

Judgment Reserved on 01-08-2022

Judgment Delivered on 01-09-2022

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21223 of 2022

Applicant :- Peeyush Kumar Jain

Opposite Party :- Union of India

Counsel for Applicant :- Rahul Agarwal, Malay Prasad

Counsel for Opposite Party :- Dhananjay Awasthi

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Anurag Khanna, the learned Senior Counsel assisted by Sri Rahul Agarwal, Ms. Tanya Makker, Sri. Malay Prasad, Ms. Saloni Mathur and Sri. Piyush Kant Shukla, the learned counsel for the applicant and Sri Dhananjay Awasthi and Sri Digvijay Nath Dubey, the learned Senior Standing Counsel for the Directorate General of Goods and Services Tax Intelligence (DGGI).
2. By means of the instant application, the applicant is seeking his release on bail in Criminal Case No. 7646 of 2022 in the Court of learned Special Chief Judicial Magistrate (Economic Offences) / Additional Metropolitan Magistrate-III, Kanpur Nagar, arising out of a complaint filed in respect of offence under Section 132 (1) (a) read with Section 132 (1) (i) and 132 (5) of the Central Goods and Services Tax Act, 2017.
3. Briefly stated, the facts of the case are that on 22-12-2021 the Officers of the DGGI started making a search on the residential and official premises of the applicant at Kannauj and Kanpur, which continued till 28-12-2021. Cash amounting to Rs. 196.57 Crores was seized from the applicant's premises besides recovery of 23 kilograms gold, which was handed over to the Officers of the Directorate of the Revenue Intelligence. The applicant was arrested on 26-12-2021.
4. On 22-02-2022, the DGGI filed a complaint before the learned Special Chief Judicial Magistrate (Economic Offences) / Additional

Metropolitan Magistrate-III, Kanpur Nagar against the applicant seeking his prosecution and punishment for committing the aforesaid offences. It has been stated in the complaint that the applicant is one of the partners in the firm M/S Odochem Industries and he used to operate and manage two proprietorship concerns namely Odosynth Inc., (of which the applicant's wife Smt. Kalpana Jain is the proprietor) and M/S Flora Naturale (of which Smt. Vijay Laxmi Jain, wife of Sri Ambrish Kumar Jain is the proprietor) and it was revealed during investigation that the aforesaid firms operated by the applicant along with his brother Ambrish Kumar Jain were collectively engaged in illicit supply of finished goods, namely perfumery compounds, without issuing any tax invoice and without payment of GST.

5. It has further been stated in the complaint that in his voluntary statement recorded on 25-26.12.2021, 06-07-08.01.2022 and 05.02.2022 under Section 70 of the CGST Act, 2017, the applicant had admitted having made illicit supply of perfumery compounds by the aforesaid firms and he had offered to pay Rs. 52 Crores towards his tax liability along with the applicable interest and penalty and that he has managed purchase of raw materials required for manufacturing of perfumery compounds without accounting for in the books and without payment of GST, but he has not disclosed the names and particulars of the buyers and sellers of the aforesaid firms.
6. As per the complaint averments, the amount of GST evasion far exceeds Rs. 500 lakhs prescribed under Section 132 (1) (i) of the Act and the offence committed by the applicant is punishable for a term which may extend to five years.
7. On 02-03-2022, the applicant filed an application before the learned Trial Court for being released on bail and on 05-02-2022, the Trial Court passed an order rejecting the bail application on the ground that the applicant is an active partner in all the three firms; that more than Rs. 196.58 Crores cash was seized from the applicant's premises; that the financial records of the firms showed different liability of tax than seized amount of cash and no reasonable explanation was provided for the huge amount of cash seized; that the applicant has neither denied

the ownership of the searched premises nor did he deny possession of the huge amount of the cash; that the matter is serious in nature and is very harmful to the economic health of the country and granting bail in such a matter would be likely to promote such type of modus-operandi in evasion of tax.

8. On 04-04-2022, the applicant filed an application before the Sessions Judge seeking his release on bail, and the learned Sessions Judge rejected the bail application by means of an order dated 28-04-2022 on similar grounds.
9. It has further been stated in the affidavit that the applicant is suffering from multiple illnesses like double vision, glaucoma, insomnia, hypertension, anxiety and blood pressure for which he is undergoing treatment.
10. The DGGI has filed a counter affidavit stating that during the searches conducted at the business and residential premises of the firms operated by the applicant along with his family members, unaccounted cash of Rs.196,57,02,539/- has been seized; that the applicant has admitted that the amount seized is the sales proceed of the goods clandestinely supplied by him without payment of tax and the applicant has paid Rs. 54.09 crores towards GST liability along with interest and penalty as per his own calculation, but as the investigations are still in progress, DGGI is yet to ascertain the final tax liabilities under Section 74 (7) of the CGST Act, 2017.
11. It has further been stated in the counter affidavit that the department has recovered several fake invoices and fictitious LRs (transport documents) evidencing clandestine supplies of taxable goods. Additionally, 23 Kgs of Gold bullions believed to be having foreign origin markings, have also been recovered from the residential premises of the applicant and separate proceedings have been initiated against the applicant in respect thereof under the provision of the Customs Act, 1962.
12. In the rejoinder affidavit filed on behalf of the applicant it has been stated that the alleged 'voluntary statement' of the applicant had been

obtained by the DGGI under duress and coercion and it was not voluntary and that the applicant is a person of clean antecedents and he is not a habitual offender.

13. The rejoinder affidavit further contains an averment that after the applicant's firm paid the tax and interest, the DGGI has released the goods that had been seized from the applicant's premises.
14. The rejoinder affidavit further contains that the prosecution complaint had been filed way back on 22-02-2022 and yet even the charges have not been framed till date and there appears to be no likelihood that the trial will commence soon.
15. It has further been stated in the rejoinder affidavit that in the counter affidavit filed by the DGGI before the Trial Court, it was categorically stated that since the applicant has not made any payment of tax, the plea of the applicant cannot be entertained. Now the applicant has paid the amount of tax along with interest and penalty, the DGGI is pleading that the voluntary payment of tax has no impact on the present proceedings, which stand is clearly and afterthought and a mischievous and deliberate attempt to keep the applicant incarcerated.
16. Regarding the DGGI's contention that it is yet to ascertain the tax liability of the assessment, it has been stated in the rejoinder affidavit that the assessment proceedings (which typically start with the issuance of a show-cause notice) have not even been initiated till date.
17. Sri. Anurag Khanna, the learned Senior Advocate for the applicant has submitted that the offences alleged carry a minimum punishment of six months' imprisonment and a maximum of five years' imprisonment and the offence is compoundable, which indicates that the offence is not grave. Moreover, mere gravity of the offence cannot be a ground to deny bail. He has further submitted that the applicant has already paid a sum of Rs.54.09 Crores towards tax, interest and penalty and he has undertaken to deposit the amount of any additional liability whereas the Department is yet to ascertain his tax liability. He has further submitted that since the applicant has already deposited the amount of tax, interest and penalty and the DGGI has seized the cash

amount of Rs. Rs.196,57,02,539/-, the interest of the Revenue as well as that of the public at large is protected; that the applicant has already spent more than 8 months in jail and during this period the department has not sought his custodial interrogation, which shows that his custody is not at all required. He has further submitted that investigation against the applicant stands completed and the trial is yet to commence and that the applicant cannot be kept in custody on the ground that investigation against the suppliers of the raw materials to the applicant and the buyers of the applicant is still pending.

18. Sri. Khanna has also submitted that the applicant does not have a passport and, therefore, he has not a flight risk. He has further submitted that the entire evidence in the present case is documentary in nature, which is already in possession of the department and the statement of the applicant has already been recorded and, therefore, there is no possibility of the applicant tampering with any evidence and moreover, a mere apprehension of the applicant tampering with the evidence is not a ground to deny bail to the applicant.
19. Before proceeding to decide the prayer for grant of bail, it would be apt to have a look at the following relevant statutory provisions contained in Section 132 and 138 of the Act: -

132. Punishment for certain offences.— (1) *Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, 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;*

* * *

- (ii) *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;*

* * *

shall be punishable—

- (iii) *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;

* * *

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

* * *

138. Compounding of offences.— *(1) Any offence under this 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 be, of such compounding amount in such manner as may be prescribed:*

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;*
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;*
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;*
- (d) a person who has been convicted for an offence under this Act by a court;*
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and*

(f) *any other class of persons or offences as may be prescribed:*

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

20. A bare perusal of the aforesaid provisions leave no room to doubt that that the offences alleged carry a minimum punishment of six months' imprisonment and a maximum of five years' imprisonment and Section 138 of the Act provides that the offence is compoundable.
21. Although the learned Counsel for the DGGI have contended that the applicant is also accused of committing offence under the Customs Act and the present case falls under clause (c) of the Proviso appended to Section 138 and it is not compoundable, but the aforesaid submission appears to be misconceived. For the aforesaid clause to be attracted, the person should have been accused of *committing an offence under this Act which is also an offence under any other law for the time being in force*. The allegations against the applicant which amount to an offence under the Customs Act, are not an offence under this act and *vice versa* and, therefore, clause (c) of the Proviso appended to Section 138 is not attracted in the present case.
22. The learned Counsel for the DGGI have also submitted that the applicant has not disclosed the names and particulars of his suppliers of raw material and, therefore, he is not co-operating in investigation and thereby he appears to have committed the offence under Section 132 (1) (k) of the Act. However, the complaint mentioned the

accusations against the applicant only under Section 132 (1) (a) read with Section 132 (1) (i) and 132 (5) and there is no accusation for committing an offence under Section 132 (1) (k) of the Act. Therefore, I am of the view that the offence alleged against the applicant is compoundable.

23. The law regarding grant of bail has been explained in numerous decisions of the Hon'ble Supreme Court and it will be apt to refer to a few of the relatively recent judgments on the subject. In the case of **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, the Hon'ble Supreme Court was pleased to reiterate the law of bail in the following words:—

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

* * *

*5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in **Nikesh Tarachand Shah v. Union of India** [(2018) 11 SCC 1] going back to the days of the Magna Carta. In that decision, reference was made to **Gurbaksh Singh Sibbia v. State of Punjab** [(1980) 2 SCC 565] in which it is observed that it was held way back in **Nagendra v. King-Emperor** [AIR 1924 Cal 476] that bail is not to be withheld as a punishment. Reference was also made to **Emperor v. Hutchinson** [AIR 1931 All 356] wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.”*

24. In **P. Chidambaram v. CBI**, (2020) 13 SCC 337, the Hon'ble Supreme court reiterated the following principles for grant of bail: -

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.*

25. In a recent decision in the case of ***Satender Kumar Antil v. Central Bureau of Investigation***, 2022 SCC OnLine SC 825, the Hon'ble Supreme Court has summarized and reiterated the law regarding grant of bail in economic offences, as laid down in its earlier decisions, in the following words:—

*“66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. **After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis.** Suffice it to state that law, as laid down in the following judgments, will govern the field:—*

Precedents

-P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791:

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 provide 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.***

-Sanjay Chandra v. CBI, (2012) 1 SCC 40:

*“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.***

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by

the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required. xxxxxxxxxx

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

(emphasis supplied)

26. In a recent decision of this Court in the case of **Nitin Verma versus Union of India and another**, 2022 Scc OnLine All 512, this Court granted bail to a person accused of committing offence under Section 132 (1) (b) and 132 (1) (i) of the CGST Act, 2017 where the allegation was that the total invoice value of the fake supplies made by the 126 bogus firms of the accused was Rs. 691.35 Crores and the total GST evasion involved in it is Rs. 100.30 Crores, after taking into consideration the legal position referred to in the last preceding paragraphs, on the following reasons: -

“28. Analyzing the facts of the case in light of the law laid explained in the case of Y. S. Jagan Mohan Reddy, Dataram Singh and Satender Kumar Antil (Supra), it has to be taken into consideration that (1) the applicant has been implicated on the basis of the statement of a co-accused Chandra Prakash Kriplani, who has already been granted bail by this Court; (2) earlier, the applicant himself had been granted anticipatory bail by this Court; (3) the applicant has no criminal history; (4) the department had initiated proceedings on 31.12.2019 by issuing a summons under Section 70 of CGST Act and after completion of the investigation, on 22.11.2021 the department has filed a complaint in the Court of Special Chief Judicial Magistrate, Agra and, therefore, it cannot be said that now the applicant is in

a position to influence the investigation of the case; (5) the applicant is languishing in jail since 26-09-2021; (6) the maximum punishment that can be imposed upon the applicant is five years' imprisonment and (7) the offence is compoundable as per the provision contained in Section 138 of the CGST Act, I am of the considered view that the applicant is entitled to be released on bail.”

27. In **Paras Jain versus Union of India**, Criminal Miscellaneous Bail Application No. 21848 of 2022, decided on 29-07-2022, wherein it was stated in the counter affidavit that “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/-.”, a co-ordinate Bench of this Court granted bail in an offence under Section 132 (1) (b) of the CGST Act, 2017, keeping in view the facts that the applicant was in jail since 18-02-2022, he had no criminal history, the offence is compoundable and the trial will take a its own time to conclude.
28. The learned Counsel for the DGGI have submitted that in the case of **Vimal Yashwantgiri Goswami versus State of Gujarat**, R/Special Civil Application No. 13679 of 2019 decided on 20-10-2019, the Gujarat High Court had declined to give any relief to the petitioner, as the case against him involving allegations of GST evasion was found to be serious in nature and the petitioners had not offered to compound the offence. In the aforesaid case, the relief sought by the petitioner which was declined by the High Court was stay of arrest of the petitioner. However on 28-04-2022, the Gujarat High Court has passed an order granting bail to the petitioner **Vimal Yashwantgiri Goswami versus State of Gujarat**, in its order reported in 2022 Scc OnLine Guj 713: -

“9. ___ Even, if the tax evasion is taken more than 5 crores, the maximum punishment which can be imposed is five years. It is not disputed by the department that if the tax evasion of the applicant is less than Rs. 5 crores, then it will be aailable offence as per the provisions of Section 132(1)(i) read with Sections 132(4) and 132(5) of the Gujarat GST Act and the Central GST Act, 2017. Considering the aforesaid observations, the applicant has carved out his case for grant of bail under the provision of section 438 of the Cr.P.C.”

29. The learned Counsel for the DGGI have placed reliance upon a judgment of the Chhattisgarh High Court in the case of **Basudev Mittal versus Union of India**, MCRC No. 3919 of 2022 decided on 15-07-2022 and the decision dated 24-12-2019 given by Calcutta High Court in **Arvind Kumar Munka versus Union of India**, CRM No. 10075 of 2019, in which the High Courts had denied bail to the accused. However, mere denial of bail by another High Court on the facts of a particular case, without laying down any proposition of law, would not amount to a binding precedent.
30. The position of law regarding grant of bail which emerges from the judgments of the Supreme Court referred to above, is that the basic jurisprudence relating to bail in economic offences 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. It is not advisable to categorize all the economic offences into one group and deny bail on that basis. One of the circumstances to consider the gravity of the offence is the term of sentence that is prescribed for the offence the accused is alleged to have committed. 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 provide so. While considering the prayer for grant of bail in any offence, including an economic offence, the Court has to consider: -
- (i) the nature of accusation and the severity of the punishment to which the party may be liable in the case of conviction and the nature of the materials relied upon by the prosecution;
 - (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
 - (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;
- (v) larger interest of the public or the State and similar other considerations.

A prayer for bail is not to be denied merely because of the sentiments of the community are against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

31. Having considered the facts and submissions made in light of the law laid down by the Hon'ble Supreme Court in various cases, which has been summarized in the preceding paragraphs and keeping in view that: -

- (i) the offences alleged carry a minimum punishment of six months' imprisonment and a maximum of five years' imprisonment and that the offences are compoundable, which indicates that the offences are not grave;
- (ii) The applicant has already paid a sum of Rs. 54.09 Crores towards tax, interest and penalty and he has undertaken to deposit the amount of any additional liability;
- (iii) the Department is yet to ascertain the applicant's tax liability;
- (iv) the amount of Rs.196,57,02,539/- seized by the DGGI from the applicant's premises is still lying with the Department and, therefore, the interest of the Revenue as well as that of the public at large is protected;
- (v) the applicant has already spent more than 8 months in jail and during this period the department has not sought his custodial

interrogation, which shows that his custody is not at all required;

- (vi) the trial is yet to commence;
- (vii) the applicant has no previous criminal history and he has already been granted bail in the case under the Customs Act;
- (viii) the applicant does not hold a passport and, therefore, he is not at a flight risk;
- (ix) Besides a mere vague allegation that the applicant may tamper with the evidence, no material is there to give rise to a reasonable apprehension that the applicant will misuse his liberty to subvert justice or tamper with the evidence or witnesses;

I find it a fit case to exercise this Court's discretion of granting bail to the applicant.

32. Let the applicant - **Peeyush Kumar Jain** be released on bail in Criminal Case No. 7646 of 2022 in the Court of the Special Chief Judicial Magistrate (Economic Offences) / Additional Metropolitan Magistrate-III, Kanpur Nagar, arising out of the complaint filed by DGGI in respect of offence under Section 132 (1) (a) read with Section 132 (1) (i) and 132 (5) of the Central Goods and Services Tax Act, 2017, on his furnishing a personal bond of Rs.10,00,000/- and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not influence any witness.
- (iii) The applicant will appear before the trial court on the date fixed, unless his personal presence is exempted, in which case he will appear through his Counsel.
- (iv) The applicant will 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 to any police officer or tamper with the evidence.

33. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the present order bail.

Order Date :- 01-09-2022

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