

Reserved on 13.07.2022

Delivered on 29.07.2022

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21848 of 2022

Applicant :- Paras Jain @ Rohan Jain

Opposite Party :- Union of India

Counsel for Applicant :- Prateek Kumar

Counsel for Opposite Party :- Dhananjay Awasthi, Parv Agarwal

Hon'ble Siddharth, J.

Heard Sri Ramakant Gaur, Advocate, holding brief of Sri Prateek Kumar, Advocate, assisted by Sri Samaksh Sharma and Ms. Sneha Agha, learned counsels for the applicant and Sri Parv Agarwal, learned counsel for the opposite party.

The instant bail application has been filed on behalf of the applicant, **Paras Jain @ Rohan Jain**, with a prayer to release him on bail in **Case Crime No. DGCI/GRU/INV/2665/2021**, under **Sections 132(1)(b) and 132(1)(i) of Central Goods and Services Tax Act, 2017, Directorate General, D.G.G.I., G.S.T., Ghaziabad Regional Unit, Meerut, Zonal Unit, Meerut**, during pendency of trial.

There are allegations in the complaint filed by the Directorate General of G.S.T. Intelligence, Zonal Unit, Meerut, regarding offences committed under Section 132 (1)(b) of the Central Goods and Services Tax Act, 2017 against the applicant and another co-accused, Jogvinder Singh, are that M/s ARJ Exim India availed fake Input Tax Credit (I.T.C.) of Rs.40.66 crores on the strength of invoices issued by non-existent firms, M/s JMJ Traders and Ms. Durga Traders, It was found that the aforesaid firms had passed on fraudulent I.T.C. to a common buyer, namely, M/s Balaji Enterprises, Delhi. The amount of fraudulent I.T.C. passed on by the two non-existent firms to M/s Balaji Enterprises is Rs.57.96 lacs. In the search conducted in the registered office of M/s Balaji

Enterprises, Sandeep Singhal, Proprietor of the firm stated that he has received some invoices for metal scrap from the applicant without receiving any goods. He admitted that bills from M/s Robin Traders, M/s Balaji Enterprises and other firms were sent by the applicant through whatsapp without supply of any goods and admitted his tax liability on account of availing fake I.T.C.. He voluntarily deposited Rs.3.14 crores on 17.02.2022. During further investigation, the applicant and co-accused, Jagvinder Singh, were found in one secret office at Shastri Nagar, New Delhi from where number of incriminating documents, like Adhar Cards, PAN Cards, forged rent agreements, forged electricity bills, etc., stamps of various firms, electronic devices and invoices of fake firms were recovered alongwith cash of Rs.35 lacs. Co-accused admitted managing and controlling number of firms by issuing fake invoices. The statement of Kunal Parcha, Accountant of Sri Jagvinder Singh was recorded, wherein he admitted issuing of fake bills on the direction of the accused. This fact was proved from the whatsapp of Kunal Parcha and the accused. The applicant admitted the allegations in his statement recorded under Section 70 of C.G.S.T. Act, 2017. It was found that they have issued fake invoices from 76 bogus firms to various business buyers without supplying of goods or services and have availed ineligible Input Tax Credit amounting to Rs.343 crores.

Learned counsel for the applicant has submitted that even if all the allegations levelled in the complaint are admitted the alleged receipt of money by the accused persons fall between 10,50,00,000/- to Rs.15,84,00,000/- and the department will gain 2.3% of invoices amount. The real beneficiaries of the fraudulently availed I.T.C. have not been investigated so far. CW-8, CW-10 and CW-11 are co-accused and they can be conferred the status of approvers under Section 306 Cr.P.C. by the court and before that

their statements cannot be admitted/read as evidence against the accused. He has pointed out to the Panchnama dated 17.02.2022, which shows that it was pre-signed by the Panch witnesses. There is big gap at the bottom of every page of Panchnama after its contents end. He has submitted that the Panchnamas were prepared in advance. All the statements are computer typed, which show that they were pre-typed and only signature of the accused were taken on their statements. Data allegedly collected from the mobile phone was done by a private firm and no certificate under Sections 145 of C.G.S.T. Act, 2017 is there. Such data cannot be read against the applicant at this stage. The private firm which examined the data is neither a examiner under Section 49-A of Income Tax Act nor authorized to conduct such analysis under Section 79-A of the Income Tax Act. The details of email-I.D. of the fake firms are not stated in the complaint.

He has further submitted that there is allegation in the complaint that the firms in dispute were not existent. However, name, address, and registration number generated by G.S.T. department of the aforesaid firms are mentioned in the complaint itself. The firms are granted registration number as per Rule 8 & 9 of C.G.S.T. Rules, 2017 after due verification of their credentials. He has disputed the Panchnama on the ground that the Panch witnesses belong to Ghaziabad, when the inspection was carried out at Delhi. He has submitted that the entire investigation was conducted by the prosecution on 17.2.2022 and 18.2.2022 leading to arrest of the applicant. The applicant was prolonged in illegal detention at the office of the DGGI. The entire investigation regarding allegedly illegal official transactions, whatsapp chats and hundreds of accounting entries was done. No demand notice for ascertaining tax claimed has been issued till date as per Section 74 C.G.S.T. Act. The offence alleged is punishable upto 5 years. The

applicant is in jail since 18.2.2022. No custodial interrogation of the applicant is required. The sanction for transaction accorded by the ADG, DGGI is based merely on his subjective satisfaction and not as per requirements of the Section 69(1) of the C.G.S.T. Act. The law of the Apex in the case of ***Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273*** has been violated. He has relied upon the judgement of the Apex Court in the case of ***Sanjay Chandra Vs. CBI, AIR 2012 SC 830***, regarding the object and purpose of bail and number of judgements of different High Courts in this regard and has submitted that applicant may be released on bail.

Learned counsel for opposite party has filed counter affidavit and 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, fake invoices, ledger of buyer firms, PAN Card, E-way bill, etc., were recovered. The Punchnama was made in accordance with law and there was sufficient material against the applicant to implicate him in this case. Kunal Parcha, accountant of the applicant and co-accused, Jagvinder Singh proved the *modus operandi* of the applicant. Sandeep Singhal, Proprietor of the firm, had admitted that he prepared fake invoices from the applicant and he voluntarily deposited the amount of Rs.6.36 crores towards ineligible Input Tax Credit availed by his firm. From the analysis of incriminating material recovered, the involvement of the applicant with 75 fake firms was discovered. No one turned up in response to the summons from 75 firms. The aforesaid firms have availed fraudulent I.T.C. of Rs.5,28,91,94,250/-. As per Section 145 of

CGST Act, 2017, hardcopies of information retrieved from digital devices are admissible and the arguments in this regard by the counsel for the applicant is not in accordance with law. The complaint has been filed against the applicant and other co-accused within time. He has further submitted that the case laws relied upon by the learned counsel for the applicant do not apply to the facts of the present case. He has relied upon the following judgments:-

- 1. *P.V. Ramana Reddu Vs. Union of India, 2019 (25) G.S.T.L. 185 (Telangana)***
- 2. *Ashok Kumar Vs. Commissioner, 2020 (41) G.S.T.L. J111 (SC)***
- 3. *Bhajan Lal Bishnoi Vs. The Superintendent, CRL OP NO. 7672 OF 2021 (Madras High Court)***
- 4. *Ajaj Aamad Vs. State of Orisa (CGST), 2021 (53) G.S.T.L. 390 (Ori.)***
- 5. *Sahil Jain Vs. Joint Commissioner, 2021 (54) G.S.T.L. 141 (P&H)***
- 6. *Paresh Nathalal Chauhan Vs. State of Gujarat, 2020 (37) G.S.T.L. 411 (Guj.)***

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 witnesses has been furnished. The proprietor of two firms, namely, Sri Shyam International, Delhi and M/s Balaji Enterprises 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 applicant is to be tried by the court of Special Chief Judicial Magistrate, Meerut. The alleged 75 non-existent firms could not be located till the filing of the complaint and if located the evidence collected from those firms could be led before the trial court. The applicant is in jail since 18.2.2022 and there is no allegation that he had any prior criminal history of any economic offence or otherwise 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, the evidence, so collected, the trial will take considerable time and it may happen, if denied bail, the judicial custody of applicant can be prolonged beyond the statutory period of punishment which is five years.

[Section 132\(1\)\(i\)](#) provides for punishment as that '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.

Taking into consideration the 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 finds this to be a fit case where discretion could be exercised in favour of the applicant.

The seriousness of the offences alone is not conclusive of the applicant's entitlement to bail, as held by the Supreme Court *inter alia* in **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 Bail

Appln. 21/2022 Page 6 of 7 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."

The applicant is in jail since 18.2.2022 and has no criminal history.

Keeping in view the nature of the offence, argument advanced on behalf of the parties, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of ***Dataram Singh Vs. State of U.P. and another reported in (2018)3 SCC 22 and recent judgement dated 11.7.2022 of the Apex Court in the case of Satendra Kumar Antil Vs. C.B.I., passed in S.L.P. (CRL.) No. 5191 of 2021*** and without expressing

any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified:-

1. The applicant will surrender his passport, if any, and not to leave the country without permission of the trial court concerned. In case, he has no passport he will file affidavit to this effect before this court.
2. The applicant will furnish bank guarantee of Rs. 50 lacs in favour of the opposite party which shall be forfeited in favour of opposite party in case of violation of any of conditions imposed in this order.
3. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
4. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
5. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
6. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of

liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail of applicant and forfeiture of the amount of Rs. 50 lacs furnished towards bank guarantee.

Order Date :- 29.07.2022

Ruchi Agrahari