

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**  
**M.Cr.C. No.25945 of 2020**  
**Nitesh Wadhwani Vs. State of M.P.**

**Indore, Dated:- 13/08/2020**

**Heard with consent of the parties through  
Video Conferencing.**

Shri Vikas Singh, learned Senior Counsel with Shri J. P. Mishra and Shri Pranav Diesh, learned Counsels for the petitioner—Nitesh Wadhwani.

Shri Vikramjit Banerjee, learned Additional Solicitor General along with Shri Prasanna Prasad, learned counsel for the respondent/Union of India.

**A file containing 107 pages is supplied by the  
respondent in sealed cover**

**ORDER**

**1.** This is the first application under section 438 of the Cr.P.C. seeking anticipatory bail in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as “GST Act”), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the ‘Department’).

**2.** The learned Senior Counsel for the petitioner began with the arguments that the only fault of the petitioner is that he is the landlord of the premises where his tenant, who runs a factory, allegedly evaded the tax by clandestine sale of Pan Masala. The petitioner is neither a Partner of his tenant M/s Vishnu Essence nor is concerned with it in any other way. But he has been portrayed as the only responsible person for the alleged crimes committed by his tenant, while no documents

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have been produced by the department to prove the same.

3. In reply, learned Additional Solicitor General submitted that the petitioner is the Director of a Media Company, which publishes a daily newspaper in the name and style of “*Dabang Dunia*”. Several vehicles incriminated in the clandestine removal/transportation of Pan Masala endorsed the *Dabang Duniya* press sticker and drivers of these vehicles were carrying Identity Cards of *Dabang Dunia* as provided to them by the transporter ‘*Ashoo RoadLines*’. Dummy director of M/s Elora tobacco Co. Ltd Mr. Shayam Khemani also had Press ID card of *Dabang Dunia*. This shows that the petitioner was well involved in the alleged tax evasion. Apart from that, statements of the co-accused persons recorded under Section 70 of G.S.T. Act have also been referred by the learned ASG wherein the authors have disclosed that actually the petitioner is the sole Owner/Proprietor/In-charge of the entire business of M/s Vishnu Essence or Ellora Tobacco Co. Ltd or M/s. AAA Enterprises or M/s Namrata Impacts and so on. He is the kingpin of entire empire of business or trade of all these firms. He had effective control over their factory operations and is the ultimate financial beneficiary in this illicit Pan Masala trade. He is the mastermind or the key accused of the alleged tax evasion, which otherwise runs in crores of rupees. Therefore, he is not entitled for bail.

4. To counter the argument in respect of statements recorded under Section 70 of the Act, the learned Senior Counsel for the petitioner pointed out that immediately after getting an opportunity, the co-accused persons have retracted

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their statements, which were otherwise recorded involuntarily under the threat and pressure of the officials of the department, therefore, they cannot be relied upon at this stage. Otherwise also, looking at the provisions of Section 136 of the Act itself, much weight can not be attached to such statements during the life time or availability of the author. Lastly, it is contented that these statements didn't lead to any recovery. No supporting evidence either documentary or oral could be collected during investigation. Therefore, on the basis of such statements, no adverse inference can be drawn against the petitioner at least at this stage.

5. A significant amount of time has been spent by both the parties to convince the Court or to counter that the procedure prescribed in Chapter XII of the CR.P.C. has not been complied with or followed in the present case, therefore, the very initiation of the proceeding is void and contrary to the law.

6. It is not disputed that the petitioner is one of the Director of media company *Dabang Dunia* but it is contented that they are neither concerned nor responsible for the unauthorized use of any sticker or ID card by any vehicle or driver implicated in the clandestine transportation of any taxable goods.

7. Pendency of investigation is also taken as a ground to press for dismissal of the petition, which is countered on the ground that the department has already completed custodial interrogation of Kishore Wadhwani, who is real uncle of the petitioner and is impleaded for the same charge on the basis of the same set of evidence, therefore, no further custodial interrogation of the petitioner as requested by the department

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is necessary. It is further submitted that the officials of the department have harassed the co-accused persons and have recorded their statements to suit their whims under threat, coercion and duress. The petitioner have all reasonable apprehension that in case of his arrest, he will be treated in the same fashion and may be forced to signed the statements against his wish under the threat and undue pressure of the officials.

**8.** It is averred that the petitioner is not co-operating the investigation. He was called several times to co-operate, but he did not adhere to the summons issued by the department. Summons sent by speed post received back with a note that 'refused to accept'. Such non-cooperative attitude dis-entitles him for any sympathy of the Court. It is stated that by remaining out of the clutches of the law, he is creating hindrance in the investigation. To bolster this contention, the learned ASG pointed out that a group of persons assaulted the officials when they tried to search of the house of the petitioner following the due process of the law. A separate FIR is lodged against them. The case is registered and is under investigation. This shows that the petitioner is non co-operative with the investigation and only on this ground he is not entitled for anticipatory bail.

**9.** This allegation is contested stating that the department issued summons to his real uncle Kishore Wadhwani, who co-operated with the investigation and appeared before the officer, but suddenly he was arrested by the investigating officer without any intimation, without giving him proper opportunity

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to seek legal help or to present his case and without following the due process of the law. Therefore, the petitioner also has an apprehension of receiving the same treatment. It is asserted that if his rights are protected, he is ready to co-operate with the investigation, to appear as and when called by the department and to answer all the questions/queries of the department. It is proposed that any suitable direction of his periodical appearance before the investigation officer may be given by the Court itself and he is ready to comply with them.

**10.** It is explained that when the officers came to his house, the petitioner or any other male member was not at home and the officials of the department were trying to enter the house forcibly without disclosing their identity. When they were asked to show the same, they misbehaved with the women of the house and hence faced rebuttal from the family. It is further alleged that the FIR has been lodged only to pressurize the petitioner and now it cannot be used as a tool to oppose his prayer for bail.

**11.** It is impressed that this Court does not possess the power to grant anticipatory bail as the provisions of Section 438 Cr.P.C. are not applicable in cases registered under the GST Act.

**12.** Admittedly, the question of applicability/non-applicability of the provisions of Section 438 Cr.P.C. is still open and is under consideration of the Hon'ble Supreme Court.

**13.** Learned Senior Counsel for the petitioner submitted that on several occasions various High Courts as well as the Hon'ble Supreme Court has granted relief of anticipatory bail or interim

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protection against corrosive action of the officials of the department. He has referred **Aditya Gupta Vs. Union of India and ors passed in WP (Cri.)No.184/2020, Dauya Ram Vs. Union of India and Anr passed in WP (Cri) No.90/2020, Akash Garg Vs. Union of India and Anr passed in WP (Cri.) No.89/2020, Namrata Jain and Anr Vs. Union of India and Anr passed in WP (Cri) No.267/2019, Bimal Jain Vs. Union of India and Anr passed in WP (Cri) No.60/2020, Shashank Gupta and Anr Vs. Union of India and Anr passed in WP (Cri) No.298/2019, Gurbaksh Singh Sibbia Vs. State of Punjab, Siddharam Satlingappa Mhetre Vs. State of Maharashtra, Subhash Choudhary Vs. Deepak Jyala, Sri Hanumanthappa Pathrera Vs. State through Senior Intelligence Officer, DGGIST, Bengaluru Zonal Unit, G. Bhaskar Rao VS. Dir. General of GST Intelligence, New Delhi, Mahendra Kumar Singhi and ors VS. Commissioner of Commercial Tax, Amit Bothra Vs State of MP, Birender Kumar Pandey Vs. Union of India, Vijay Sajnani Vs. Union of India and Ors and Nilesh Parikh Vs. Union of India.**

14. The learned Additional Solicitor General has placed reliance on certain judgments of Hon'ble Supreme Court and High Courts passed in **Special Leave Petition (Crl) 4322-4324 of 2019** titled **Union of India V. Sapna Jain & Ors.,** judgment dated 18.04.20219 in W.P. No.4764/2019 in the case of **P.V. Ramanna Reddy & Ors. Vs. Union of India,** in Cr.A. No.730 of 2013 decided on 9<sup>th</sup> May, 2013

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in the case of Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, Union of India Vs. Padam Narain Aggarwal, reported in (2008) 13 SCC 305, Hema Mishra Vs. State of U.P., (2014) 4 SCC 453, Kartar Singh Vs. State of Punjab (1994) 3 SCC 569 and State of Telangana Vs. Habib Abdullah Jeelani reported in (2017) 2 SCC 779, Satya Pal V. State of U.P. [2000 Cri LJ 569 (All)], Ajeet Singh V. State of U.P. [2007 Cri LJ 170 (All)], Lalji Yadav V. State of U.P. [1998 Cri LJ 2366 (All)], Kamlesh Singh Vs. State of U.P. [1997 Cri LJ 2705 (All)] and Natho Mal Vs. State of U.P. [1994 Cri LJ 1919 (All)].

**15.** It emerges from most of the judgments on the issue of granting anticipatory bail cited by the respondent that the Hon'ble Courts have held that the facts of a particular case are the paramount consideration for granting or refusing the protection of a pre-arrest bail. It is nowhere stated that the anticipatory bail is barred by law or cannot be granted in a case registered under the GST Act.

**16.** Other arguments of both the parties are on similar lines, which were raised and considered earlier while deciding the bail petitions of co-accused Amit Bothra and Ashok Daga. These arguments as well as the facts of the case can be borrowed from order dated 27.07.2020 passed in M.Cr.C. Nos.21628/2020 and 21618/2020, respectively. Relevant part of this order is being reproduced below:-

“1. Both these petitions have arisen out of the same crime number of the same office/police station, therefore, they are heard together and are being

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decided by this common order.

2. These are the first applications under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as “GST Act”), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the ‘Department’).

3. The case of the prosecution in brief is that the officials of the department received intelligence input that one Pakistani national Sanjay Matta is indulged in clandestine clearance of mouth freshener, commonly known as “*Pan Masala*”, without payment of GST. Acting on this information, several searches were conducted at various places between 30.05.2020 to 02.06.2020 and unaccounted goods worth Rs.2.59 crores were found in different godowns of Mr. Matta, which were seized. Subsequent information received during search led to the search of premises of transporter M/s Ashu Roadlines, Indore. During this search 10 vehicles, unaccounted Pan Masala, its packing material and some raw material was seized. The Pan Masala was found to be of ‘Vimal’ brand manufactured by M/s Vishnu Essence, Sanwer Road, Indore. The truck drivers also confirmed clandestine transportation of Pan Masala. Information extracted from the mobile of an employee of Aashu Roadlines Mr. Sameer Khan, indicated that the firm M/s Vishnu Essence had procured large quantities of raw material and packing material from Ahmadabad clandestinely and had supplied the finished goods in the same manner to M/s AAA Enterprises, Indore. The petitioners Amit Bothara and Ashok Daga are partners of the firm M/s Vishnu Essence. They were called and interrogated. They confessed in their statements recorded under Section 70 of the GST Act that their firm had supplied Vimal brand Pan Masala worth Rs.320 crores clandestinely and has evaded payment of the GST to the tune of Rs.225 crores. Subsequent



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search of various places and statements of various persons further confirmed the aforesaid tax evasion. Following the due process, the petitioners were taken into custody and booked in the aforementioned crime.

4. Refuting all the allegations made by the prosecution, it is submitted by the learned senior counsel for the petitioners that the firm M/s Vishnu Essence is duly registered with the GST vide registration no.23AAQFV6401JIZZ. The firm is honestly doing its business. It is paying GST to the tune of Rs.7-8 crores per month on an average on the sales. Their product contains 85% betel nut (Supari) and 15% Sugandh, Kattha, Elaichi (essence, catechu, cardamom) etc. Supari is purchased from the undertakings/ companies of the government or from the societies run by the government; therefore, clandestine purchase is not possible. Rest of the raw material is purchased from the open market but only from the traders duly registered under the GST through invoices. Therefore, there has never been any scope to evade the tax.

5. It is asserted that the petitioners have never confessed anything before the officials. Their statements were recorded under threat and pressure. They retracted them immediately after coming out of the fear.

6. It is further averred that the petitioners were doing their business honestly and were paying GST to the tune of Rs. 7 crore per month regularly, but due to unprecedented circumstances of spread of COVID-19 pandemic and complete lockdown pursuant thereto; there was some delay in paper work and submission of the invoices etc. Taking advantage of this beyond control peculiar circumstance, the officials of the department abused their authority, presumed the tax evasion and assessed the amount only on the basis of their conjecture and surmises as there was no production during the period of lockdown. Nil electricity consumption establishes the fact of closure of the factory during this period. Therefore, the allegation of evasion of tax is false and

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frivolous from it's very foundation.

7. It is also submitted that the petitioners were earlier paying GST honestly and are also ready to pay the same in future. Though under pressure, but they have already paid Rs. 7 crores and are still ready to pay the deficit, if any, found due on the final assessment.

8. It is argued that the dispute is only a revenue matter. The alleged evasion is assessed about Rs. 7 crores. Despite their right to challenge the assessment by depositing 10% of the amount assessed, they have deposited entire amount of Rs. 7 crores.

9. It is asserted that the petitioners have no connection with Pakistani national Sanjay Matta or alleged main accused Kishore Wadhwani.

10. It is further argued that the petitioners have been falsely implicated in the case. The officials have acted maliciously. The allegation made against them is vague. There is no incriminating evidence or supporting documents qua the petitioners. Details of alleged tax evasion have not been supplied to them. Their custody is illegal as there is no evidence to show that the officials were having "reasons to believe" that their custody was necessary. The department has not sought their police remand. This shows that their detention was unnecessary and illegal. The sole basis of their arrest is their statements recorded by the officials, but the same were recorded under threat and pressure and have been retracted immediately. Procedure prescribed under Ss. 67, 69, 74, 134, 136, 138 of the GST Act and S.41A of Cr.P.C. for arrest, recording of statement, search and seizure has not been followed. The dispute is entirely covered under Section 132 of the G.S.T. Act. Initially the offence was also registered under the same Section. Offences under Sections 409, 467, 471 and 120-B IPC are not made out. Record shows that these offences have been added by the officials at a later stage merely with intent to harass the petitioners.

11. It is also stated that the petitioners are in

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custody since 11.06.2020 and are in jail since 13.06.2020. Their custodial interrogation is not required. The nature of evidence is documentary and all documents are in custody of the Department. Hence, there is no fruitful purpose to keep them in custody. They are paying around 70-80 crores G.S.T. per annum on an average. Their detention would cause loss of this amount to the State exchequer. About 150 workers are working in the firm of the petitioners. In case of their detention, the work of the firm will be at a halt and hence, affect the survival of the families of those 150 workers. The offence is punishable with maximum 5 years imprisonment and is triable by the Judicial Magistrate First Class. The petitioners are ready to abide by the terms and conditions to be imposed by this Court, therefore, it is prayed that they be granted bail.

12. The petitioners have relied upon ***Joti Prasad Vs. State of Haryana 1993 supp. SCC 497, P. Chidambaram Vs. Directorate of Enforcement 2019 Lawsuit (SC) 1947, D.K. Sethi Vs. Central Bureau of Investigation, Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr (2010) Vol.14 SCC 496, Sandeep Kumar Bafna Vs. State of Maharashtra and Anr (2014) 16 SCC 623, C. Pradeep Vs. The Commissioner of GST and Central Excise Selman and Anr SLP 6834/2019, Madhav Gopaldas Shah Vs. State of Gujarat, Prasad Purshottam Mantri Vs. UOI and Ors, Sanjay Kumar Bhuwalka Vs. UOI 2018 SCC Online Cal 4674, Mohit Vijay Vs. UOI (Rajasthan High Court), Lalit Kumar Gandhi Vs. State of MP and Make My Trip Vs. UOI and Ors Delhi High Court WP (c) 525/2016 and C.M.2153/2016.***

13. Stand taken by the department is that the petitioners have a very proximate nexus to the entire syndicate involved in clandestine manufacturing of pan masala and have caused huge loss to the sovereign exchequer. Acting on the intelligence information, when several persons were interrogated

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and search of several places was conducted, tax evasion of crores of rupees was detected. Still the investigation is going on. As many as 11 searches and 14 statements have been recorded after the arrest of the petitioners. In all possibilities the magnitude of the offence would increase in many folds. Release of the petitioners would hamper the investigation, which is at very crucial stage, therefore, it is prayed that they be not granted bail.

14. It is submitted that during the course of investigating very clinching and cogent evidence has been unearthed which indicates that in connivance with each other, the petitioners as well as other wrongdoers have adopted a peculiar modus operandi for clandestine manufacturing and sale of pan masala. The petitioners are not merely benefactors of illegal activities, but had a very proximate nexus with the entire band of persons involved in the said syndicate. Investigation revealed that Mr. Vijay Kumar Nair of M/s. AAA Enterprises is the front man of Kishore Wadhwani. Kishore Wadhwani is the kingpin of the entire illegal procurement, production and supply chain of pan masala clandestinely. Investigation has further revealed that the petitioners had procured raw materials of pan masala and packing material from Ahmadabad and various other cities in Gujarat in clandestine manner and supplied manufactured pan masala to M/s. AAA Enterprises without invoices and payment of G.S.T.

15. Sale and distribution of pan masala has been completely banned across the country due to pandemic induced lockdown from 25th March, 2020 considering its risk in spread of Covid-19 infection. In spite of the strict restriction, the petitioners' firms took undue benefit of this emergent situation and supplied their finished goods clandestinely in the State of Madhya Pradesh in connivance with M/s. AAA Enterprises. In view of the seriousness of the offence committed by the petitioners, they were arrested under Section 69 of the G.S.T. Act, 2017. As per Section 132(5), since the G.S.T. evasion detected is more than five crores rupees, the offence is

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cognizable and non-bailable. There is every likelihood of the petitioners affecting the investigation and tampering with the witness. The officials of the DGGI were assaulted when they tried to search the house of Kishore Wadhwani for which an FIR is lodged with Police Station—Juni, Indore.

16. In the case of ***P. V. Ramana Reddy Vs. UOI W.P. No.4764 of 2019*** at paras 56 and 57, the Telangana High Court has observed that the object of arrest is to prevent a person from committing any offence or from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent such person from any inducement, threat or promise to any person acquainted with the facts of the case and to do proper investigation or inquiry. The Hon'ble Supreme Court in ***SLP (Crl.)4430/2019*** has upheld this observation of the High Court of Telangana.

17. The Hon'ble Supreme Court in ***Cr.A. No.730/2013*** decided on 9th May, 2013 in the case of ***Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation*** has observed in para 34 that the Economic Offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Therefore, the petitioners be not granted bail.

18. Reliance has also been placed on ***The State of Gujarat Vs. Mohanlal Jitmalji Porwal and others*** reported in ***AIR 1987 SC 1321***.

19. Provisions of section 69, 70, 131, 133, 135, 136 of the GST Act have been referred by the learned counsel for the respondent/UOI.

20. I have heard the learned senior counsels at length and have perused the record supplied by the department.

21. On careful consideration of nature and gravity of the allegation made against the petitioners and the

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specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

22. It is directed that the petitioners **Amit S/o Shri Shubhkaran Ji Bothara** and **Ashok Daga S/o Shri Ghawarchand Daga** be released from custody on their furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lakhs Only) each** with separate sureties to the satisfaction of the Trial Court for their appearance before it as and when required further subject to the following conditions :-

- (i) The petitioners shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial.;
- (ii) The petitioners shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses, so as to dissuade him from disclosing truth before the Court;
- (iii) The petitioners shall not commit any offence or involve in any criminal activity;
- (iv) In case of their involvement in any other criminal activity or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.
- (v) The petitioners shall submit their passports, if any, before the Trial Court and shall not leave India without prior permission of this Court.”

17. I have carefully gone through the documents produced before the Court as well as the statements recorded under Section 70 of the G.S.T. Act. Elaborate discussion of all this evidence, which is otherwise confidential, would not be appropriate as it may affect the case of either party. But on

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careful consideration of the evidence on record, I am of the considered opinion that it would be appropriate to allow the petition, therefore, without commenting on merits of the case, the petition is allowed.

**18.** Accordingly, the bail application is allowed and it is directed that in the event of the petitioner's arrest or surrender before the police within a month of this order, the **petitioner Nitesh Wadhwani S/o Late Shri Ashok Wadhwani** shall be released on bail on his furnishing a personal bond of **Rs.10,00,000/- (Rupees Ten Lakhs Only)** with one solvent surety of the like amount to the satisfaction of Station House Officer of the Police Station concerned. The petitioner would abide by the conditions mentioned in Section 438 (2) Cr.P.C. Further subject to following conditions:-

- (i) Petitioner shall co-operate with the investigation and shall appear before the Investigating Officer/Department as and when required. In addition to that he shall appear in the first week of every calender month before the officials of the Department till the filing of the charge-sheet against him and shall co-operate with the investigation till the filing of the charge-sheet against him.
  - (ii) Petitioner shall submit his passport, if any, before the Trial Court and shall not leave India without prior permission of this Court.
- 19.** All the pending IAs, if any, stand closed.
- 20. Index of the file supplied by the respondent be retained in the record and the file be returned in sealed cover.**

**(Virender Singh)**  
**Judge**

**Pankaj**