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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 900 of 2022

- Subhash Chouhan S/o Lalchand Chouhan Aged About 56 Years R/o 46/40, Madar Teresa Nagar, Camp - 1, Ward No. 21, Supela Bhilai, District Durg Chhattisgarh.

---- Applicant

Versus

1. Union Of India Through The Superintendent, Preventive Central And Central Excise GST, Central Tax Building, Dhamtari Road, Tikrapara District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through District Magistrate, Raipur Chhattisgarh.

---- Non-Applicant

For Applicant : Smt. Fouzia Mirza, Sr. Advocate with Shri Ali Afzal Mirza, Advocate.

For Non-Applicant No.1 : Shri Maneesh Sharma, Standing Counsel.

For Non-Applicant No.2 : Shri BP Banjare, Deputy GA.

Hon'ble Shri Deepak Kumar Tiwari, J

Order On Board

21/06/2022 :

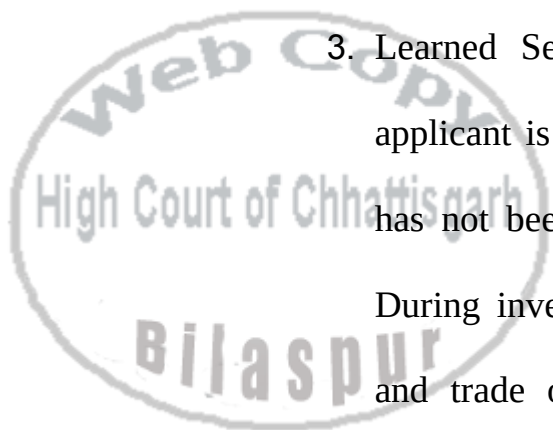
1. The applicant has preferred this application for grant of bail as he is arrested in connection with Crime No.88/GST/21-22 registered in Police Station Central GST, Raipur, (Preventive) District Raipur for offence under Sections 132 (1)(a) & 132 (1)(c), 132 (1)(1)(i) of the Central Goods and Service Tax Act, 2017 (for short 'the Act').
2. Case of the prosecution is that the applicant is the Proprietor of M/s



Minal Traders, Bhilai and is doing the business of Iron Trading. The applicant was arrested by the officers of the CGST on 27.10.2021 and after investigation, a complaint has been filed against the applicant on 24.12.2021 alleging that the applicant carried out purchases from different entities and wrongly availed Input Tax credit of Rs.6,95,32,472/- by procuring invoices from fake and fictitious firm and also supplied goods without payment of tax and without issuing invoices to the tune of Rs.27,70,559/-. Thus total Input Tax Credit availed and non-payment of tax is Rs.7,23,03,031/-.

3. Learned Senior Counsel for the applicant would submit that the applicant is innocent and has been falsely implicated. Due procedure has not been followed, as the offence triable is summons in nature.

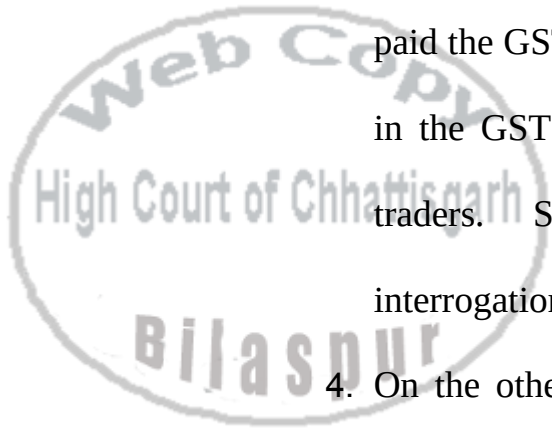
During investigation, all the necessary documents regarding business and trade of the applicant's firm were supplied to the concerned authorities, but were not considered in proper manner. She further submits that the offence under Section 138 of the Act is compoundable in nature and the offence up to the amount of Rs.5 crores, tax evasion is defined as bailable in character. Co-accused namely, Rohan Tanna and Abhishek Pandey have been granted bail by the co-ordinate Bench in MCRC Nos.6331/2021 and 6692/2021, vide order dated 21st December, 2021. The allegations relating to supply of goods without issuing invoices to the tune of Rs.27,70,559/- are false, as the tax has already been paid. Learned counsel further submits that the applicant's firm has been dealing with GST which was valid for all transactions, however,





later on it has been cancelled. She further submits that no notice has been issued in compliance of Section 74 of the Act. All the necessary cooperation to the investigation has been extended and the offence is punishable maximum up to 5 years. The applicant is in jail since 27th October, 2021 i.e. for more than 9 months. She also submits that it is settled law that in criminal jurisdiction, presumption of innocence has to be presumed. It is further submitted that in the GST portal, there is no system of cross-checking in their software for the traders who are wrongfully availing Input Tax Credit. As the earlier supplier has not paid the GST in proper manner, therefore, there is failure of mechanism in the GST Department and permitted wrong GST in number to the traders. She further submits that there is no need of custodial interrogation, therefore, the applicant may be released on bail.

4. On the other hand, learned Counsel for non-applicant No.1 strongly opposes the bail application and submits that the applicant has been found to be habitually involved in procuring fake invoices. Investigation is still going on and another firm has been detected through which the applicant has dealt with and caused loss to the exchequer. He further submits that the statement of the applicant was recorded on 27.10.2021 wherein he could not give satisfactory reply and sought to seek instructions from their Chartered Accountant. The Chartered Accountant has also not submitted any explanation to the Department about non-existent firm to whom the supply has been made by the present applicant by using fake transport bilties. The documents





collected prima facie establish that the applicant has violated the provisions of Section 16, 31 & 49 of the Act and thereby committed the offence under Section 132 (1)(1)(i) of the Act for violation of Section 132 (1)(a) and Section 132 (1)(c) of the Act. Learned counsel also relies on the ratio laid down by the Hon'ble Supreme Court in the matter of **P.V. Ramana Reddy Vs. Union of India** {2019 SCC OnLine TS 2516} and submits that the said matter has been confirmed by the Hon'ble Supreme Court in SLP (Cr) No.4430/2019. The Hon'ble Supreme Court observed that the High Courts while entertaining such requests in future, will keep in mind that the Supreme Court by order dated 27th May, 2019 passed in SLP (Cr) No.4430/2019 has dismissed the Special Leave Petition filed against the judgment and order of Telangana High Court in the similar matter. In the said matter, protection was denied to the petitioner. He also refers the judgment in the matter of **Nimmagadda Prasad Vs. Central Bureau of Investigation** {(2013) 7 SCC 466} and refers paras-23 to 25, which are reproduced here under:-

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In **State of Gujarat v. Mohanlal Jitmalji Porwal** {(1987) 2 SCC 364} this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p. 371, para 5)

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State





are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

5. In view of the aforesaid submissions, learned counsel prays that the bail application be rejected.
6. Countering the submissions, learned Senior Counsel for the applicant





would submit that the protection denied in the matter of **P.V. Ramana Reddy** (Supra) relates to pre-arrest protection whereas the present case relates to post-arrest bail. She also submits that the time already spent in jail is always a relevant consideration in the matter of grant of bail and only on the basis of economic offence, the offender should not be kept in jail for indefinite period. She further submits that though the applicant is in jail for the last 9 months, but till so far the Department has not completed its investigation and is still seeking time for further investigation, though the complaint has already been filed. Learned counsel for the applicant placed reliance on the Judgment in the matters of **Shri Vikas Bansal Vs. Union of India** {Bail application No.2381/2021, decided on 23.9.2021 by the Gauhati High Court} and **Tarun Jain Vs. Director General of GST**{Bail application No.3771/2021, decided on 26.11.2021 by the Delhi High Court}to submit that the Delhi High Court has granted anticipatory bail in a case involving tax evasion of Rs.72 crores. In the matter of **Nitin Verma Vs. State of UP & Another** {Criminal Misc. Anticipatory Bail Application No.4116/2020, decided on 5.1.2021}, the Allahabad High Court has also extended the benefit of anticipatory bail. Therefore, the applicant may be released on bail.

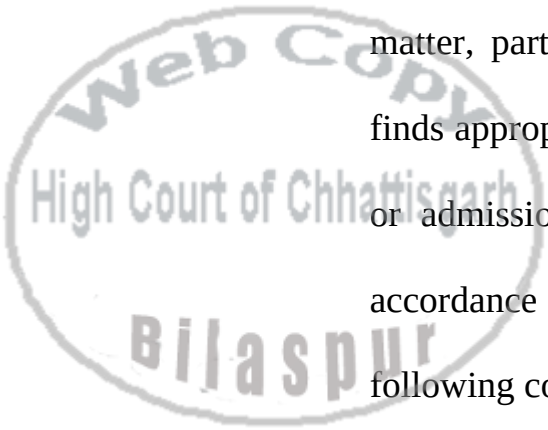
7. Considering the submissions of the parties, particularly considering the fact that the allegation against the present applicant is of wrongfully utilizing Input Tax Credit of Rs.6,95,32,472/- and supplied taxable goods without payment of taxes and without issuing invoices to the tune





of Rs.27,70,559/-, totalling Rs.7,23,03,031/-, and that offence under the Act are bailable and non-cognizable except for the offence under Section 132 (5) of the Act, further considering that the applicant can be punished with maximum sentence of 5 years with fine, he is in jail since 27.10.2021, further considering that Proprietor of the firm namely, Rohan Tanna and Abhishek Pandey have already been enlarged on bail by the co-ordinate Bench and also considering that the applicant in the bail application raised a ground that the offence is compoundable in nature and, therefore, this Court after considering all the aspects of the matter, particularly the period of detention and the amount involved finds appropriate that if the applicant deposits Rs.70 lakhs under protest or admission of the disputed amount, which would be adjusted in accordance with law, the applicant can be enlarged on bail with the following conditions:-

- the applicant shall execute a personal bond for a sum of Rs.50,000/- with one surety for the like amount to the satisfaction of the trial Court.
- He shall appear before the trial Court on each and every date given by the said Court.
- The applicant shall also deposit a sum of Rs.70 lakhs, under protest or admission, in favour of Principal Commissioner, CGST, Raipur within a period of 45 days from the date of his release.
- The applicant shall also furnish all details of movable and immovable properties in his name as well as his family, wife and dependent children, duly supported with affidavit. The said declaration shall also be filed within a period of 45 days from the date of release of the applicant.
- The applicant shall not alienate the immovable property without written





permission of the concerned trial Court.

- It is made clear that if the applicant fails to comply with any of the conditions mentioned above, this order granting bail to the applicant shall automatically stand cancelled without further reference to the Bench.
- Consequently, the Bail Application is allowed.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve

