

**2023 LiveLaw (SC) 345**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**KRISHNA MURARI; J., AHSANUDDIN AMANULLAH; J.**  
**CRIMINAL APPEAL NO.1193 OF 2023 (@ SLP (CRL.) NO. 2868/2023) 19 APRIL, 2023**  
**MAKHIJANI PUSHPAK HARISH versus THE STATE OF GUJARAT**

**Code of Criminal Procedure, 1973; Section 437 - Seeking pre-deposit of bank guarantee for grant of bail is unsustainable.**

(Arising out of impugned final judgment and order dated 12-01-2023 in CRLMA No. 710/2023 passed by the High Court of Gujarat at Ahmedabad)

*For Petitioner(s) Mr. Bharat Rai Chandani, Adv. Mr. Deepak Kumar Khokhar, Adv. Mr. Aneesh Mittal, AOR Mrs. Sonia Abrol, Adv.*

*For Respondent(s) Ms. Deepanwita Priyanka, Adv. Ms. Swati Ghildiyal, AOR Ms. Devyani Bhatt, Adv.*

**ORDER**

Leave granted.

2. We have heard learned counsel for the parties.
3. On being arrested on the basis of complaint filed by the Superintendent (Prevention) of Central GST and Central Excise, Vadodara, for the offences punishable under Sections 69, 132(1)(a) of the Central Goods and Services Act, 2017 (for short 'CGST'), the appellant made an application under Section 437 of the Code of Criminal Procedure, 1973 for seeking bail before the Court of Chief Judicial Magistrate, Vadodara.
4. The bail was granted subject to the condition that the appellant submits a bank guarantee of an amount of Rs.3 crores along with certain other conditions.
5. Aggrieved by the imposition of condition for deposit of bank guarantee, as a pre-deposit for a bail, the appellant approached the High Court by filing Criminal Miscellaneous Application No. 710 of 2023 which came to be disposed of by the order dated 12.01.2023 impugned herein, whereby the High Court modified the condition of furnishing bank guarantee of an amount of Rs.3 crore by reducing it to Rs.1.5 crore.
6. Such pre-condition of deposit of an amount or furnishing a bank guarantee has been the subject matter of consideration by this Court in a number of cases, where condition of pre-deposit has been held to be bad.
7. Reference may be made to an identical matter in Criminal Appeal No. 186/2023, *Subhash Chouhan Vs. Union of India*, this Court vide Judgment dated 20.01.2023 set aside the order passed by the High Court imposing a condition of deposit while granting bail to the appellant therein.
8. It is also pertinent to note that in the said case, the learned Additional Solicitor General appearing for the Union of India/State had fairly stated that such a condition cannot be imposed while granting bail. The statement made by the learned Additional Solicitor General is recorded in the judgment and order dated 20.01.2023.
9. The same view has been reaffirmed by this Court in another similar case, Criminal Appeal No. 523/2023, *Anatbhai Ashokbhai Shah Vs. State of Gujarat & Ors.* vide judgment and order dated 17<sup>th</sup> February, 2023.
10. Facts of the present case being identical to the facts of the aforesaid two Criminal appeals, we see no reason to deviate from the view taken in the aforesaid two cases.

11. Following the reasons given in the aforesaid judgments and orders, we are of the considered opinion that pre-condition of furnishing bank guarantee imposed by the High Court is not liable to be sustained and is hereby set aside.

12. The rest of the conditions imposed for grant of bail by the Chief Judicial Magistrate and upheld by the High Court are hereby sustained.

13. Accordingly, it is directed let the applicant be released on bail. The appeal, accordingly, stands allowed.

14. Pending application(s), if any, shall stand disposed of.

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