior standing counsel for GST submits that in fact at present only the petitioner has been called for the purpose of inquiry and production of documents and the department has not even moved



a file in accordance with Section 69 for the purpose of affecting the arrest of the accused and as there is no apprehension of arrest at the moment, the application is pre-mature and liable to be dismissed.

10. Section 69 of the CGST which reads as under:

“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 1974),

(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 bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy 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.”

11. The bare perusal of the Section 69 of the CGST makes it clear that



there are sufficient inherent safeguards contained in Section 69 prior to the affecting arrest of the accused persons. The legislature in its wisdom has made it mandatory that before affecting the arrest of the accused, the commissioner should have reasons to believe that a person has committed an offence under Section 132 of the CGST, it further provides that the officer authorized to arrest the person shall inform such person the ground of arrest.

12. Thus, I consider that Section 69 which is akin to Section 19 of PMLA has inherent safeguards before affecting the arrest of accused persons. Thus, taking into account the totality of the facts and circumstances and in view of the judgment of *The State of Gujarat Etc. (Supra)*, I consider that no relief can be granted in the present petition to the petitioner. The relief as stated by the learned senior counsel for the petitioner was granted by the Apex Court in view of the peculiar facts and circumstances.

13. The Court has also taken into account the submissions made by learned counsel for the department that as of now, the department has not even moved a file for effecting the arrest of the accused and there is no apprehension.

14. Hence, the present petition is dismissed.

DINESH KUMAR SHARMA, J

AUGUST 23, 2023

Pallavi