
[2024] 164 taxmann.com 198 (Andhra Pradesh)[19-06-2024]

GST : Where petitioners arrested for irregular availment of input tax credit despite not receiving associated services, transfer of such irregularly claimed input tax credit without providing any services during relevant period, no apprehension for prosecution that petitioners would tamper with evidence or interfere with ongoing investigation, anticipatory bail was to be granted to petitioners

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[2024] 164 taxmann.com 198 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Smt. Prathipati Teene Venkayamma

v.

State of Andhra Pradesh*

T. MALLIKARJUNA RAO, J.

CRIMINAL PETITION NOS. 1448, 1449, 1489 & 1539 OF 2024

JUNE 19, 2024

Punishment for certain offences - Anticipatory bail - Irregular availment of input tax credit - Petitioner's were arrested for irregular availment of input tax credit based on invoices despite not receiving associated services and transfer of such irregularly claimed input tax credit without providing any services during relevant period - On petitioner's petitions seeking anticipatory bail - HELD: Matter was under consideration by competent authority - Release of accused persons was unlikely to prejudice ongoing investigation - It was not prosecution's case that petitioners did not cooperate with investigation and were not available for interrogation - There was no indication of a likelihood that petitioners would abscond from court's jurisdiction - Petitioners had expressed a willingness to cooperate with investigation agency - Likelihood of levying accusations to harm or embarrass petitioners through potential arrest was not improbable, especially in political disputes - Allegations against petitioners were subjected to trial's outcome - Mere apprehension that accused would tamper with prosecution evidence or intimidate witnesses could not be grounds to refuse bail unless prosecution shows that accused tried for such tampering/intimidation - If petitioners were granted pre-arrest bail, there was no apprehension for prosecution that they will tamper with evidence - Further, there was no risk of interference with ongoing investigation by petitioners - Therefore, anticipatory bail was to be granted to petitioners with conditions [Section 16, read with section 67 and section 132 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 50 to 55] [In favour of assessee]

CASE REVIEW

Bhadresh Bipinbhai Sheth v. State of Gujarat (2016) 1 SCC 152; *Shri Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 Supreme Court Cases 565 and *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011) 1 SCC 694, *relied on*.

Javvaji Sarath Chandra, Kilaru Nithin Krishna and V.V. Satish for the Petitioner. Y.L. Sivakalpana Reddy (SC Cum Spl PP, CID) for the Respondent.

ORDER

1. All these Criminal Petitions are filed, under Section 438 of Cr.P.C., seeking anticipatory bail by different accused, i.e. CrI.P.No.1448 of 2024 (filed by A.4 & A.5); CrI.P.No.1449 of 2024 (filed by A.2 & A.3); CrI.P.No.1489 of 2024 and CrI.P.No.1539 of 2024 are filed by the Petitioners who are not arrayed as accused in same crime viz. Crime No.63 of 2024 of Machavaram Police Station, Vijayawada, they are being taken up together for disposal through this Common Order.

2. A case has been registered against the Petitioners/A.2 to A.5 and others for the offences punishable under Sections 420, 409, 467, 471 of the Indian Penal Code, 1860 (for short, "I.P.C.")

3. I heard Sri B. Adinarayana Rao, learned Senior Counsel for the Petitioners and Smt. Y.L. Shivakalpana Reddy learned Standing Counsel-cum-Special Public Prosecutor for C.I.D., in all the petitions.

4. The Prosecution's case, as presented in the report dated 24.02.2024 and outlined in the counter-affidavits submitted on behalf of the respondent State in four petitions, is as follows:

- i. Based on the report dated 24.02.2024 from the Deputy Director of the Andhra Pradesh State Directorate of Revenue Intelligence (A.P.S.D.R.I.) to Station House Officer, Machavaram Police Station in Vijayawada, a crime had been registered in Crime No.63 of 2024. The report disclosed that Avexa Corporation Private Limited (A.C.P.L.), headquartered at Banjara Hills, Hyderabad, is involved in providing works contract services and is registered under the Goods and Services Tax (G.S.T) regime.
- ii. The A.P.S.D.R.I. office conducted a search operation under the provisions of Section 67 of the Andhra Pradesh Goods and Services Tax (A.P.G.S.T.) Act, 2017, at various premises of the taxpayer, on a reasonable belief that the company in question, Avexa Corporation Private Limited (A.C.P.L.), was improperly availing Input Tax Credit (I.T.C.) for G.S.T. payments. During the operation, it was discovered that the Directorate General of Goods and Services Tax Intelligence (D.G.G.I.) in Hyderabad had already investigated the matter. Additionally, a Show Cause-cum-Demand Notice had been issued by the D.G.G.I., proposing a penalty of approximately Rs.16 Crores under the provisions of the Central Goods and Services Tax (C.G.S.T.) Act, 2017, for the irregular availment of I.T.C.
- iii. M/s. Avexa Corporation Private Limited (A.C.P.L.) in Andhra Pradesh has wrongly or illegitimately claimed Input Tax Credit (I.T.C.) based on invoices despite not receiving the associated services from July 2017 to March 2022. Moreover, it is acknowledged that they transferred these irregularly claimed I.T.C. amounts to various entities without providing any services during the mentioned period. Based on the admission of A.2, it appears that they intentionally misrepresented facts in their GSTR3B returns by indicating receipt of services when, in fact, they had not received them.
- iv. Explanation 2 of Section 74 of the Central Goods and Services Tax (C.G.S.T.) Act 2017 defines "suppression" as the act of not disclosing facts or information that a taxable person is obligated to declare in returns, statements, reports, or any other documents as required under the Act or the rules established therein. It also includes the failure to provide information when requested in writing by the proper officer. M/s. Avexa Corporation Private Limited (A.C.P.L.) has fraudulently and improperly claimed inadmissible Input Tax Credit (I.T.C.), intentionally misrepresented facts, and suppressed information. Consequently, they have violated the C.G.S.T. Act, 2017 provisions and the rules framed thereunder.
- v. Kurra Jogeswara Rao, who is arrayed as A.2 in this case, confessed in his voluntary statements dated 22.07.2022 that he is the authorized individual representing M/s. Avexa Corporation Private Limited (A.C.P.L.) is accountable for all business operations, tax affairs, and lawful and unlawful actions pertaining to the company. Upon scrutiny of the seized documents and statements provided by A.2, it was found that M/s. A.C.P.L. had wrongfully availed and utilized an irregular Input Tax Credit (I.T.C.) amounting to Rs. 2,62,56,750/-. Consequently, this amount is subject to recovery under Section 74 of the C.G.S.T. Act.
- vi. Furthermore, M/s. Avexa Corporation Private Limited (A.C.P.L.) has also wrongly claimed Input Tax Credit (I.T.C.) amounting to Rs.5,39,57,910/- without receiving corresponding goods or services. They are consequently liable for a penalty of Rs.3,39,77,220/- as per Section 122(1)(vii) of the C.G.S.T. Act, read in conjunction with Section 20 of the Integrated Goods and Services Tax

(I.G.S.T.) Act, 2017. Additionally, M/s. A.C.P.L. has transferred irregular I.T.C. worth Rs.8,04,63,898/- without providing goods or services. For this action, they are subject to a penalty of Rs. 3,57,43,817/- as per Section 122(1)(ii) of the C.G.S.T. Act.

- vii. The investigation conducted by the Directorate General of Goods and Services Tax Intelligence (D.G.G.I.), Hyderabad unit, unveiled that M/s. Avexa Corporation Private Limited (A.C.P.L.) solely received invoices and bills from four firms/companies, namely (1) M/s. Tanisha Infra Zone Pvt. Ltd. (2) M/s. Rollon Projects (3) M/s. Annai Infra Developers Ltd. (4) M/s. Allways Town Planners Pvt. Ltd. However, A.C.P.L. did not receive either goods or services from these entities. The Show Cause Notice indicated that Rs. 22 Crores was transferred to these four firms, resulting in the irregular claiming of Input Tax Credit (I.T.C.) amounting to Rs. 2.63 Crores. Since A.C.P.L. did not receive services from its subcontractors (the four firms mentioned above), they couldn't provide such subcontracted work to M/s. Jakson Eminence Pvt. Ltd. It appears that an amount of Rs. 21,93,08,317/- was improperly diverted by A.C.P.L. without receiving any goods or services, and all four of the listed firms/companies were implicated in misappropriating government funds.
- viii. Furthermore, M/s. Avexa Corporation Private Limited (A.C.P.L.) received a work order dated 27.10.2017 for the construction of the "N9 Road Near Uddandarayunipalem to Nidamaru in Amaravathi" on a subcontract basis from M/s. B.S.R. Infratech India Pvt. Ltd. The investigation uncovered that A.C.P.L. diverted funds to four fictitious entities, namely (1) M/s. Khwahish Marketing Pvt. Ltd. (2) M/s. Noida Ispat India Limited (3) M/s. Prasant Industrial Corporation (4) M/s. Goldphoenix Iron and Steels Pvt. Ltd. A.C.P.L. issued outward invoices to M/s. B.S.R. Infratech India Pvt. Ltd. with a taxable value of Rs. 23,43,92,315/- along with G.S.T. of Rs. 2,81,27,078/-. This implies that A.C.P.L. received a total amount of Rs. 26,25,19,393/- from M/s. BSR Infratech India Pvt. Ltd., the principal contractor.
- ix. Additionally, according to the Show Cause Notice issued by the Directorate General of Goods and Services Tax Intelligence (D.G.G.I.), A.V.E.X.A. was involved in inward bill trading with four firms namely (1) Aadhya Enterprises (2) Sanjay Kumar Bhatia (3) Tanishq Steels Limited (4) Mount Business Build Pvt. Ltd. As a result of this activity, A.V.E.X.A. irregularly claimed input tax credit amounting to Rs.2,69,21,955/-. The total value of these fictitious input supplies was Rs.15,16,39,909/-.

5. The case of the Petitioners/A.4 and A.5 in Crl.P.No.1448 of 2024 and the Petitioners/A.2 and A.3 in Crl.P.No.1449 of 2024, are the same, in brief, are that:

- i. The entire complaint is built upon fabricated and distorted facts, completely untrue and utterly fallacious. It is driven solely by political vendetta against the Petitioners/accused. The purported transactions allegedly occurred between 2017 and 2022; however, the Petitioners had already ceased associating with A.V.E.X.A. company in 2011 and 2015. Therefore, these allegations are fictitious and have been concocted with the malicious intent to prosecute the Petitioners unjustly.
- ii. Furthermore, it is contended that to establish the elements of Section 420 of the Indian Penal Code (I.P.C.), there must be dishonest inducement leading to the delivery of property to the accused through deceit, which is conspicuously lacking in the current matter. The authorities responsible for entrusting the work expressed contentment with the work performed by the principal contractor, B.S.R.I.I.P.L. Notably, B.S.R.I.I.P.L. did not raise any grievances of deceit or cheating against A.V.E.X.A.
- iii. Furthermore, it is argued that to fulfil the requirements outlined in Section 409 of the Indian Penal Code (I.P.C.), the accused must belong to specific professions such as public servant, banker, merchant, factor, broker, attorney, or agent. Therefore, as the Petitioners do not belong to any of the categories as mentioned above, they do not meet the criteria set forth under Section 409 of the I.P.C.
- iv. The provisions of Section 30 of the I.P.C. are not applicable in this case, as the alleged invoices do not represent any form of valuable security. Additionally, the accusation of forgery has not been raised by any individual or entity whose invoices are purported to have been forged. Therefore, the elements required under Section 30 of the I.P.C. are not satisfied in this scenario.

- v. The theory of conspiracy presented by the complainant seems to be a fabrication aimed at politically targeting the Petitioners' husband and brother-in-law (A.4 and A.5). It's implied that this move stems from their outspoken opposition to individuals in influential positions within the current administration. However, there is a noticeable absence of *prima facie* evidence substantiating the alleged offences, casting doubt on the genuine intentions or bona fides behind the complaint.
- vi. The initiation of the current criminal proceedings appears to be a deliberate attempt to hinder the active participation of the Petitioners' family in the upcoming General Elections of 2024, with a potential motive to undermine their political involvement through legal means.

6. The case of the Petitioners in Crl.P.No.1489 of 2024, in brief, is that:

- i. The allegations outlined in the F.I.R. or complaint are deemed to be incredibly far-fetched and inherently improbable. They lack the substance necessary for any prudent individual to arrive at a reasonable conclusion that there are sufficient grounds for initiating proceedings against the Petitioners. Merely citing sections of the law and subjecting the Petitioners to trial under such circumstances would constitute nothing short of an abuse of the Court's process.
- ii. The assertion that the 1st Petitioner in Crl.P.No.1489 of 2024, who holds a position in the Government as a Minister from Guntur District (referred to as A.1), exerts substantial influence over contractors conducting projects in the Guntur District, particularly within the Andhra Pradesh Capital Region Development Authority (A.P.C.R.D.A.), lacks clarity and supporting evidence. These claims appear vague and unsupported, thereby casting doubt on their validity and credibility.
- iii. The first Petitioner in Crl.P.No.1489 of 2024 has been announced as a contesting candidate representing the Telugu Desam Party for the Chilakaluripeta Assembly Constituency in the 2024 General Election. Additionally, he holds the responsibility assigned by the party as the Zonal Incharge for East and West Godavari Districts. He coordinates the leadership and cadre throughout these districts for the forthcoming General Elections. There is a concern regarding the potential arrest of the Petitioners under the pretext of being former directors of the mentioned company.

7. The case of the Petitioners in Crl.P.No.1539 of 2024, in brief, is that:

- i. The offences outlined in the G.S.T. Act address the use of false, forged, or fake documents and the offence of abetment, with specific provisions and corresponding punishments. Consequently, it is contended that the police lack jurisdiction to register an F.I.R. under Chapter XVII of the I.P.C. provisions, which stipulate punishments exceeding those prescribed under the G.S.T. Act.
- ii. The Petitioner is a well-established company engaged in construction activities and has undertaken government projects across multiple states. At no point in its operations has the Petitioner been associated with irregularities or offences. Specifically, the Petitioner contracted work from M/s.Avexa consistently fulfilled its financial obligations, including the payment of G.S.T. The allegations presented in the F.I.R. and the evidence collected fail to demonstrate any wrongdoing by the Petitioner.

8. I have heard both sides. Both parties reaffirmed their arguments, aligning with the contentions outlined in the petitions and their respective counters.

9. In *Bhadresh Bipinbhai Sheth v. State of Gujarat* (2016) 1 SCC 152, the Hon'ble Supreme Court has laid down specific guidelines for applications for anticipatory bail. In paragraph 25.10, the Hon'ble Supreme Court held as under:

"25.10. We all also reproduce para 112 of the judgment in the Siddaram Satingappa case, where the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

- (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (b) The antecedents of the applicant, including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

- (c) The possibility of the applicant of fleeing from justice;
- (d) The possibility of the accused's likelihood to repeat similar or other offence;
- (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;
- (f) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a vast number of people;
- (g) The Courts must carefully evaluate the available material against the accused. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860, the Court should consider with even greater care and caution because over-implication in the case is a matter of common knowledge and concern;
- (h) While considering the prayer for the grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to a free, fair and complete investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.
- (j) Frivolity in Prosecution should always be considered, and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the Prosecution, in the normal course of events, the accused is entitled to an order of bail,"

10. In *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab* (1980) 2 Supreme Court Cases 565, the Hon'ble Apex Court held that "The question whether to grant bail or not depends for its answers upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict".

11. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011) 1 SCC 694. The Hon'ble Apex Court laid down certain factors and parameters to consider while dealing with anticipatory bail. It further held as follows:

113. Arrest should be the last option, and it should be restricted to those exceptional cases where arresting the accused is imperative based on the facts and circumstances of that case. The Court must carefully examine the entire available record, particularly the allegations directly attributed to the accused, corroborated by other material and circumstances on record.

12. The power to authorize detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. The attitude of arresting first and then proceeding with the rest is despicable. It has become a handy tool for police officers who lack sensitivity or act with oblique motives.

13. The law presumes an accused to be innocent until his guilt is proven. As a presumably innocent person, he is entitled to all the fundamental rights, including the right of liberty, guaranteed under Article 21 of the Constitution of India.

14. It is settled law that while considering the prayer for grant of anticipatory bail, the accusation's nature and gravity and the accused's exact role must be properly comprehended before arrest is made. In the event of some doubt as to the genuineness of the Prosecution, the normal course of events is that the accused is entitled to an order of anticipatory bail. The Court must adequately exercise its jurisdiction to protect the personal liberty of a citizen. It is also a well-accepted principle that bail is the rule and the jail is the exception.

15. It could be seen from the record that 2nd respondent/Defacto Complainant, holding the position of Deputy Director, Andhra Pradesh State Directorate of Revenue Intelligence, Vijayawada, Andhra Pradesh, lodged a written complaint with the 1st Respondent/Station House Officer, Machavaram P.S., and 1st Respondent initiated the legal process by registering F.I.R. No.63 of 2024, dated 25.02.2024 for the offences punishable under sections 420, 409, 467, 471, 477A, 120B r/w 34 of I.P.C.

16. As per the complaint, Petitioners in Crl.M.P.No.1449 of 2024/A.2 and A.3 are the present Directors of Avexa Corporation Pvt. Ltd (A.V.E.X.A. formerly known as M/s Siva Swathi Constructions Pvt. Ltd.); Allegations suggest that A.1, in collaboration with the other named accused, engaged in a series of unethical manoeuvres. These included submitting falsified documents to government authorities, thereby perpetrating financial fraud and inflicting a substantial loss totalling Rs.26,25,19,393/- upon the Government exchequer. The purported misdeeds extend to the diversion of funds entrusted by the Government for executing developmental projects, constituting a grave economic offence. These fraudulent activities are reported to have occurred between 2017 and 2022 with the collective conscience of all the Directors of the accused company being a company colluded with several other companies to deal with infrastructure, handling important projects, and dealing with Government functionaries, breached the trust reposed on it and committed criminal breach of trust and caused huge loss to the state exchequer.

17. The learned counsel for the Petitioners/A.2 and A.3 in Crl.M.P.No.1449 of 2024 contends that the allegations outlined in the written complaint are vague, omnibus, false, uncontroverted and absurd and are only created to implicate the Petitioners as a result of political motives. They do not reveal any offence by the Petitioners. The essential elements required under Section 420 of IPC are not present in the current case. They argue that no deceitful inducement prompted the delivery of property to the accused parties, a crucial aspect for the application of this section. Additionally, they assert that the complaint lacks any indication of breach of trust necessary to invoke Section 409 of IPC, as there was no formal entrustment of property to the Petitioners. Furthermore, the Petitioners highlight that the authorities responsible for overseeing the work expressed satisfaction with the performance of the principal contractor, B.S.R.I.I.P.L. Moreover, B.S.R.I.I.P.L., as the principal contractor, did not raise any grievances regarding the non-completion of work by Avexa Corporation Pvt. Ltd.

18. According to the A.2 and A.3, their association with the company began when they assumed roles as Director and Additional Director in 2015 and 2020, respectively. A.3's involvement with Avexa Corporation Pvt. Ltd. commenced following the unfortunate passing of her late husband, Sri Boggavarapu Markhandeyulu (A.6), who held a directorial position at the time of his demise. Subsequently, A.3 was appointed as the Additional Director of the company. Since her appointment in 2020, A.3 has maintained a non-participatory stance in the day-to-day operations of Avexa Corporation Pvt. Ltd.

19. In Crl.P.No.1539 of 2024, the first Petitioner is represented as B.S.R. Infratech India Limited through its Managing Director, Balusu Srinivasa Rao. The second Petitioner is Balusu Srinivasa Rao.

20. The Petitioners in Crl.P.No.1539 of 2024 assert that the first Petitioner, a reputable construction company, has a well-established presence in the construction industry, undertaking government projects across multiple states such as Maharashtra, Karnataka, Odisha, Telangana, and Andhra Pradesh. Specifically, concerning constructing the 'N9 Road' in Amaravati, authorities have expressed satisfaction with the completed work and accompanying test reports. Consequently, they approved the M.Book and released payments for the completed tasks. Furthermore, the first Petitioner engaged in M/s. Avexa services for certain aspects of the project and promptly settled all dues, including the Goods and Services Tax (G.S.T.); however, despite the payments made by the first Petitioner to Avexa, the G.S.T. amount owed to the first Petitioner by M/s. Amaravati Development Corporation remains outstanding. The Petitioners emphasize that any irregularities related to Input Tax Credit (I.T.C.) are solely attributable to M/s. Avexa and its Directors, not to the first Petitioner. They argue that if there were any discrepancies in the availing of I.T.C., they should not be associated with the first Petitioner's operations or conduct.

21. The available records show that the Petitioners (in Crl.P.No.1539 of 2024) initiated legal action by filing Writ Petition No.5660 of 2024 before this Court. Their petition sought a declaration that the actions of the Respondents, involving interference with the Petitioners' office, threats to seal the premises, and removal of staff without adhering to due process of law, were unlawful and arbitrary. During the proceedings, the learned Government Pleader for Home representing the Respondents in the Writ Petition presented arguments indicating a complaint lodged concerning G.S.T. affairs, which prompted an investigation by the concerned police authorities. As a result, the premises of the Petitioner Company were subject to search as part of the ongoing inquiry. Subsequently, the Court disposed of the Writ Petition at the admission stage, issuing directives to the Respondents; specifically, they were instructed not to interfere with the Petitioners' office or their employees without adhering to due process of law.

22. The Petitioners (in Crl.P.No.1539 of 2024) argue that the remand report of A.1 includes an allegation suggesting collusion between the first Petitioner's company and M/s. Avexa. They contend that this allegation

is maliciously fabricated to harass the Petitioners to satisfy political vendettas. Importantly, they highlight that over the past five years, there have been no allegations against the Petitioners' work in any capacity. Additionally, they emphasize that the first Petitioner has diligently cleared all tax and G.S.T. liabilities despite the Government failing to specify the exact G.S.T. amount in question.

23. It is the Prosecution's case that while A.1 was acting as Additional Director of M/s.Avexa Company, a sub-contractor, an amount of Rs.50,00,000/- was transferred from M/s. B.S.R. Infra Tech, who was an original contractor to the Government illegally on 31.01.2020. Abusing the position and influence of his father, A.1 entered into a conspiracy with the companies with a common intention of misappropriating funds which were entrusted to carry out the earmarked work contracts at Amaravati region, created false documents as if certain supplies or services were rendered by filing false invoices without actually doing no such work and diverted huge Government amounts to the companies by using false documents as genuine and by creating false G.S.T. accounts and claimed Input Tax Credit to a tune of Rs.8,00,00,000/-.

24. The learned Special Public Prosecutor contends that D.G.G.I., Hyderabad's investigation is confined to determining the evasion of input tax credit by the A.V.E.X.A. company and issued a show cause notice for the payment of Rs.16/- crores as a penalty under section 74(1) of the provisions of the C.G.S.T. Act, 2017; the investigation done by D.G.G.I., Hyderabad unit established that M/s. Avexa company is in conspiracy with shell companies, created fake invoices, and committed misappropriation of tax amount to Rs.16,06,78,558/-.

25. It is not in dispute that M/s Avexa received a work order dated 27.10.2017 from M/s B.S.R. Infratech Private Limited on a subcontract basis for the construction of the N9 road from Uddandurayunipalem to Nidamaru in Amaravati.

26. The learned Special Public Prosecutor contends that the investigation revealed that Avexa had issued outward invoices having a taxable value of Rs.23,43,92,315/- along with G.S.T. of Rs.2,81,27,078/- to M/s. B.S.R. Infratech India Private Limited implies that Avexa received Rs.26,25,19,393/-from B.S.R. Infratech Private Limited, the principal contractor and as per the investigation, M/s. Avexa has transferred funds to fake entities outside the state of Andhra Pradesh, and Avexa only received inward bills/invoices without receipt of Goods/Services from them.

27. It is not in dispute that Avexa has received a work order regarding the construction of roads and utilities in the green buffer of N6 road in Amaravati Capital City from M/s. Jakson Eminence for values of Rs.19,49,94,000/- and Rs.35,85,95,506/- dated 28.02.2019, the above-said work was claimed to have been sub-contracted by Avexa to M/s. Tanisha Infra XZone Private Limited, M/s. Rollon Projects, M/s. Annai Infra Developers Limited and M/s. Allways Town Planners Private Limited.

28. The learned Special Public Prosecutor further contends that Avexa had diverted substantial public money, i.e., Rs.17,85,61,864/- from the M/s. Aditya Enterprises, M/s. Sanjay Kumar Bhatia, M/s. Tanishq Steels Limited and M/s. Mount Business Build Private Limited: several sub-contracts were entered into without the permission of Amaravati Development Corporation Limited (A.D.C.L.), a Government body; the subcontract between B.S.R. and Avexa does not have prior approval of the authority mentioned above, violating the terms of the contract, there were invoices issued and transfer of funds were carried out by the Respondent in colour of carrying out of works, whereas there was no supply of any goods and services by the Respondents; hence, stating that there is a diversion of funds. So, the diversion of Government funds by the Avexa through the shell companies has to be investigated.

29. Sri B. Adinarayana Rao learned senior counsel representing the Petitioners submits that the parties are private entities and there is no contractual relationship with the Government; there is no privity of contract between the B.S.R. (Principal) and the Government, hence, the case against the cannot be upheld; the execution of work is already done, and therefore, there is no question of diversion of funds, as the funds are all utilized towards the works; the claim of investigating agency stating that execution of work nonetheless is of no relevance at this stage of the case cannot be upheld; any concerned case against the Respondent is to be carried out by the G.S.T. authorities, as the orders are not granted yet in relevance to irregular input tax credits and the present allegations cannot be proved by the Respondent/State.

30. He further contends that section 132 of the Central Goods and Services Act, 2017 (hereinafter referred to as 'the Act') provides punishment for certain offences.- 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 the issue of any invoice, in violation of the

provisions of this Act or the rules made thereunder, 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;

31. He further contends by relying on section 134 of the Act, Cognizance of Offences.- No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class shall try any such offence.

32. He further contends by relying on section 137 of the Act, Offences by companies.-

- (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or another officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of subsection (2) shall, mutatis mutandis, apply to such persons.
- (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

33. The contention put forth by the Petitioners in Crl.P.No.1489 of 2024 is that the 1st Petitioner has been an active member of the Telugu Desam Party for over three decades, with a notable political career that includes multiple terms as a member of the Andhra Pradesh Legislative Assembly, spanning from 1999 to 2019. From 2014 to 2019, the 1st Petitioner held significant ministerial portfolios, including Agriculture, Agriculture Processing, Marketing and Warehousing, Animal Husbandry, Dairy Development, Fisheries, Food and Civil Supplies, and Price-Monitoring and Consumer Affairs. Moreover, the 2nd Petitioner, the daughter of the 1st Petitioner, expresses apprehension regarding the possibility of imminent arrest in connection with F.I.R. No.63 of 2024, dated 25.02.2024. Notably, the 1st Petitioner's son is arrayed as A.1 in the F.I.R. as mentioned above and was consequently apprehended on 29.02.2024. Additionally, it is contended that the 2nd Petitioner in Crl.P.No.1489 of 2024 has never held the position of Director within Avexa Corporation Pvt. Ltd. at any point.

34. It is also contended on behalf of the Petitioners in Crl.P.No.1489 of 2024 that even according to the complaint itself, both A.1, the son of the first Petitioner, and the first Petitioner were merely Directors of Avexa Corporation Pvt. Ltd., with no active involvement beyond their directorial roles. Moreover, the Prosecution's case indicates that the alleged fraudulent activities transpired between 2017 and 2022 with the collective awareness of all directors of the accused company. The contentions raised by the Petitioners in Crl.P.No.1489 of 2024 highlight that the first Petitioner disengaged from Avexa Corporation Pvt. Ltd. as early as 2010, while the second Petitioner never held any role within the company. Remarkably, these assertions remain uncontested, with no *prima facie* evidence disputing the Petitioners' claims. The Petitioners in Crl.P.No.1489 of 2024 express genuine concerns regarding potential arrest, citing their familial ties to the individuals named as accused in the F.I.R. Nevertheless, they assert that no *prima facie* material has been presented to implicate them in the company's affairs during the period of alleged fraudulent activities from 2017 to 2022.

35. The status of the first Petitioner (in Crl. M.P. No.1489 of 2024), a former cabinet Minister aged 66, who intends to contest in the upcoming elections for the Chilakaluripeta Assembly constituency, remains uncontested.

36. According to the Prosecution's case, the alleged fraudulent activities occurred between 2017 and 2022 with the collective awareness of all directors of the accused company. In Crl.P.No.1448 of 2024, the Petitioners, A.4 and A.5, assert that they were previously directors of Avexa Corporation Pvt. Ltd. (formerly known as M/s Siva Swathi Constructions Pvt. Ltd.) and exited from the company in 2011 and 2015, respectively. This fact remains undisputed, as no *prima facie* material has been presented to challenge it. The contention of the Petitioners in Crl.P.No.1448 of 2024 is that they harbor genuine concerns regarding potential arrest on the pretext of being former directors of Avexa Corporation Pvt. Ltd. This apprehension is further heightened by the arrest of A.1, who is the son and son-in-law of the Petitioners 1 and 2, respectively, and was also a former director of the company. Importantly, no material has been provided to demonstrate the involvement of the Petitioners in the company's affairs during the period of alleged fraudulent activities from 2017 to 2022. This lack of substantiation underscores the Petitioners' contention of being unjustly targeted to impede their family's active participation in the forthcoming general elections in 2024.

37. The first Petitioner (in Crl.P.No.1448 of 2024), a woman aged 64 years, and the other Petitioners, have expressed their willingness to comply with any conditions set forth by the Court and to cooperate fully with the investigation.

38. As seen from the record, the Directorate General of Goods and Services Tax Intelligence (D.G.G.I.) had previously investigated the submission of counterfeit invoice bills by the shell companies associated with the firm. These entities purportedly claimed to be engaged in development activities in the Amaravati region, although no actual work transpired. Consequently, the D.G.G.I. recommended a penalty of Rs.16 crores against A.1's company under the Central Goods and Services Tax Act, 2017. This indicates that the D.G.G.I., Hyderabad, has undertaken a significant portion of the investigation.

39. This is evident from the committee's comprehensive report regarding the allegations against M/s. Avexa Corporation Private Limited by A.P.S.D.R.I., Vijayawada; the matter originated from a letter sent by the Special Commissioner of A.P.S.D.R.I., Vijayawada, to the Special Chief Secretary, Finance (DP-I) Department. The Special Commissioner requested the forwarding of the letter to the Special Chief Secretary, MA & U.D., for further action. In response, the Commissioner of A.P.C.R.D.A. constituted a committee comprised of Chief Engineers from APCRDA/ADCL through Rc.No. 23/24-Estt., dated 08.02.2024, to investigate the purported diversion of funds by M/s. Avexa Corporation Private Limited. The committee members include:

- i. Sri N.V.R.K.Prasad, Chief Engineer, H&B
- ii. Sri P.Siva Prasada Raju, SE/Chief Engineer (FAC)
- iii. Sri G.V.Pallam Raju, SE/Chief Engineer (F.A.C.), T&T

40. It is observed in the report that as per note of APSDRI/DGGI, dated 06.07.2023, in Para (11), the central allegation of diversion of public funds by M/s. Avexa Corporation Private Limited, Vizianagaram, A.P., to the extent of Rs.45.37 Crores, is resorting to inward and outward bill trading. After having examined all the available records with A.D.C.L. (Amaravati Development Corporation, Vijayawada), it is concluded that there is no agreement between A.D.C.L. and M/s. Avexa Corporation Private Limited, the total mobilization advance was paid to M/s. B.S.R.I.I.L. is Rs.20.80 crores. The total bill amount paid to the Principal Contractor, i.e., M/s. B.S.R.I.I.L. is Rs.118.82 crores, and the G.S.T. Component Paid & released to the Principal contractor is Rs.5,18,10,138/-. Hence, the allegation has not been substantiated per A.D.C.L.'s available records.

41. It is also observed in the report that after verifying all the existing records available with A.D.C.L., the payment was released to the extent of work done after following the due procedure of the Department and per the terms and conditions of the agreement and after due certification by P.M.C. M/s. L.E.A. Associates South Asia Private Limited, at every stage, as mentioned in Para No.6(A), to ensure that the requisite quality & quantity checks are done both by the P.M.C. in the presence of the Department & the Principal Contractor. P.M.C. (M/s. L.E.A. Associates South Asia Private Limited) is responsible for "Supervise the construction works of contractor strictly by the performance indicators and other stipulations contained in Contract documents and ensure complete compliance concerning technical specifications and various stipulations

contained in the Contract documents with high standards of quality assurance in supervision and the execution of work as per agreement".

42. The learned Special Public Prosecutor contends that the committee held in the report that the fact regarding the raising of outward invoices having a taxable value of Rs.17.71/- crores along with G.S.T. of Rs.2,81,27,078/- without any supply of Goods or services by Avexa is to be ascertained from M/s. B.S.R. Infratech Pvt., Ltd., by the investigating agency.

43. As seen from the record, the Respondent/State grieves that the directors of the M/s.Avexa company, with a malafide intention to misuse public funds, diverted the public funds secured from the Principal contractor to the shell companies, created fake invoices with G.S.T. to the shell companies to avoid input tax credit, and thereafter diverted the public funds to the shell companies.

44. The learned counsel for the Petitioners contends that when a particular enactment, *i.e.*, the G.S.T. Act, covers the criminal act of an offender, the offender gets out of the net of the Indian Penal Code. The material on record discloses that the D.G.G.I., Hyderabad, has already investigated in respect of submitting fake invoice bills by the shell companies of A.1's firm under the guise of doing development activities at Amaravati Region and proposed a penalty of Rs.16/- crores to the A.1's company under the G.S.T. Act, 2017, it establishes that most of the investigation is completed by the D.G.G.I., Hyderabad.

45. The learned counsel for the Petitioners contends that when a matter is pending before the proper officer, the Respondent/State is not empowered to investigate it by registering the crime.

46. At this stage, it is pertinent to note that the Respondent-State has taken a specific stand in the counter by contending that the A.P.C.R.D.A. report dated 22.02.2024 related to the execution of the contract by Amaravati Development Corporation Limited with the B.S.R. Infratech Limited and M/s. Megha Engineering and Infrastructure Limited, reveals that the A.D.C.L. effected payments only after following the due procedure, obtaining the P.M.C. certifications at every stage and ensuring the quality of works as per the agreement conditions. Therefore, the primary accusation against the accused is their purported creation of counterfeit invoices to siphon public funds. The respondent/state does not contend that funds were withdrawn without fulfilling the requisite standards for project completion.

47. According to Section 6 of the A.P.G.S.T. Act, particularly Section 6(b), if a proper officer acting under the Central Goods and Services Tax Act, 2017 has already initiated proceedings concerning a specific subject matter, no additional proceedings on the same subject matter shall be undertaken by the proper officer under the A.P.G.S.T. Act.

48. Section 132(1)(b) of the G.S.T. Act states that issuing invoices or bills without actual supply of goods or services, thereby violating the Act or its rules, leading to incorrect availment or utilization of input tax credit or tax refund, is deemed an offence under the Act.

49. Section 134 of the G.S.T. Act stipulates that no court can initiate legal proceedings for any offence under this Act or its rules without prior approval from the Chief Commissioner.

50. Without expressing any opinion on the contention raised by the Petitioners' counsel regarding the registration of the criminal case while the matter is pending before the competent authority, this Court notes that a significant portion of the investigation has been completed. The matter is currently under consideration by the competent authority, the release of the accused persons is unlikely to prejudice the ongoing investigation.

51. The existence of the power to arrest is one thing; the justification for exercising it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons. No arrest can be made routinely on a mere allegation of the commission of an offence made against a person. It would be prudent and wise for a police officer not to arrest without reasonable satisfaction being reached after some investigation into the genuineness of the allegation. (In this regard, a reference can be made to *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273).

52. It is not the Prosecution's case that the Petitioners did not cooperate with the investigation and are not available for interrogation. There is no indication of a likelihood that the Petitioners would abscond from the court's jurisdiction. The Petitioners have expressed a willingness to cooperate with the investigation agency. The object of the bail is neither punitive nor preventative. The likelihood of levying accusations to harm or embarrass the Petitioners through potential arrest is not improbable, especially in political disputes.

53. At this stage, the allegations against the Petitioners are subjected to the trial's outcome. It is settled law that mere apprehension that the accused would tamper with the prosecution evidence or intimidate the witnesses cannot be grounds to refuse bail unless the Prosecution shows that the accused tried for such tampering/intimidation.

54. Given the facts and circumstances of the case coupled with the *prima facie* analysis of the nature of allegations and the other factors peculiar to this case, this Court views that even if the Petitioners are granted pre-arrest bail, there cannot be any apprehension for the Prosecution that they will tamper with the evidence. The material placed on record discloses that the Petitioners have a permanent abode. It is not the Prosecution's case that the Petitioners would flee away from the jurisdiction of the Court. The facts do not warrant custodial interrogation of the Petitioners. Granting anticipatory bail to the Petitioners would not impede the ongoing investigation, as the material part of the investigation, primarily based on the documentary evidence, is already completed.

55. Upon careful review of the available material, as there is no risk of interference with the ongoing investigation by the Petitioners, this Court finds that anticipatory bail can be granted to the Petitioners under certain conditions:

- (i) Petitioners/Accused are directed to surrender before the Station House Officer, Machavaram Police Station, Vijayawada City, within two (2) weeks from today and upon their surrender, they shall be released on bail upon furnishing a personal bond for Rs.1,00,000/-(Rupees One Lakh Only) each with two sureties for a like sum each to the satisfaction of the concerned Investigating Officer.
- (ii) Petitioners shall appear before the concerned Investigating Officer as and when their presence is required.
- (iii) Petitioners shall cooperate with the investigation and make themselves available for interrogation by a police officer as and when required. Furthermore, they are prohibited from making any direct or indirect inducement, threat, or promise to any person acquainted with the facts of the case to dissuade them from disclosing such facts to the Court or any police officer.
- (iv) If the Petitioners fail to cooperate with the Investigation agency, the Prosecution is at liberty to make an appropriate application seeking cancellation of their bail.

56. It is explicitly clarified that the observations made in this Order are preliminary and pertain solely to the decision on the present applications without indicating a stance on the case's merits. The Investigating Agency is affirmed to have the freedom to investigate without being influenced by the observations in this Order.

57. The Criminal Petitions are allowed, accordingly.

58. Miscellaneous applications pending, if any, shall stand closed.

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^{*}In favour of assessee.