

[2023 LiveLaw \(SC\) 700](#)

IN THE SUPREME COURT OF INDIA

S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.

Special Leave to Appeal (Crl.) No. 898/2023; 23-08-2023

MURSALEEN TYAGI *versus* THE STATE OF UTTAR PRADESH & ANR.

Bail - The grant of bail subject to onerous conditions, is ordinarily in exceptional circumstances and cannot be as a matter of course.

(Arising out of impugned final judgment and order dated 02-12-2022 in CRMBA No. 50540/2021 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Sanjoy Ghose, Sr. Adv. Mr. Ayush Anand, Adv. Mr. Shubhendu Anand, Adv. Mr. Anant Sangal, Adv. Mr. Siddhartha Sinha, AOR

For Respondent(s) Mr. Sarvesh Singh Baghel, AOR Mr. Dhawal Uniyal, Adv. Mr. Arun Pratap Singh Rajawat, Adv. Ms. Sonia Mathur, Sr. Adv. Mr. Mukesh Kumar Maroria, AOR Mr. Shlok Chandra, Adv. Ms. Bani Dikshit, Adv. Ms. Sristi Mishra, Adv. Mr. Madhav Sinhal, Adv. Ms. Noor Rampal, Adv.

ORDER

The trial Court had in this case recorded by its order, the petitioner accused had agreed to deposit 10% of the amount allegedly claimed as Wrongful ITC Credit (Rs.70 Lakhs constituting 10% of Rs.7 Crores). This was the basis of criminal proceedings against him. The High Court affirmed that order and consequently the condition – (requiring deposit of 10% of the said alleged amount claimed as wrongful credit). This Court had issued notice on 30.01.2023 and directed that the petitioner ought not to be arrested. The record would reveal that the respondent had been given time to file counter affidavit.

Ms. Sonia Mathur, learned senior counsel appearing on behalf of second respondent again requested for some time. This Court is of the opinion that having regard to the previous opportunities granted and the circumstance that the petitioner had enjoyed liberty for the last 9 months or so, the request for further extension of time is not reasonable. It is, accordingly rejected.

The basis for the FIR in this case was alleged claim for wrongful ITC - which the revenue alleged was to the extent about Rs.12 Crores. That appears to be a matter of adjudication which is to be done in accordance with the provisions of the Central Goods and Services Tax Act, through the adjudicatory process. There is no information forthcoming as the fate of those proceedings – whether show cause notice was issued and, if so, what is the result thereof. The counter affidavit of the revenue, filed before the High Court is a part of the record. It reiterates the contents of the complaint and the alleged wrongful credit claimed by the petitioner.

The grant of bail subject to onerous conditions, is ordinarily in exceptional circumstances and cannot be as a matter of course, in “*Yashik Jindal vs. Union of India*” reported in 2023 SCC Online SC 417 under similar circumstances, this Court had observed as follows:

“3. This Court has deprecated imposition of such onerous conditions previously-notably in the recent order in “Subhash Chouhan v. Union of India” (Criminal Appeal No. 186 of 2023) decided on 20.01.2023.

4. Following the order in Subhash Chouhan v. Union of India, the condition requiring the petitioner to deposit Rs.2 crores is hereby set aside. The Court is informed that the petitioner had borrowed sums of money and deposited the same. It is open for them to seek withdrawal/refund of such amounts. They shall, however, comply with the other conditions imposed on them.”

Given the facts of this case, the Court is of the opinion that a similar course needs to be adopted. Accordingly, the interim order dated 30.01.2023 is hereby confirmed. The petitioner shall be enlarged on bail subject to such terms and conditions as the trial Court may impose, other than the condition of requiring pre-deposit.

The petition is allowed in the above terms.

All pending applications are disposed of.

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