



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 548/2024

Ashutosh Garg

----Petitioner

Versus

Union of India, through Special Public Prosecutor

----Respondent

For Petitioner(s)	:	Mr. Prateek Kasliwal with Mr. Shubham Bhati and Ms. Mausli Dhadhich
For Respondent(s)	:	Mr. Kinshuk Jain with Mr. Saurabh Jain

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on:-	<u>01.03.2024</u>
Pronounced on:-	<u>06.03.2024</u>
<u>Reportable</u>	

1. Counsel for the petitioner submits that the petitioner has been impleaded as accused in the instant case on the basis of his confessional statement recorded under Section 70 of the Goods and Services Tax Act, 2017 (for short, "the CGST Act, 2017"). Counsel submits that the aforesaid statement of the petitioner is not admissible in evidence, at this stage, as the same is not relevant, as there was no adjudication of the allegations on merit in view of Section 136 of the CGST Act, 2017. Counsel submits that the petitioner has been arrested in the instant case on 02.11.2023 and after his arrest, complaint has been filed against him for the offences punishable under Section 132(1) (b) (c) (f)



(j) (l) of the CGST Act, 2017 on 30.12.2023. Counsel submits that the maximum punishment for the above alleged offence is five years and the same is triable by the Court of Magistrate (First Class). Counsel submits that looking to the period of incarceration of the petitioner and looking to the fact that the alleged offence is triable by Court of Magistrate, indulgence of bail be granted to the petitioner. In support of his contentions, he has placed reliance upon the following orders/judgments passed by the Hon'ble Apex Court as well as this Court in the following cases:-



1. **Ratnambar Kaushik Vs. Union of India reported in 2023 (2) SCC Online 621.**
2. **Rishabh Jain Vs. State of Rajasthan and Anr. (S.B. Criminal Miscellaneous Bail Application No.10718/2023)** decided on 04.12.2023.
3. **Ravindra Kumar Vs. Union of India and Anr. (S.B. Criminal Miscellaneous Bail Application No.2937/2022)** decided on 08.02.2023.
4. **Nikhil Gupta Vs. Union of India and Anr. (S.B. Criminal Miscellaneous II Bail Application No.17510/2022)** decided 10.02.2023.
5. **Shubham Jindal Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.11285/2023)** decided on 06.10.2023.
6. **Babulal Qazi Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.12786/2022)** decided on 13.02.2023.
7. **Mohammad Shadab Kadri Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.2299/2022)** decided on 06.04.2023.
8. **Shri Mohammed Ali Akram Khan Vs. Union of India and Ors. (S.B. Criminal Miscellaneous**



Bail Application No.13860/2022) decided on 06.04.2023.

9. **Vineet Gupta Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.7162/2023)** decided on 20.07.2023.
10. **Saurabh Jindal Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.14791/2022)** decided on 16.12.2022.
11. **Vikas Bajoria Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.17349/2022)** decided on 06.01.2023.
12. **Abhishek Singhal Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.14211/2021)** decided on 11.11.2021.
13. **Laxman Chaudhary Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.16422/2021)** decided on 06.10.2021.
14. **Vineet Gupta Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.7162/2023)** decided on 20.07.2023.

2. Per contra, learned counsel for the Union of India opposed the arguments raised by the counsel for the petitioner and submitted that when the statements of the petitioner were recorded under Section 70 of the CGST Act, 2017, it was revealed that the petitioner has created and operated 294 fake firms and has evaded a tax of Rs. 1,032 Crores. Counsel submits that when the investigation was conducted by the investigating agency, this fact came on the record that one co-accused Anil Kumar was also in conspiracy with the petitioner and a separate complaint has been filed against the said co-accused Anil Kumar bearing No.DGGI/ INV/122/2023-Gr.-F-O/o ADG-DGGI-ZU, Jaipur for the offences punishable under Section 132(1) (b) (c) (f) and (l) of the



CGST Act, 2017. Counsel submits that the Co-ordinate Bench of this Court has already rejected the bail application of the co-accused Anil Kumar (S.B. Criminal Miscellaneous Bail Application No.15833/2023) vide order dated 19.02.2024. Counsel submits that not only the confessional statement of the petitioner is there on the record, but the evidence is also there when physical verification of more than 50 fake firms created by the petitioner was done inasmuch as, the address of all the fake firms is one and the same. Counsel submits that the petitioner was involved in committing the offence and has caused loss of Rs.1,032 Crores to the Government. Hence, under these circumstances, the petitioner is not entitled to get indulgence of bail from this Court. In support of his contentions, he has placed reliance upon the following orders/judgments passed by the Hon'ble Apex Court as well as different High Courts, in the following cases:-

1. **Surjeet Singh Chhabra Vs. Union of India and Ors.** reported in **1997 (1) SCC 508.**
2. **Naresh J. Sukhawani Vs. Union of India** reported in **1995 Supp (4) SCC 663.**
3. **Anil Kumar Vs. Union of India (S.B. Criminal Miscellaneous Bail Application No.15833/2023)** decided on 19.02.2024.
4. **Sandeep Goyal Vs. Union of India (Special Leave to Appeal (Crl.) No.1803/2020).**
5. **Sandeep Goyal Vs. Union of India (S.B. Criminal Miscellaneous III Bail Application No.1521/2020)** decided on 05.02.2020.
6. **Basudev Mittal Vs. Union of India (MCRC No.3919/2022)** decided on 15.07.2022 (passed by Chattisgarh High Court).



7. **Lalit Goyal Vs. Union of India and Ors. (S. B. Criminal Miscellaneous Bail Application No.13042/2021)** decided on 07.09.2021.

3. Heard and considered the submissions made at Bar and perused the material available on the record.

4. Perusal of the complaint and documents available on the record indicate that an information was received by the Directorate General of Goods and Services Tax Intelligence (for short, "DGGI") Jaipur Zonal Unit (for short, "JZU") regarding issuance of fake invoices of menthol without supply of underlying goods in the office of the petitioner. Thereafter, detailed investigation was conducted by DGGI and during investigation, it was found that many of the fake firms issuing invoices to M/s Kaizan Organics Pvt. Ltd. are being run by one and the same person, i.e, the petitioner Ashutosh Garg. Then his statements were recorded under Section 70 of the CGST Act, 2017 and it was revealed by him that he created 181 fake firms just to issue fake invoices involving Input Tax Credit (for short, "ITC") of Rs.679 Crores for the purpose of passing inadmissible ITC. The petitioner created/operated fake firms with fake IDs for the purpose of passing inadmissible ITC fraudulently. During investigation, it was found that the number of fake firms created and operated by the petitioner were increased from 181 to 294 and accordingly, the fake ITC amount increased from Rs.679 Crores to Rs.1,032 Crores.

5. During investigation, this fact also came on the record that one Anil Garg alias Anil Kumar proprietor of M/s. Anil Trading Company purchased and operated some of the fake firms of the



petitioner. Thereafter, statements of the said Anil were recorded under Section 70 of the CGST Act, 2017 on 17.11.2023 and 18.11.2023 and this fact came on the record that he has also created fake firms for the purpose of issuing fake invoices and passing inadmissible ITC of Rs.19.47 Crores to the beneficiaries without actual supply of goods. He availed the ITC in his firms on the basis of fake invoices issued from the firms of the petitioner Ashutosh Garg. The said Anil Garg alias Anil Kumar was then, arrested on 18.11.2023 and a separate complaint No. DGGI/INV/122/2023-Gr-F O/o ADG-DGGI-ZU, Jaipur was filed for the offence(s) under Section 132 (1)(b)(c)(f) and (l) of the CGST Act, 2017.

6. The aforesaid Anil Kumar approached this Court by way of filing SB Criminal Misc. Bail Application No.15833/2023 and his bail application was rejected by the Co-ordinate Bench of this Court vide order dated 19.02.2024 with the following observations:-

"The allegation in the charge sheet itself speaks and states that accused-petitioner has generated the fake ITCs of Rs.20,2,40,841/-. It is settled law that economic offences constitute a class apart a class apart and required to be scanned with a different approach in the matter of bail. In the matter of Ratnambar Kaushik (Supra), the facts were entirely different and that was not a case of generating the fake ITC. In that case, goods were supplied without paying the CGST. In the present case, the facts are entirely different. The Hon'ble Apex Court in the matter of Lalit Goyal (supra) vide order dated 26.08.2022 dismissed the bail application of the petitioner. In the matter of Lalit Goyal, it was alleged that petitioner Lalit Goyal and other persons had made



various fake firms and claimed Input Tax Credit of Rs.18.91 Crores without any transportation of goods. In that case, co-ordinate Bench of this Court in S.B. Criminal Misc. Bail Application No.13042/2021 dated 07.09.2021 dismissed the bail application of the petitioner and in SLP vide order dated 26.08.2022, the Hon'ble Apex Court dismissed the Special Leave Petition, therefore, considering the gravity of the offence, so also, that petitioner has taken a fake Input Tax Credit (ITC) worth of Rs.20,28,40,841/-, I am not inclined to enlarge the accused-petitioner on bail.

Accordingly, the bail application of accused-petitioner under Section 439 Cr.P.C. is dismissed."

7. Once the bail application of the similarly situated accused Anil Kumar has been rejected by the Co-ordinate Bench of this Court vide order dated 19.02.2024, there is no reason or occasion available with this Court to take a different view looking to the allegation of causing huge loss of Rs.10,32,91,88,876/- to the Government and such act of the petitioner amounts to misuse of the public exchequer.

8. A common man of this Country is paying all kinds of taxes including CGST and SGST to the Central and State Government for development and building of the Nation and the State but the person like the petitioner is causing obstruction in the development of the Nation as well as the State by creating fake firms and causing huge loss of Rs.10.32,91,88,876/- to public exchequer. Such act of economic offence committed by such accused person like the petitioner, is required to be dealt with a different approach in the matter of bail.



9. The economic offence, having deep rooted conspiracies and involving huge loss of public exchequer, needs to be viewed seriously and considered as grave offence, affecting the economy of the Nation as a whole and thereby posing serious threat to the financial health of the Country. Economic offence is always committed by a person with calculated design profiting himself regardless of the consequences to the community.

10. The anti-social activities of persons of the upper strata in their occupations, which have become known as "white-collar crimes", have been given their due importance in the recent past years, after enactment of the CGST Act, 2017. The object of this Act is to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

11. During last few decades, our Country has seen the execution of various plannings involving huge expenditure by the Government for various nation building activities. The corrupt officers, businessmen and contractors never had been so good in making their true contribution in the development works of the nation. No doubt the country did make some progress but a big chunk of money earmarked for developmental projects has been pocketed by the "white-collar criminals" by doing such illegal activities of causing huge loss to our Country in crores of rupees.

12. This Court finds no substance in the arguments of the counsel for the petitioner that the petitioner is entitled to get bail merely because the alleged offence under Section 132 of the CGST Act, 2017 is punishable with an imprisonment of five years



and the same is triable by the Court of Magistrate First Class. There cannot be any straight jacket formula to decide the bail applications in favour to the accused merely because the alleged offence is triable by the Court of Judicial Magistrate First Class and the same is punishable with an imprisonment of five years only. Every bail application is required to be decided on its own facts and circumstances and the merits of the case. Every case has different facts and allegations and while deciding the bail applications, the Court has to keep the nature of evidence and accusation in mind and then decide the bail applications accordingly. Hon'ble Apex Court in the case of **Nimmagadda Prasad vs. Central Bureau of Investigation** reported in **2013(7) SCC 466** has held in para 24 as under:-

"24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not



expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

13. Considering the facts and circumstances of the case, the nature of allegations levelled against the petitioner and evidence collected by DGGI, seriousness of the offence and further considering the fact that the bail application of the similarly placed accused Anil Kumar has been rejected by the Co-ordinate Bench of this Court, this Court is not inclined to release the petitioner on bail.

14. Accordingly, this bail application deserves to be rejected and the same is hereby rejected.

15. The trial Court is expected to expedite the trial.

16. Before parting with the order, it is made clear that whatever has been observed by this Court is only for the purpose of deciding this bail application. The Trial Court would decide the matter independently, on the basis of the evidence available on the record, without being influenced by any of the observations made by this Court.

(ANOOP KUMAR DHAND),J

Aayush Sharma/-