

(VIA VIDEO CONFERENCING)

\$~80

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

% *Date of Decision: 11.02.2022*

+ **CRL.M.C. 644/2022**

SAURABH MITTAL

..... Petitioner

Through: Mr. Vikram Chaudhary, Sr. Adv. with
Mr. Arun Malik and Ms. Ria Khanna,
Advocates.

versus

UNION OF INDIA, DEPARTMENT OF REVENUE & ORS.

..... Respondent

Through: Mr. J.P.N. Shahi, Adv. for R-1/UOI.
Mr. Satish Aggarwal, Sr. SPP with Mr.
Jasneet Jolly, Adv. for R-2.
Mr. Aditya Singhla, Sr. Standing
counsel with Mr. Yatharth Singh and
Mr. Tejan Kapur, Advs. for 3.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J. (ORAL)

CRL. M.A. 2747/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 644/2022 and CRL.M.A. 2746/2022

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner with the following prayers:

- a) *Quash the action of the Respondents in case F. No. DGGI/INT/INTL/1402/2021 whereby Respondent No. 3 has embarked upon inquiry investigation which is beyond its zonal jurisdiction;*
- b) *As an alternative as well as supplement to the above prayer (a), directions may be issued for transfer of such inquiry/investigation from Ghaziabad Regional Unit to Respondent No. 2 DGGI HQ Delhi or Delhi Zonal Unit;*
- c) *Hold and declare that the territorial jurisdiction of the proceedings being carried out by the Respondent No. 3 in F. No. DGGI/INT/INTL/1402/2021 vests with the courts at Delhi;*
- d) *Quash and set aside the Summons dated 07/02/2022 and 02/02/2022 issued against the Petitioner as the same have been actuated with malice;*
- e) *Issue appropriate writ(s), order(s) or direction(s) to the Respondents in furtherance of the observations; order(s) and direction(s) issued by the Hon'ble Supreme Court inter alia, vide Order dated 02.12.2020 passed in SLP (Crl.) No. 3543 of 2020 titled as 'Paramvir Singh Saini vs. Baljit Singh & Ors.' to the effect that all proceedings carried out by Respondent no. 1 & 2 including those in relation to the recording of statements etc. in terms of the Notice (s)/ Summon (s) issued under Section 50 PMLA in ECIR MBZO-1/66/2021 to be audio/videographed in the presence of Petitioner's lawyer at a visible distance (beyond audile range) inter-alia by way of installation of appropriate CCTV cameras.*
- f) *Pass any order or further order(s) which your lordship may deem fit and proper in the interest of justice.*

(VIA VIDEO CONFERENCING)

2. Issue notice. Learned counsel for respondent no.1, learned senior standing counsel for respondents no. 2 & 3 and learned senior SPP appears on advance notice and accepts notice

3. The brief facts of the case are that pursuant to some intelligence received that a group of unscrupulous persons in collusion with some custom house agents (CHAs) are actively involved in evasion of GST by making exports from some non-existent firms, Senior Intelligence Officer, Director General of GST, Ghaziabad Regional Unit (Respondent No. 3) commenced inquiry and carried out certain searches at the purported premises of one M/s Heritage International at Delhi. On 27.11.2021, search was carried out at the office premises of Saurabh Mittal (Petitioner herein), wherein documents related to the firms of petitioner being M/s Akula Exports and M/s Vistar Exports were seized. It was alleged that one Tinku Yadav is the mastermind involved in the creation of numerous fake firms and a huge amount of fraudulent Input Tax Credit has been availed and the said Tinku Yadav was arrested on 29.11.2021. In his statement before the authorities, Tinku Yadav claimed that he worked under the directions of Satish Jain and Govind Sharma. In January 2022, statements of Satish Jain and Govind Sharma were recorded wherein they further claimed that the petitioner along with certain other persons was involved in the creation of bogus firms. On 25.01.2022, based on the statement of Satish Jain and Govind Sharma, searches were conducted again at the premises of the petitioner and subsequently summons were issued to both, the petitioner as well as his father under Section 70 CGST Act, 2017, pursuant to which the Petitioner and his father duly appeared and

(VIA VIDEO CONFERENCING)

though the petitioner was allowed to go back, the father of the petitioner Yogesh Mittal was arrested under Section 69 of CGST Act, 2017. On 26.01.2022, father of the petitioner was produced before the Learned Special Duty Magistrate, Meerut when the respondent filed its remand application seeking judicial custody. It is alleged that from a perusal of the remand application, the Petitioner became aware of the nature of accusations levelled against him and his father. Petitioner's father Yogesh Mittal was remanded to judicial custody for 14 days and on 31.01.2022, the co-accused and alleged mastermind in the instant matter, Tinku Yadav was granted default bail by the learned Special Chief Magistrate, Meerut in the light of no prosecution being launched by the respondents even after 60 days from his arrest. Pursuant to the arrest of petitioner's father, the petitioner received summons dated 02.02.2022 for appearance on 04.02.2022 and another summon dated 07.02.2022 for appearance on 11.02.2022, before Respondent No. 3, DGGI, Ghaziabad Regional Unit.

4. It is vehemently urged by the Ld. senior counsel for the petitioner that the instant petition raises pivotal issues relating to a case of forum-hunting by Senior Intelligence Officer, Director General of GST, Ghaziabad Regional unit (Respondent No. 3) who has not only indulged in abuse of the powers of arrest etc. vested in him but also chosen the jurisdiction of the Court in Meerut when no cause of action arose in the said jurisdiction. It is further submitted that the allegations are made against those companies which are all registered in Delhi as per CGST Act, 2017 and even the list of suppliers that the department is probing, are all registered in Delhi under CGST Act, 2017. It is

(VIA VIDEO CONFERENCING)

further submitted that nothing substantial had transpired in the jurisdiction of Meerut and it is alarming as to how, why and under what circumstances, the Respondent No. 3 has chosen the jurisdiction of Meerut when his counterparts in Delhi could have undertaken such inquiry. It is further submitted that the series of events would reflect a completely arbitrary approach being adopted by the Respondent No. 3 where it has thrown to wind all cannons of law and indulged in a wanton exercise of such powers despite there being absolutely no material or cogent evidence to justify either the petitioner's father or petitioner's connection with the said alleged transactions.

5. It is further submitted that elaborate allegations have been levelled against accused persons in the remand application of the father of the petitioner alongwith the recoveries made therein, however, not even a single mention of the petitioner has been made in the remand application of the father of the petitioner and he is being implicated only on the basis of bald and vague statements made by other co-accused persons. It is further submitted that the said statements are inadmissible for the reason that there is no corroborative material evidence to the statements made by such persons against the petitioner and incriminating statements obtained from the co-accused have no evidentiary value against the petitioner as per the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in the matter of *Haricharan Kurmi vs. State of Bihar, AIR 1964 SC 1184*.

6. It is further submitted that the petitioner is about 34 years old and is seriously indisposed as he has been suffering from End Stage Liver Disease and had undergone Living Donor Liver surgery in January 2017. It is further

(VIA VIDEO CONFERENCING)

submitted that he has been constantly under the treatment and requires not only medical supervision but also a hygienic environment and home cooked food and thus, owing to his ill health, he has not been actively involved in business since long. It is further submitted that the petitioner has an elder brother who is suffering from mental retardation ever since his birth and is virtually dependent on family members for his survival. It is further submitted that in the wake of arrest of the petitioner's father, and the petitioner being hounded, the brother of the petitioner is extremely distressed as the only person to look after the him is the petitioner's mother who is a senior citizen and in a frail state of health. It is further submitted that neither the petitioner nor his father had any connection with the transactions, except for recording some purported incriminating statements, no cogent evidence is available to connect the petitioner or his father with the ongoing investigations. It is further submitted that the petitioner's father was arrested in a high-handed manner and despite the petitioner being medically crippled to undertake even ordinary pursuits of life, having undergone a liver transplant surgery, he is being subjected to a witch-hunt and gross harassment.

7. It is further submitted that the offences under the CGST Act are compoundable and are not serious in nature. It is further submitted that the entire evidence present in the instant case is based on documents and thus, petitioner's custodial interrogation is not required. It is further submitted that the maximum punishment that could be imposed under Section 132 of the CGST Act, 2017 is only an imprisonment for 5 years, apart from fine, thus, as per the scheme of the CGST Act, though the offence is of economic nature

(VIA VIDEO CONFERENCING)

yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. It is further submitted that the offences under the CGST Act are not grave to an extent where the custody of the accused can be held to be sine qua non. It is further submitted that the petitioner cannot be held vicariously responsible for the default of firm not owned or related to the petitioner, as he does not hold a Managerial/Directorial or any Executive position in the said firm. It is further submitted that pursuant to the arrest of petitioner's father, the petitioner received summons dated 02.02.2022 for appearance on 04.02.2022 and another summon dated 07.02.2022 for appearance on 11.02.2022, before Respondent No. 3, DGGI, Ghaziabad Regional Unit, which is threatening to invade his liberty in the garb of ongoing investigation and therefore, being seriously aggrieved of the conduct and allegations levelled by the Respondent No. 3, the petitioner has preferred the instant petition with the aforesaid reliefs and also, seeks that no coercive action be taken against the petitioner by the respondents.

8. Learned senior counsel for the petitioner has placed reliance upon ***Paramvir Singh Saini vs. Baljit Singh & Ors. (SLP (Crl.) No. 3543 of 2020, Order dated 02.12.2020)*** decided by the Hon'ble Supreme Court of India, wherein, this Court directed that the Central Oversight Body (COB) may issue appropriate directions from time to time so as to ensure that use of videography becomes a reality in a phased manner. Further, reliance is also placed upon ***Vijay Sajjani vs. Union of India [(2012) SCC OnLine SC 1094] and Birendra Kumar Pandey vs. Union of India & Ors. (W.P.(Crl.) 28 of 2012, Order dated 16.04.2012)*** and stated that the Hon'ble Supreme Court has consistently laid down that presence of an advocate at a visible but beyond

(VIA VIDEO CONFERENCING)

hearing range during interrogation, recording of statement and videography thereof is mandatory.

9. Learned senior counsel for the petitioner has also relied upon the following judgments:

- *Y. Abraham Ajit & Ors. vs. Inspector of Police, Chennai & Anr. [(2004) 8 SCC 100]*
- *Ramesh & Ors. vs. State of Tamil Nadu [(2005) 3 SCC 2005]*
- *Manish Ratan & Ors. vs. State of M.P & Anr. [(2007) 1 SCC 262]*
- *Amarendu Jyoti vs. State of Chhatisgarh [(2014) 12 SCC 362]*
- *DGGI vs. Daman Thakral [2021 (3) TMI 144]*
- *Navinchandra N. Majithia vs. State of Maharashtra [(2000) 7 SCC 640]*
- *Parveen Bhatia & Ors. vs. State of Punjab & Ors.*
- *Vikas Jain Prop. Jaina Trading vs. DGGI, Zonal unit, Meerut (W.P (Crl.) 1494/2021)*
- *Tarun Jain vs. Directorate General of GST Intelligence (Bail Application No. 3771/2021)*
- *Arnesh Kumar vs. State of West Bengal [(2014) 8 SCC 273]*
- *Arnab Manoranjan Goswami vs. State of Maharashtra & Ors. [(2021) 2 SCC 427]*
- *Surinder Kr. Khanna vs. Intelligence Officer, DRI [(2018) 8 SCC 427]*
- *Rajinder Arora vs. Union of India & Ors. (W.P.(C) 389 of 2010, Order dated 07.12.2010);*

(VIA VIDEO CONFERENCING)

- *Sri Prakash Aggarwal vs. Union of India & Anr (Crl. Misc. Petition No. 16512/2010 in Writ Petition (Crl.) No. 85 of 2010, Order dated 04.08.2010);*
- *Anandprakash Choudhari vs. Union of India & Anr. (CRL.M.P. No. 23956 of 2010 in W.P.(Crl) No. 122 of 2010, Order dated 24.11.2010);*
- *Mahender Kumar Kundra vs. Union of India & Anr. [(2015) 15 SCC 419];*
- *Assistant Director (PMLA) Directorate of Enforcement vs. Gagan Dhawan (SLP (Crl.) D.No. 36376 of 2017, Order dated 13.11.2017);*
- *Nilesh Parekh vs. Union of India (W.P.(Crl.) 300 of 2019, Order dated 17.04.2020)*

10. On the other hand, it is submitted by the learned senior standing counsel for the respondents that the investigation is at a very nascent stage and the allegations against the petitioner are grave and serious in nature. It is further submitted that the fraud involved in the instant case is of Rs 350 crores approximately and around 200 firms are involved in placing fraudulent Input Tax Credit. It is further submitted that these firms are not solely based in Delhi but in Ghaziabad and Noida as well and that the factory of the petitioner is also situated in Ghaziabad, thus, the contention of the learned senior counsel for the petitioner that the jurisdiction of Meerut has been chosen wrongly is baseless and without any merit. It is further submitted that Upender Singh, a bank official at ICICI Bank, Kamla Nagar has revealed in his statement that he had opened accounts for these 200 firms without physical verification at

(VIA VIDEO CONFERENCING)

the behest of the petitioner and his father. It is further submitted that it is only after looking into the statements given by father of petitioner to the concerned department, the active role of petitioner emerged and thereafter, statement of Upender Singh came into sight. It is further submitted that father of petitioner was arrested on 25.01.2022 and the statement of Upender Singh was recorded in February 2022 and as the statement by Upender Singh was recorded subsequent to the remand application of father of petitioner, the petitioner, hence, could not be named in the remand application alongwith other accused persons. It is further submitted that the summon pending on this day is, in fact, the third summon issued against the petitioner under Section 70 of CGST Act and in the two summons which were issued earlier for appearance before Respondent No. 3, DGGI, Ghaziabad Regional Unit, the petitioner has not cooperated and even failed to appear before the concerned authority. Lastly, it is submitted by the learned senior standing counsel for the respondents that looking into the conduct of the petitioner coupled with serious allegations of availing an enormous fraudulent Input Tax Credit, the petitioner is not entitled to any protection or relief from this court as the possibility of the petitioner hampering the investigation at this point in time, cannot be ruled out.

11. Learned senior standing counsel for the respondents has placed reliance upon the following judgments:

- ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors. [(2021) SCC OnLine SC 315]***
- ***Union of India vs. Padam Narain Aggarwal [(2008) 13 SCC 305]***
- ***Sandeep Jain vs. Additional Director DRI (Directorate of Revenue Intelligence) & Anr. (W.P.(C) 9561/2019)***

(VIA VIDEO CONFERENCING)

- *Sandeep Jain vs. Additional Director DRI (Directorate of Revenue Intelligence) & Anr., (Review Pet. 387/2019 in W.P.(C) 9561/2019)*
- *Poolpandi and Ors. vs. Respondent: Superintendent, Central Excise and Ors. [(1992) 3 SCC 259]*
- *M/S Euphoria Technologies Pvt. Ltd. vs. Directorate General Of GST Intelligence, Delhi Zonal Unit & Anr. (Writ Pet. (CRL.) NO. 139/2021)*
- *National Building Construction Company Limited vs. Union of India and Ors. [2019[20] G.S.T.L. 515]*
- *Indo International Tobacco Ltd. vs ADG, DGGI & Ors. (WP (C) No. 2420/2021) cited as [2022 SccOnline Del 90]*

12. In *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors.*, [(2021) SCC OnLine SC 315], in paragraph 64, it is observed and held as under:

“64. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or “no coercive steps to be taken against the accused” in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India without assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As observed hereinabove, it is the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of blanket interim orders without assigning reasons, of not to arrest and/or “no coercive steps” would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under

the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.”

13. In **Sandeep Jain vs. Additional Director DRI (Directorate Of Revenue Intelligence) & Anr. (W.P.(C) 9561/2019)**, in paragraph 9,10,11,14 and 15, it is observed and held as under:

“9. If the summons are not followed by this petitioner, the respondents are bound to initiate further coercive action in accordance with law.

10. It is a bounden duty of this petitioner, to go to the investigation officer/department respondent No.2. All depends upon the facts and circumstances of the case and the cooperation by this petitioner.

11. If the petitioner cooperates with the investigating officer, the investigation can be completed expeditiously. If this petitioner, as stated hereinabove, avoids the summons, not only the investigation will be prolonged but also the respondents would be at liberty to initiate coercive actions against this petitioner, in accordance with law.

14. The duration of the investigation depends upon the cooperation between of the parties and the complexity of the situation.

15. As the investigation is ongoing, we are not going much into and upon the facts of the case. Suffice it to state, that the petitioner has to attend hearing before the DRI Ahmedabad, as per summons issued to this petitioner.”

14. In **Sandeep Jain vs. Additional Director DRI (Directorate Of Revenue Intelligence) & Anr. (Review Pet. 387/2019 in W.P.(C) 9561/2019)**, in paragraphs 15-18, it is observed and held as under:

*“15. It is clear that the directions, in **Jugal Kishore Samra**, were issued in the special facts and circumstances of that case. A reading of the order, dated 16th April, 2012 supra, in **Birendra Kumar Pandey**, too, reveals that permission, to have an advocate’s presence at visible, but not audible,*

(VIA VIDEO CONFERENCING)

distance, during the recording of the statement under Section 108 of the Act, was permitted because the petitioners, in that case, were apprehensive that coercive attempts could be made to extort confessions from them.

16. No doubt, if a litigant, in a particular case, is able to produce credible material to indicate a real and live apprehension, of the possibility of coercive methods being employed, while recording of his statement under Section 108 of the Act, the court can always permit the presence of an advocate, at visible, but not audible, distance, during the course of recording of the statement.

17. The apprehension of coercive measure being employed is, however, required to be real and live, so that the grant of permission to have the presence of an advocate, at visible, but not audible, distance, which is an exception, does not become the rule.

*18. A person, to whom summons have been issued under Section 108 of the Act, cannot, as a matter of right, seek presence of an advocate, at any distance, during the course of recording of his statement, by merely reciting, as a mantra as it were, that he apprehends that of coercive measures may be employed during the course of recording of his statement. The court has to be convinced that the facts of the case justify such an apprehension. Else, the Supreme Court has held, as far back as in **Poolpandi v. Superintendent, Central Excise**, as under:*

“11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated..... The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the just, fair and

(VIA VIDEO CONFERENCING)

reasonable test' we hold that there is no merit in the stand of appellant before us.' ..”

15. In *Indo International Tobacco Ltd. vs ADG, DGGI & Ors. (WP (C) No. 2420/2021)* cited as [2022 SccOnline Del 90] in paragraphs 48,49 and 75, it is observed and held as under:

“48. By the Notification No. 14/2017 dated 01.07.2017, the CBEC has appointed the Officers in the Directorate General of Goods and Services Tax Intelligence (DGGI), Director General of Goods and Service Tax (DGGST), and Director General of Audit (DG Audit) as the Central Tax Officers and conferred on them the powers extended throughout the territory of India.

49. Therefore, by way of the above two Notifications, there are Central Tax Officers who are empowered to exercise all-India jurisdiction and those who enjoy the limited territorial jurisdiction.

75. At this stage, however, we may note the submissions of the learned ASG to the effect that all-India jurisdiction can be exercised only by a Central Tax Officer appointed as a ‘proper officer’ under Notification No. 14 of 2017 dated 01.07.2017. We are not agreeable to such an argument without limitation. In the course of investigating of a tax entity, a situation may arise where the investigation may have to be carried out from entities which are not within the territorial jurisdiction of the Officer appointed under the Notification dated 19.06.2017 and/or such State Notifications appointing an Officer with the limited territorial jurisdiction. It cannot be said that in every such case, the ‘proper officer’ having limited territorial jurisdiction must transfer the investigation to the ‘proper officer’ having pan India jurisdiction. In or advisable, and certainly not acceptable.”

16. As far as the judgments relied upon by the Ld. senior counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments, but with due regard, the same are not applicable to the facts of the present case.

17. In the instant case, the allegations against the petitioner are of indulging in creation of numerous fake firms and availing an enormous Input Tax Credit

(VIA VIDEO CONFERENCING)

fraudulently. The petitioner agrees and undertakes to appear before the officers and cooperate in the investigation, however, the main grievance of the petitioner is about the possibility of his arrest and detention to custody. But the objection of the respondents is that this Court cannot interfere with investigation by granting protection to the petitioner at this stage. It is trite law that at the stage of show cause notice, summons, chargesheet or notice to appear, constitutional courts would not interfere as to interject the proceedings and thereby, prevent the authorities from proceeding with.

18. Perusal of the various provisions of CGST Act which have been discussed in various judgments time and again demonstrate that the summons for appearance issued under Section 70 of the CGST Act and the authorization for arrest issued under Section 69 (1) of the CGST Act, do not fall within the ambit of the definition of “Criminal Proceedings”, because criminal proceeding commences, only after the launch of prosecution. It is pertinent to mention that Section 132 (1) of CGST Act lists out about twelve different types of offences under Clauses (a) to (l) and five out of these twelve offences are cognizable and non-bailable in view of Section 132 (5) of CGST Act and the remaining seven offences are non-cognizable and bailable in view of Section 132(4) of the CGST Act.

19. The sum and substance of the propositions of law, which could be culled out from the aforesaid decisions is as follows:

- i. The summons under Section 70 of the CGST Act are to be issued only after inquiry is initiated and at the stage of issuance of summons, the Court cannot interfere or grant unreasonable stay on investigation.

(VIA VIDEO CONFERENCING)

- ii. Any person against whom an enquiry is undertaken under the relevant provisions of the tax laws, does not ipso facto become an 'accused' until prosecution is launched.
- iii. The powers bestowed upon the officers appointed under numerous tax enactments for search and arrest are in effect intended to aid, assist and provide support to their main purpose of levying and collecting the taxes and duties.
- iv. Passing of any blanket orders without stating reasons would obstruct the investigation and could jeopardize the same. Therefore, such a broad directive is completely unjustified and before passing any blanket order, it is paramount to state the reasons for granting of any such interim relief or protection.

20. Now, coming to the jurisdiction, suffice it to say that the Court, in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The issues involving facts raised by the petitioner by way of defence is a matter of investigation/inquiry and the same will have to be adjudicated on merits of the case and not by way of invoking jurisdiction under Section 482 Cr.P.C. at this stage.

21. The parameters of the jurisdiction of the High Court in exercising jurisdiction under Section 482 Cr.P.C, are now almost well-settled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is the application of well-known legal principles involved in each and every matter adverting back the facts of the present case, this Court does not find any material on record which can be stated to be of

(VIA VIDEO CONFERENCING)

sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.P.C. at this stage of issuance of summons. More so, the defence raised by the petitioners in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.P.C.

22. As far as the relief prayed for by the Ld. senior counsel for the petitioner with regard to the audio/videography of the proceedings to be carried out by the respondents, in the presence of petitioner's lawyer at a visible distance, beyond audible range, inter-alia, by way of installation of appropriate CCTV cameras, is concerned, the same is untenable in law as in the instant case, the petitioner has failed to raise any reasonable basis to apprehend coercion by the respondents herein against the petitioner. It is clear that such directions are to be issued in special facts and circumstances of that case. Perusal of *Vijay Sajjani vs. Union of India [(2012) SCC OnLine SC 1094]* and *Birendra Kumar Pandey vs. Union of India & Ors. (W.P.(Crl.) 28 of 2012, Order dated 16.04.2012)*, relied upon by Ld. senior counsel for the petitioner shows that the permission to have an advocate present at visible, but not audible, distance, during the proceedings was permitted because the petitioners therein, apprehended that coercive attempts could be made to extort confessions from them, which is not the case here. A person, to whom summons have been issued cannot as a matter of right seek presence of an advocate at visible, but not audible distance and the said relief is to be granted sparingly, in exceptional circumstances, where it appears prima facie that the apprehension of the person is sincere and bonafide.

(VIA VIDEO CONFERENCING)

23. Keeping in view the fact that the investigation is still at a nascent stage and that the present case involves fraud of Rs 350 crores approximately and around 200 firms are involved in placing fraudulent Input Tax Credit coupled with the fact that one Upender Singh, a bank official at ICICI Bank, Kamla Nagar, has levelled specific allegations against the petitioner and has stated that at the behest of the petitioner and his father, he had opened accounts for these 200 firms without physical verification and further, looking into the conduct of the petitioner, the petitioner is not entitled to any relief from this court.

24. Accordingly, no ground for quashing of the action of the respondents in case F. No. DGGI/INT/INTL/1402/2021 and setting aside of the Summons dated 02.02.2022 and 07.02.2022 issued against the petitioner, is made out and I also find no flaw or infirmity in the territorial jurisdiction of the proceedings being carried out by the Respondent No. 3 in F. No. DGGI/INT/INTL/1402/2021 at Ghaziabad Regional Unit.

25. Therefore, in view of the discussions mentioned hereinabove, the present petition is dismissed and CRL.M.A. 2746/2022 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

FEBRUARY 11, 2022

ib