

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - BEFORE CHARGESHEET) NO. 778 of 2024**

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PARAG NATHALAL HARIA

Versus

STATE OF GUJARAT

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Appearance:

MR. N.D.NANAVATI, SENIOR ADVOCATE with MR. APURVA N
MEHTA(7202) for the Applicant(s) No. 1

MS HETVI H SANCHETI(5618) for the Respondent(s) No. 2

MR. L.B.DABHI,App for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 12/02/2024****ORAL ORDER**

1. The Applicant has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in connection with F.No. GEXCOM / AE / INV / GST / 8107 / 2023 - AE / 19.12.2023 registered with Inspector (Anti Evasion), CGST, Rajkot for the offences punishable under Sections 132(1)(b), 132(1) (c) and 132(1)(1) of the Central Goods and Service Tax Act, 2017.

2. Heard learned Senior Advocate Mr. N.D.Nanavaty appearing with learned Advocate Mr. Apurva N. Mehta for the Applicant, learned Advocate Ms. Hetvi H. Sancheti appearing on behalf of Respondent No.2 - Inspector (Anti Evasion) Central Excise & CGST HQ, Rajkot and learned APP Mr. L.B.Dabhi appearing on behalf of the Respondent - State.

3. Learned Advocate for the Applicant has submitted that the Applicant is involved in the legitimate business of trading in copper scrap, brass scrap, etc. and is not involved in any kind of illegitimate activities. The Applicant has



done purchases and sales through valid tax invoices, delivery of the goods has been taken off and the transactions have been done through banking channels. The registration of all the suppliers were also live and active when the purchases were effected and all the documents demonstrating genuineness of the transactions including proof of delivery are already in the possession of the Respondent. The electronic records are also with the Respondent and no further recovery is pending against the Applicant. It is further submitted by learned Senior Advocate Mr. N.D.Nanavaty that the Complainant has not produced any incriminating material to show that the Applicant has committed any such offence and there is no direct material linking the Applicant to the aforementioned offences except the confessional statement obtained under duress. It is further stated that the Applicant has fully cooperated the authorities and the investigation qua the Applicant is already completed. There are no past antecedents registered against the Applicant. It is further submitted that no monetary benefit has accrued to the present Applicant in the present offence in question. He has further submitted that the Applicant has good reputation in the society and no useful purpose would be served by keeping the applicant in jail for indefinite period. It is further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court if released on bail.

4. Learned Advocate Ms. Hetvi Sancheti appearing for Respondent No.2 has opposed the Application contending inter alia that the fraud in question is of huge amount in the sum of more than Rs.67.72 Crores, which is a systematic fraud and there are other similar such transactions had taken place previously also. She has tendered an Affidavit on behalf of the Respondent No.2 and submitted that fictitious firms were created and opened in the name of the present Applicant and his wife and the benefit of input tax credit was availed in the names of the said fictitious firms. She therefore submitted to dismiss the present Application. She has placed on record the Affidavit opposing the



present Application which is ordered to be taken on record. Affidavit in reply is ordered to be taken on record.

5. Learned APP has opposed the present application for grant of regular bail and submitted that looking to the nature of offence this Court may not exercise the discretion in favour of the applicant and the Application may be dismissed.

6. Heard learned Advocates for the parties and perused the record.

7. From the record, it emerges that the investigation is over and the charge sheet is also filed so also considering the nature of offence and the role attributed to the present Applicant, the Application deserves consideration. This Court has also considered the fact that Section 132 of the GST Act describes punishment of imprisonment which may extend to 5 Years and with fine for the offence alleged against the present Applicant. Considering this aspect, the Application deserves consideration. This court has also considered the following aspects:

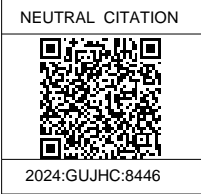
(a) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(b) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(c) That the Applicant is in custody since 19.12.2023.

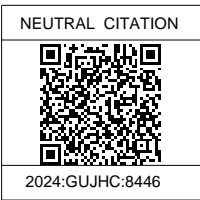
(d) The law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40.**

8. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the



case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

- (a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- (b) maintain law and order and not to indulge in any criminal activities.
- (c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.
- (d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.
- (e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.
- (f) not leave India without prior permission of the Trial Court
- (g) surrender passport, if any, to the Trial Court within a week. If the Applicant does not possess passport, shall file an Affidavit to that effect.



9. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

10. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if the Applicant is not required in connection with any other offence for the time being.

11. At the trial, the concerned trial Court shall not be influenced by the *prima facie* observations made by this Court in the present order.

12. Rule is made absolute. Direct service permitted.

(M. R. MENGDEY,J)

J.N.W