

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC. APPLICATION NO. 9674 of 2022**

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MOHMED HASAN ASLAM KALIWALA
Versus
STATE OF GUJARAT

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Appearance:

MR ND NANAVALY, SR. ADV WITH MR CHETAN K PANDYA(1973) for the
Applicant(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 2,3
MR MANAN MEHTA APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 29/07/2022

ORAL ORDER

1. The applicant, presently in custody, has filed regular bail application under Section 439 of the Cr.P.C., in connection with **File No. DCST/ENF08/SURAT/ AC-1/HASAN KALLIWALA/58-21-22**, for the offences under punishable under Sections 132(1)(b) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') and Section 132(1)(b) of the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as 'the GST Act').
2. The applicant is arrested on 17.04.2022. He moved an application for regular bail before the Metropolitan Magistrate, Ahmedabad and City Sessions Court at Ahmedabad, which came to be rejected by the courts below.

3. Brief facts leading to file present application is that, it came to be the notice of the department that present applicant and others were indulged into activities of creating fictitious entity to pass ineligible input tax credit. It is in this matter, the search proceedings against HK Metal and Blue Star Trading Company were conducted at their registered places of business. Both the firms are proprietorship concern, doing scarp business at Bhavnagar and are registered in the name of Kalawala Haji and Mrs. Sabana Aslam, who are father and mother of the applicant respectively and according to record, the applicant is the authorized representative of both the firms and managing its bank transactions. During the search proceedings, both the firms were not operative and not in existence at the business place and one new firm M/s. Ashiya Enterprise was found. The findings of the investigation, emerged that these firms doing wrongful activity of issuing fake invoices, to pass ineligible input tax credit to beneficiaries without any actual movement of goods, whereby, the applicant caused revenue loss to the government exchequer to the tune of Rs.21.59 crores, as by passing the illegal ITC, the beneficiary firms had claimed unlawful input tax credit. In such circumstances, the applicant has violated the provisions of GST, GGST and IGST and rules made

thereunder and thereby evaded tax of Rs.21.59 crores. The proprietor of these firms were served summons under Section 70 of the Act and they were arrested after due process of law. The applicant herein was evaded the investigating proceedings since long and lastly, he was apprehended on 17.04.2022. He was produced before the Metropolitan Magistrate Court, Ahmedabad and was granted custodial interrogation for 4 days. During the pendency of the petition, the complaint as contemplated under CGST Act, is filed before the court concerned, which came to be registered as CC No. 57059 of 2022.

4. This Court has heard learned Senior Counsel Mr. N.D. Nanavati, assisted by Mr. Chetan Pandya, learned counsel appearing for and on behalf of applicant, Mr. Manan Mehta, learned APP for the respondents.
5. Mr. N.D. Nanavati, learned Senior Counsel urged that:

- (i) During the interrogation of the Proprietors of 2 firms who are happened to be a parents of the applicant, the respondent agency has recovered the necessary documentary evidence and same is in the custody of the department. Even after the arrest of the applicant, during remand

period, he was extensively interrogated by the department and necessary documents have been recovered. It is in this context, learned counsel submitted that now further custody of the applicant is not necessary, as after investigation, complaint is filed before the court concerned and in near future, there is no possibility to conclude trial in a reasonable time so keeping behind the bar the applicant, would not serve any purpose.

- (ii) Learned counsel on instructions, states that the applicant is ready and willing to deposit Rs. 2 crore within 2 months from his release before the department without prejudice to his rights and contentions;
- (iii) On factual aspect, learned senior counsel submitted that both the firms had filed regular returns for its business transactions and till date, have not received any show cause notice, raising any dispute with respect to fake invoices etc. It is in this context, it was submitted that both the firms have filed their return in GSTR1 disclosing sale of goods and same was being reflected in GSTR2A and therefore, question does not arise, to avail wrongfully ITC;

6. In view of the aforesaid contention, learned counsel submitted that discretion may kindly be exercised in favour of the applicant by enlarging him on bail by imposing suitable conditions.
7. Mr. Manan Mehta, learned APP reiterating the contents of the sworn affidavit, contended that the applicant defrauded the State Exchequer to the tune of Rs.21.59 crores and still investigation is going on and quantum of tax evasion involved is also further likely to increase and considering the conduct of the applicant, if bail is granted, then, the applicant may manipulate or attempt to destroy the evidences, which will adversely affect the investigation. He further submitted that the offence committed is grave economic offence, and detrimental to the nation economy as economic offense constitute a class apart and need to be viewed with different approach in the matter of bail and therefore, he prays that the applicant should not be enlarged so as to ensure proper investigation.
8. Having considered the rival contention of respective parties and having regard to the material on record, it appears that so far 2 firms are concerned, as referred above, investigation is virtually over. The applicant being an authorized attorney of 2 firms, initially he had evaded the investigation but later on

after his arrest and during his remand period, he was interrogated extensively and necessary materials have been recovered. Department has also filed complaint against the applicant. The applicant herein to show his bonafide, willing to deposit Rs.2 crore, which is approximately 10% of the alleged amount. Considering the facts and circumstances of the present case, it is worthwhile to note the observation made by the Apex Court in the case of **Sanjay Chandra Vs. CBI**, reported in **2012 2 SCC 40**, wherein, it was observed that “constitutionally protected liberty must be respected unless the detention becomes necessary. The balance approach is to grant bail subject to certain conditions rather than to keep the individual under detention for an indefinite period.

9. For the foregoing reasons, considering the facts and circumstances of the present case and role attributable to present applicant herein as well as his bonafide to deposit Rs.2 crore, this Court is of the considered view that case is made out for exercising discretion enlarging the applicant on bail and accordingly, I incline to release the applicant on bail, subject to deposition of Rs.2 crore before the office of the Deputy Commissioner of State Tax, Division 8, Enforcement, Surat within a period of 2 months from his release. Hence, present application is allowed.

10. Hence, the applicant is ordered to be released on regular bail in connection with the **File No. DCST/ENF08/SURAT/AC-1/HASAN KALLIWALA/58-21-22**, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall:

No.	Conditions
(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 India without prior permission of the Sessions Judge concerned;
(e)	furnish latest 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 the trial Court;
(f)	Shall deposit Rs.2 crores within 2 months from his release before the office as referred above. The applicant shall deposit the amount in two installments i.e. Rs.1 crore

within 1 month from his release and remaining amount be paid on the second month. If applicant fails to deposit the amount within stipulated time period, the bail stands automatically cancelled.
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11. The authorities shall release the applicant if he is not required in connection with the any other offence. If breach of any above condition is committed, the Sessions Judge concerned shall take appropriate action or issue warrant against the applicant. The bail bond to be executed before the learned trial Court having jurisdiction to try the case. It will be open for the sessions judge concerned to delete, modify and/or relax any of the above conditions, in accordance with law. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case. Rule is made absolute to the aforesaid extent. Direct service permitted.

(ILESH J. VORA,J)

P.S. JOSHI/30.07