

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 2455 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**JATINBHAI PRAFULBHAI KAKKAD**

Versus

**STATE OF GUJARAT & ANR.**

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**Appearance:**

MR. NIRUPAM D. NANAVATY, LD. SR. ADV. WITH MR. APURVA N MEHTA(7202) for the Applicant(s) No. 1

MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 2

MR. L.B. DABHI, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Date : 05/03/2024****CAV JUDGMENT**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being DGGI/INV/CM/25/2022 registered

with the Directorate General of GST Intelligence, Rajkot of the offence punishable under Sections 132(1)(b) and (1) of the Central Goods & Services Tax Act, 2017.

2. Learned senior advocate Mr. Nirupam D. Nanavaty assisted by learned advocate Mr. Apurva Mehta appearing for the applicant has submitted that the applicant-accused was arrested on 07.11.2023 and is in jail ever since. Learned senior advocate Mr. Nanavaty has also submitted that the investigation has already been completed and charge-sheet has also been filed. It is submitted that the applicant is a proprietor of M/s. Remgold International duly registered under the CGST Act and is indulged in the business of trading and brokerage at Rajkot and is no way connected with the instant case and has been falsely arraigned as an accused on the allegation that the applicant in connivance with the other individually indicted accused persons had allegedly issued GST invoices without any supply of the goods to the buyers on commission basis causing loss of Rs.33 crores and odd to the government exchequer.

2.1 Learned senior advocate Mr. Nanavaty submits that on 29.04.2022 and 22.02.2023 the officials of the Directorate General of Goods & Services Tax Intelligence, Rajkot Regional Unit, Rajkot (DGGI in short) carried out a search at the business premises of the applicant and also searched the residential premises of the applicant on 25.07.2022 and during the search procedure, full cooperation was extended by the applicant-accused by providing all the information as sought for by the DGGI. The documentary as well as electronic

evidences have also been seized. Then, after closure of the search and seizure proceedings, the applicant-accused subpoenaed by the respondent Office under Section 70 of the Central Goods & Services Tax Act, 2017 (henceforth referred to as "CGST") for recording of his statement. It is also submitted that, therefore, apprehending his arrest, the applicant preferred an application for anticipatory bail before the Sessions Court which resulted in rejection. Dissatisfied with the order of rejection, the applicant approached this Court with an application seeking pre-arrest bail, which ultimately came to be withdrawn. Learned senior advocate Mr. Nanavaty would submit that meanwhile, the applicant-accused got arrested by the Bhavnagar Police in connection with some other offences and on the basis of transfer warrant, the respondent-authority got the custody of the applicant-accused. It is further submitted that the purpose of arrest, when the applicant was cooperating, poses a question regarding the malicious intent of the prosecuting authority because while rendering his cooperation, the applicant was coerced into signing several statements and documents by the investigators. It is pointed out that offences under Section 132 (1) (b) and 132(1)(1) of the CGST Act, 2017 provides for a maximum punishment for 5 years and is triable by the learned Magistrate of First Class. The applicant is in custody since 07.11.2023 and no further detention is warranted. He is not a responsible person either as a proprietor or a person responsible for the running of any proprietary concern and no notice was issued under Section 73 of the CGST Act, 2017, seeking explanation from the applicant. It is moreso submitted

that before making an arrest of a person, the authority ought to have followed the statutory procedure as provided under the CGST Act.

2.2 Learned senior advocate Mr. Nanavaty submits that the applicant-accused is a reputed businessman and has nothing to do with the present offence. The applicant-accused himself shown willingness to appear before the authority for the purpose of recording of his statement. The applicant does not have any connection with the alleged bogus firms mentioned in the production report. It is further submitted that the applicant fully cooperated to the investigators at the time of search and seizure procedure and all the documentary as well as electronic evidences have already been recovered by the investigator and thus no further recovery or discovery is pending against the applicant-accused. It is further submitted that the investigator has not been able to produce any incriminating material against the applicant-accused establishing his nexus with the instant felony, except the confessional statement of the applicant and other co-accused. Learned senior advocate Mr. Nanavaty would further submit that the present one is the sole offence ever registered against the applicant-accused under the provisions of the CGST Act. There are two other offences registered against the applicant-accused under the provisions of the Indian Penal Code, however, in both those offences, the applicant-accused has already been bailed out. It has been further submitted that as per the tenets of law laid down by the Hon'ble Apex Court in the case of Satender Kumar Antil vs. CBI & Anr, Misc. Application No.1849 of 2021 in Special Leave Petition (Crl.)

No.5191 of 2021 decided on 11.07.2022, where there is non-compliance of Sections 41 and 41A of the Code, the applicant is entitled to bail. Moreover, number of complaints have been filed by the authority for the very same offence against different individuals with the same sort of allegations, of which, Shri Vaibhav Ghanshyambhai Paragda, Hitesh Prabhudas Lodhiya and Raj Prashantbhai Suchak, having more or less the same role, have already been enlarged on bail by the different Coordinate Bench of this Court.

2.3 In such circumstances, referred to above, learned senior advocate Mr. Nanavaty prays that there being merit in his application, the same be allowed and the applicant-accused be released on bail.

3. In rebuttal, learned advocate Mr. Nikunt Raval appearing for the original complainant has submitted that from the statements of the applicant and other co-accused persons, the allegations against the applicant in the complaint are fully proved. The applicant has admitted his active role in the alleged offence. Fraudulent availment and utilization of input tax credit of more than Rs.5 crore has been done by the applicant and offence alleged is cognizable and non-bailable as per Section 132 (5) of CGST Act. In the search, at the premises of the applicant both residential as well as business, various incriminating documents along with one AIO (All in One) were recovered. The Punchnama was made in accordance with law and there was sufficient material against the applicant to implicate him in this case. It is further submitted that the complaints filed against the applicant and the other co-

accused are within time.

3.1 Learned advocate Mr. Raval has submitted that the present applicant-accused, in connivance with the other fellow accused of the syndicate, planned a conspiracy for fraudulently availing Input Tax Credit by issuing fake invoices in the name of the non-existing firms without affecting any physical transaction and thereby committed a serious economic offence causing loss of crores of rupees to the government exchequer. It is moreso submitted that the applicant-accused is a part of the organized syndicate indulging in issuance of bogus and fake invoices in the name of the non-existing firms just with a view to dodged the Government of its legitimate GST revenue. Learned advocate Mr. Raval would further submit that one of the perpetrators, namely, Vaibhav Ghanshyambhai Pragada, in his statement recorded on 27.04.2022, has admitted that under the instructions of the present applicant-accused, he generated fake invoices and then sent to the other accused of the same syndicate on commission basis. It has been submitted that an organized syndicate is being run by number of fraudsters who are aiding and abetting each other in providing fake invoices to defraud the Government revenue. Learned advocate Mr. Raval has further submitted that apart from the present offence, the applicant-accused has also been booked in two other offences under the provisions of the IPC. It is submitted that the applicant is one of the conspirators in the scam of issuing fake invoices without supply of the goods and availing and utilising the ITC of Rs.33 Crores and odd. Learned advocate Mr. Raval submits that since the amount involved is more than Rs.500 Lakh, the said offences are cognizable and

non-bailable as per section 132(1)(i) and 132(5) of the CGST Act, 2017 and therefore urged not to exercise discretion in favour of the applicant-accused.

3.2 Learned advocate Mr. Raval further contended that the evidence collected so far clearly indicates that the accused is the co-conspirator in creating fake firms who subsequently defrauded the government exchequer to the tune of Rs.33 Crores and odd. Further, from the statement of other fellow accused of the same syndicate, it clearly appears that the accused is operator of non-existent firms and directly involved in this scam. He submits that considering the nature of offence committed by the applicant being a part of huge scam and the fact that the other stake holders or beneficiaries of said illegal activities of availing and utilizing bogus ITC on the basis of invoices without receipt of goods are also under investigation, if the applicant is released on bail, he may tamper with the evidence and influence other stakeholders or witnesses in the present offence.

3.3 In such circumstances, referred to above, learned advocate Mr. Raval prays that there being no merit in the present application, the same be rejected.

4. The learned APP appearing on behalf of the respondent-State has also opposed grant of regular bail looking to the nature and gravity of the offence and has adopted all the arguments advanced by the learned advocate appearing for the original complainant. It is, therefore, submitted that considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not

required to be exercised in favour of the applicant-accused.

5. Heard the learned counsel appearing for the respective parties and perused the record.

6. After hearing the rival contentions, this Court finds that there is no dispute that the applicant is involved in an economic offence of considerable magnitude and gravity. The department has already filed complaint against the applicant, wherein list of documentary evidences has also been furnished. The proprietors of other firms have also been made witnesses in the complaint, who were also the beneficiary of the allegedly illegal conduct of the applicant. The evidence collected against the applicant has been described in the complaint. The offences with which the applicant-accused has been indicted, are all exclusively triable by the Court of Magistrate. The applicant is in jail since 07.11.2023 and there is no allegation that he is having any past criminal history of any economic offence against him. The Hon'ble Supreme Court in case of **Sanjay Chandra Vs. CBI**, [2012 1 SCC 40], has referred the case of **State of Kerala Vs. Raneef**, [(2011) 1 SCC 784], to observe that in deciding the bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Here, taking into consideration the course of investigation adopted by the Department and the evidences so collected, the trial may take considerable time and thus it may happen, if nixed the bail, that the judicial custody of the applicant would be prolonged beyond the statutory period of punishment of five years as provided under the Act.

7. Section 132(1)(i) provides for punishment 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; and section 132(2) provides that, where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine. Section 138 of the Act makes provision for compounding of offences under the Act, even after the institution of prosecution, on payment by the person accused of the offence, such compounding amount in such manner as may be prescribed. The compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences, on payment of compounding amount as may be determined by the commissioner, the criminal proceeding already initiated in respect of the said offence shall stand abated.

8. Taking into consideration the aforesaid provisions of law and the fact that the Commissioner is empowered to recover the due amount and propose for abating the proceedings and as the trial will take its own time to conclude, this Court deems it proper to exercise discretion in favour of the applicant-accused.

9. Only on the ground of seriousness of the offence, the applicant-accused cannot be deprived of his legitimate right to be released on bail pending trial, as held by the Supreme Court

in the case of **Sanjay Chandra vs. Central Bureau of Investigation**, (2012) 1 SCC 40 in the following terms:

*“23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*

*24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor; the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice.*

*25. The provision of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It*

*transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual”.*

10. Keeping in mind the nature of the offence, arguments canvassed by the learned counsel for the respective parties, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of law laid down by the Hon’ble Apex Court in the case of ***Dataram Singh Vs. State of U.P. and another***, reported in (2018)3 SCC 22 as also the judgment delivered by the Hon’ble Apex Court in a recent past in the case of ***Satendra Kumar Antil Vs. C.B.I.***, S.L.P. (CRL.) No. 5191 of 2021, decided on 11.7.2022, and without touching the merits of the matter, I am of the view that the applicant has made out a case for bail.

11. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being DGGI/INV/CM/25/2022 registered with the Directorate General of GST Intelligence, Rajkot, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) 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 the State of Gujarat without prior permission of the Sessions Judge concerned;
- [e] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;
- [f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

12. The authorities will 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 Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

**(DIVYESH A. JOSHI,J)**

VAHID