

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC. APPLICATION NO. 23127 of 2021**

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NIRAJ JAIDEV ARYA  
Versus  
STATE OF GUJARAT  
=====

**Appearance:**

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MR YOGESH LAKHANI, SR. ADVOCATE WITH MR PANKAJ D  
RACHCHH (11401) for the Applicant(s) No. 1  
MR. RAHUL R DHOLAKIA (6765) for the Applicant(s) No. 1  
NOTICE SERVED BY DS for the Respondent(s) No. 2  
MR MITESH AMIN, PUBLIC PROSECUTOR WITH MR PRANAV TRIVEDI,  
ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1  
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**CORAM: HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 16/03/2022**

**ORAL ORDER**

1. By this application filed under Section 439 of the Code of Criminal Procedure, the applicant has prayed to release him on regular bail in connection with the Memorandum of Arrest dated 30.11.2021 in File No. DCST/Enf.-10/Rajkot/AC-3/UT LLP/2021-22 for the alleged offences under Section 132(1)(c) of the Gujarat Goods and Services Tax Act 2017 (for short, “the GGST Act”) and Central Goods and Services Tax Act 2017 (for short, “the CGST Act”) punishable under Section 132(1)(i) of the GGST Act and CGST Act.

2. Mr. Y. S. Lakhani, learned Senior Advocate appearing with Mr. Pankaj D. Rachchh and Mr. Rahul Dholakia for the applicant, submitted that the applicant herein is a designated Partner of one “Utkarsh Ispat LLP”, which is engaged in the

business of purchasing mild steel scrap and thereafter, converting it into mild steel Billet. On 19.11.2021 the respondent No.2 conducted a search and seizure operation at the factory and office premises of the LLP as also at the residence of the applicant on the ground that several purchase transactions had been made from fictitious entities. It was alleged that the applicant had shown fake purchases from 24 fictitious entities to the tune of Rs.172.36 Crores and had thereby, availed illegal Input Tax Credit to the tune of Rs.31.02 Crores.

2.1 It was submitted by the learned Senior Advocate that the applicant is the Managing Director of the firm and is looking after its day-to-day affairs. The Office of respondent No.2 authority had issued summons to the firm in the month of December 2021 and in response thereof, the firm gave its reply along with all necessary documents. The applicant was questioned on 19.11.2021 and 20.11.2021 and was, thereafter, served with the arrest memo dated 30.11.2021. In the interregnum, the applicant had suffered chest pain and was, therefore, admitted to the Hospital in Rajkot on 21.11.2021. On the next day, i.e. on 22.11.2021, the applicant was shifted to the Gujarat Cancer Institute, Ahmedabad as he was diagnosed with Prostrate Cancer.

2.2 Learned Senior Advocate Mr. Lakhani took the Court

through the documents on record to submit that all the relevant documents relating to the goods as also the vehicles along with their photographs were made available to the tax authority. The vehicles loaded with the goods had approached the way-bridge and after following due process, the goods were unloaded in the factory premises. It is alleged against the applicant that out of the 270 firms with which the applicant was doing business, 41 firms were shell companies and that false / fabricated documents were generated for the purpose of availing ineligible Input Tax Credit. However, from amongst the said 41 firms, the applicant's firm had received goods in 1,145 different Trucks, which had undertaken 4,896 trips in all for delivering the goods.

2.3 It is further submitted that goods worth Rs.225 Crores were received with genuine legal documents, which are also reflected on the Government portal and the applicant's firm has paid Rs.40 Crores as GST through the banking channels. It is contended that had the applicant's firm generated false / fabricated documents for availing illegal Input Tax Credit, then 41 firms should have been arraigned as accused. If the applicant's firm has committed fraud by receiving kick-backs through 'Aangadia' sources, then the same is required to be fortified from the statements of such 'Aangadia' sources. The statements of the transport service providers should also have been recorded to substantiate the allegation that the goods

were not actually transported to the factory premises of the applicant. Only those goods, which were tested in Laboratories, were delivered at the factory premises of the applicant and E-way bills were generated only in respect of such goods. Thus, at the factory premises of the applicant, a complete system was in place in respect of every consignment of goods that arrived at the factory.

2.4 Learned Senior Advocate Mr. Lakhani submitted that all the transaction entered into by the applicant are genuine transactions and that the applicant has all necessary documents in his possession to fortify his claim. The applicant cannot be held liable for any fraudulent act committed by any of the dealers (sellers) from whom he has purchased the goods. While relying upon the purport and object of the GGST Act and CGST Act, it was submitted that the Act has envisaged the need to restrict the denial of Input Tax Credit only to the selling dealers who have failed to deposit the tax collected by them and not to punish the bona fide purchasing dealers. The Act nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such fraudulent act or event. In the absence of any malafide intention, connivance or wrongful association of the applicant with the selling dealer or any dealer earlier thereto, no liability can be imposed on the applicant on the principle of vicarious liability. If it is held that the person who does not

deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity and such a construction has to be avoided. It was, accordingly, urged that this is a fit case where discretion may be exercised in favour of the applicant.

2.5 The learned Senior Advocate took the Court through the documents on record to submit that necessary invoices / bills along with all relevant particulars, including the Registration Number and photographs of Trucks, details of goods, E-way bills of the seller relating to corresponding dates, were produced before the authority to show that no fraud has been committed by the applicant. He pointed out that the monthly expenditure incurred by the factory towards electricity bill alone runs to the tune of Rs.2 Crores. Further, for the alleged evasion of Rs.41 Crores of Input Tax Credit, the Department had attached immovable properties of the applicant worth Rs.57 Crores, which is much beyond the alleged demand. Out of the properties so attached, this Court has ordered detachment of properties worth Rs.13 Crores in separate proceedings. Therefore, properties worth Rs.44 Crores are still under attachment with the respondent Department, which would be sufficient to safeguard its interest. It was, therefore, urged that the entire action of the respondent Department is without any basis.

2.6 It was further submitted by the learned Senior Advocate that from the transactions entered into by the applicant's firm with different Companies, the Department has attempted to show that the applicant's firm was acting in connivance with firms, named Blue Star Trading Co. Ltd., Sabar Resources Ltd., Royal Trading Company and M.M. Trading Company. It is contended that the Department has to establish from documentary evidence that such connivance existed, since it would not be possible for the applicant's firm to verify the transactions entered into by the said Companies when they upload relevant documents on the Government portal and also when they despatch goods from their factories. The applicant's firm cannot examine the transactions of each and every seller, who would have illegally claimed Input Tax Credit from the Government. Hence, it was urged that discretion may be exercised in favour of the applicant by enlarging him on regular bail.

2.7 Learned Senior Advocate Mr. Lakhani submitted that the maximum sentence for the offence in question is five years and the offence is compoundable in view of the provisions of section 138 of the GGST Act. The applicant was arrested in November 2021 and he has cooperated with the investigation all throughout. The applicant is reported to be suffering from Prostrate Cancer and is, presently, hospitalized.

3. Mr. Mitesh Amin, learned Public Prosecutor, relied upon the Affidavit-in-reply filed on behalf of original complainant-tax authority and submitted that during the recent investigations carried out by the State GST Department, several entities, which were never in existence, had shown their outward supply to various beneficiaries, including “Utkarsh Ispat LLP”, which is the firm belonging to the applicant herein. Therefore, discreet inquiry was carried out on all the purchases of “Utkarsh Ispat LLP” and it was found that the said firm had shown voluminous purchase transactions from fictitious entities. Search operations were carried out, which revealed the creation of numerous fictitious firms issuing fake invoices to “Utkarsh Ispat LLP” and subsequently, search u/s.67(2) of the said Act was carried out. From a primary scrutiny of the books of accounts and the evidence collected from the search operations, it was found that “Utkarsh Ispat LLP” had indulged in the activity of showing fake purchase transactions in its books of accounts leading to wrongful availment of ineligible Input Tax Credit. A huge cartel is working in collusion with the ill-intention to siphon-off the legally payable dues and thereby, causing huge loss to the Government exchequer.

3.1 Learned Public Prosecutor drew attention of the Court to the particulars of firms purported to be fictitious firms and

from whom the applicant is alleged to have made fake purchase transactions. He submitted that the applicant's firm had shown fake purchases to the tune of Rs.172.36 Crores from 24 fictitious entities and had thereby, availed ineligible Input Tax Credit to the tune of Rs.31.02 Crores. On further inquiry from the 41 companies, 30 more companies, who appear to be fictitious, are under investigation. The *modus operandi* of the applicant's firm is that it used to purchase raw materials from the grey market, without any invoices and it would obtain fake invoices from bogus firms to justify the final products. Such firms would be entities, who have no place of business or are merely in the activity of issuing fake invoices without physical movement of goods.

3.2 The learned Public Prosecutor further submitted that the case involves a larger conspiracy relating to evasion of crores of rupees of tax money involving several accused. Those who have been arrested have admitted their involvement in the fake billing activity and have also admitted that they had issued the fake invoices, without any actual physical movement of goods from the firms operated by their syndicate. They have admitted that their role was to issue fake invoices, E-way bills and to convert the RTGS payment into cash and to return it to the beneficiaries. It was submitted that detailed investigation in respect of the money trail in the applicant's firm is under progress and therefore, the discretion of regular bail may not



be exercised in favour of the applicant. While relying upon the principle laid down by the Apex Court in the case of *Nimmagadda Prasad v. C.B.I., (2013) 7 SCC 466*, it was submitted that the applicant is alleged to have committed grave economic offence, which is detrimental to the financial health of the country and hence, no discretion may be exercised in his favour.

3.3 It was contended by the learned Public Prosecutor that everything was happening under the conscious knowledge of the applicant and that he was mindful of the fact that he was dealing with a chain of shell companies, which were utilized for the purpose of getting the money back through ‘angadia’ service. The applicant has failed to give any satisfactory explanation qua the same. The mobile squad of the respondent Department had demanded the E-way bills from the drivers of the Trucks utilized for transporting the goods; however, discrepancies were found in the journey details inasmuch as the duration of journey beginning from the place from where the goods were loaded into the Trucks upto the place where the goods were unloaded did not match.

3.4 It was submitted by the learned Public Prosecutor that investigation was also carried out at the residence of the Chartered Accountant & In-House Consultant of “Utkarsh Ispat LLP” and many objectional and questionable documents related

to the said firm were found. There are allegations of tampering with the relevant bills against the Chartered Accountant & In-House Consultant of the applicant's firm at the time of recording his statement.

3.5 The learned Public Prosecutor further submitted that the applicant has been arrested u/s. 69 of the Act and during the search proceedings as also during his investigation at Nadiad, the applicant has not rendered any cooperation. He submitted that the investigation is at a very crucial stage as there is a likelihood that more firms may be found to be fictitious as the investigation progresses. One of the accused, named Mohammad Tata, who is alleged to have played a major role, is absconding. The Directors of the firm – Madhav Copper Ltd. are also absconding. The applicant is an influential person and financially sound. Therefore, his release from jail at this stage, may hamper the investigation in a big way. It was, therefore, urged that the present application may be rejected.

4. Heard learned advocates on both the sides and perused the material produced on record. In the impugned arrest memo, the allegation against the applicant is of committing offence under section 132(1)(c) of the GGST Act & CGST Act. Section 132 of the GGST Act is pari materia to the provisions under the CGST Act. It relates to "Punishment for certain offences". For ready reference, section 132(1) is reproduced

hereunder;

**“Section 132.(1) - Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offence, namely :-**

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention 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 utilization of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns

himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”

5. The applicant is alleged to have fraudulently claimed input tax credit to the tune of Rs.31.02 Crores by showing fake purchases from 24 fictitious entities to the tune of Rs.172.36 Crores. In pursuance of the summons issued by the respondent-tax authority in December 2021, the applicant appears to have supplied documentary evidence to the complainant-tax authority relating to the consignment of goods as also the vehicles used for transporting the goods. It is the say of the respondent-tax authority that it is seized with a list of fictitious firms from whom the applicant's firm is said to have made fake purchase transactions. However, in this petition filed under Section 439 of Cr.P.C., this Court is not required to go into the veracity of the claims made by either side. Whether or not the applicant has availed input tax credit by showing fake purchases from fictitious firms would be a matter of trial.

6. The offence alleged against the applicant is economic

offence, which has resulted in loss to the State exchequer. Of course, economic offences are grave in nature, being a class apart, which arises out of deep-rooted conspiracies and therefore, the effect on the community as a whole is to be kept in view while consideration for bail is made. But, at the same time, seriousness of charge is not the only relevant factor to be considered while dealing with bail applications : the other relevant factor that is also required to be taken note of is the punishment that could be imposed after trial and conviction. Under the provisions of the GGST Act and CGST Act, the punishment prescribed for offence under section 132(1) (c) is imprisonment for a term which may extend to Five years and with fine. The alleged offence is triable by the Magisterial Court where, even the pre-charge evidence is required to be recorded.

7. In **P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791**, the Apex Court held as under:

“22. The learned senior counsel for the appellant has also placed reliance on the decision in *Sanjay Chandra vs. CBI, (2012) 1 SCC 40* with specific reference to paragraph 39, which reads as hereunder:

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State

exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.”

The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration.

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on

the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

8. During the course of arguments, it was pointed out by the learned Senior Advocate appearing for the applicant that the respondent-Department has already attached immovable property belonging to the applicant in excess of the amount of alleged evasion or fraudulent claim of input tax credit made by him. If that be so, then the interest of the respondent-Department is already protected. The provisions of Section 138 of the GGST Act & CGST Act provide for “compounding of



offences”. Under sub-section (1) of section 138, any offence under the Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment by the person accused of the offence to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed provided that such power of compounding shall be available once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 as also the offences specified in clause (l), which are relatable to offences specified in clauses (a) to (f) of the said sub-section. The Court is informed that except the impugned complaint, no other complaint under the GGST Act or CGST Act has been registered against the applicant. The applicant is reported to be suffering from Prostrate Cancer and is presently, undergoing treatment at Nadiad in pursuance of the order dated 05.01.2022 passed by this Court.

9. Considering the statutory limit provided under the GGST Act & CGST Act for filing complaint as also the facts and circumstances of the case and without discussing the evidence in detail, this Court is inclined to grant regular bail to the applicant. In the result, the application is allowed and the applicant is ordered to be enlarged on regular bail in connection with the Memorandum of Arrest dated 30.11.2021 in File No. DCST/Enf.-10/Rajkot/AC-3/UT LLP/2021-22 on

executing a personal bond of Rs.2,00,000/- with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall:

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injurious to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the concerned trial court;
- [e] furnish the present address of residence to the investigating agency and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

9.1 The authorities shall release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the trial Court concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

9.2 Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court / authority by Fax or Email forthwith.