

**Reserved on 19.7.2022**

**Delivered on 27.7.2022**

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19902 of 2022

Applicant :- Subodh Kumar Garg

Opposite Party :- Union of India

Counsel for Applicant :- Pragya Pandey, Anurag Mishra

Counsel for Opposite Party :- Dhananjay Awasthi

**Hon'ble Siddharth, J.**

Heard Ms. Pragya Pandey, learned counsel for the applicant, Shri Dhananjay Awasthi, learned counsel for the respondent.

The instant bail application has been filed on behalf of the applicant, Subodh Kumar Garg, with a prayer to release him on bail in File No. DGGI/ARU/Gr.B/S. Traders/23/2021, under Sections 132(1)(c) of the Central Goods and Service Tax Act, 2017 District-Agra, during pendency of trial.

The applicant is a proprietor of M/s Shree Traders having its principal place of business at Araon Road Sirsaganj, Firozabad, apart from three other places of business at Manish Nagar Bodla Agra, Moja Kotta, Mathura and 41, Saryu Vihar, Kamla Nagar, Agra. The firm of the applicant is engaged in business of trading of iron and scrap and is duly registered with G.S.T. Department.

Learned counsel for the applicant has submitted that applicant's firm received goods from registered dealers after payment of G.S.T. The firm has filed returns with G.S.T. Department. The returns from July 2017 to March 2018 could not be filed due to negligence of G.S.T. consultant firm of the applicant which was closed with effect from December, 2022 and he applied for cancellation of G.S.T. registration on 2.2.2021 which was rejected by the Department. Thereafter he again applied on

31.1.2022 for cancellation of G.S.T. registration which was allowed on 8.4.2022 .During pendency of cancellation application search in dispute was conducted by the DGGI, Regional Unit, Agra on 15.3.2022. The applicant presented himself in response to summons dated 15.3.2022 and his statement was recorded from night of 15..3.2022 to evening 16.3.2022 and he was served with arrest memo on 17.3.2022 and was arrested without lodging any complaint. Applicant stated in his statement that he purchased goods on proper Invoice, E-bill, etc., from duly registered suppliers. The application was made before Special C.J.M.Agra for taking applicant in judicial custody for further investigation alongwith complaint alleging that applicant has availed input tax credit(I.T.C.) of Rs.8.76 corers and committed offence under section 132(1) (c) C.G.S.T. Act which is nonailable and cognizable offence providing for five years maximum punishment.

Learned counsel for the applicant has further submitted that entire case of the prosecution rests on the statement of the applicant recorded by the officials of DGGI .The bail was rejected by the court below without application of mind.Out of 21 firms from which supply was taken by the firm of the applicant, 18 firms was registered on date of transaction and their registrations were cancelled either suo moto or without reason retrospectively. . At the time business with the applicant's firm aforesaid companies were duly registered. In the Punchnama prepared by the Department no local witness is there. The grant of registration and cancellation is done by the department and not by the applicant and implication of the applicant only on ground that supplier firms of the applicant's firm have subsequently got re-registered cannot be a ground for implicating the applicant.

Learned counsel for the applicant has finally submitted that investigation is going on in the matter and the liability is only to the extent of Rs. 3,30,59,527/- and not Rs. 8,76,45,100/ hence applicant is entitled to be released on bail since the amount is below 5 crores. The final assessment and adjudication proceedings have not been initiated. The applicant is 56 years old and is suffering from various ailments. He is willing to comply the conditions which may be imposed by this court. The applicant has availed I.T.C. without receiving any goods from supplier only on the basis of tax invoice is not correct. Applicant has deposited differential amount at the G.S.T Rs.41,69,267/- The entire case of the department in the complaint is based on the statement of the applicant and his suppliers. He has submitted that statement of the applicant under section 136 of C.G.S.T. Act cannot be read against him at this stage.

Per contra, learned counsel for the opposite party, Shri Dhanjay Awasthi, has vehemently opposed the bail application and has submitted that applicant is proprietor of M/s Shree Traders and his son Sarthak Agarwal is proprietor M/S S&S Steel Corporation, Agra and both are engaged in the business of supply of scrap, ferrous waste and scrap waste and scrap of precious metals. The firm of the applicant has taken credit from 21 non existing firms whose G.S.T. registrations have been obtained by submitting false/ forged documents of amount of 87,645 lacs in G.S.T. as per section 29(3) of C.G.S.T. Act 2017. Cancellation of the registrations of such firms shall not be effect the liability of the applicant to pay tax and other dues. The investigation is going on and in case applicant is released on bail he will influence the investigation, tamper with evidence and influence the witnesses. The applicant could not explain why he has taken credit of Rs.8.76/-,crores from non existent firms in his statement. His bail application has rightly

been rejected by the courts below. The offence committed by the applicant falls under section 132(1) (c) of C.G.S.T Act, which is cognizable and non bailable offence since he has availed illegal I.T.C. worth of Rs. 8.76 Crore. He has finally submitted that applicant is not entitled to bail keeping in view of seriousness of economic offence committed by him.

After hearing rivals submission this court finds that documentary evidences collected by the department has already been placed before the court. Applicant has been found to be dealing with 18 non existent firms and their details have been furnished in the complaint. Their registrations have already been cancelled. The applicant's case is that at the time of business with the aforesaid firms they were duly registered and allegation that firms were fake is yet to be proved. It has not been explained how applicant will tamper with the evidence or influence the witnesses. Merely because of seriousness and magnitude economic affect the bail cannot be denied to the accused. Applicant is not stated to have any criminal antecedents. He is not shown to be habitual offender.

The Calcutta High Court in WPA No. 23512 of 2019, M/s LGW Industries Ltd. Vs. Union of India decided on 13.12.2021, specifically held “(i) ITC cannot be denied if the supplier’s registration is cancelled after the date of transaction,(ii) in such circumstances no failure on the part of the purchaser is casted upon,(iii)there is no obligation on the part of the recipient to check the genuineness of the supplier in question,(iv) if any action is to be taken by the department the same is to be taken against the supplier and not against the recipient since the recipient paid the entire amount towards the cost of the goods on the supply of goods including due tax under CGST and SGST through banking channel

and the recipient is not liable to pay double tax and penalty.”. In the present case the applicant has further clarified in his statement dated 15.3.2022/16.3.2022 that he has taken Input Tax Credit on proper invoices issued by the supplier of the goods. The aforesaid goods were transported to the applicants premises through valid E-way Bills, Bilty and other transport documents and payment has been made through proper banking channel. As such the applicant is liable to be released on bail as no case under Section 132(1) (c) and read with section 132(5) of the Act is made.

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 16.3.2022 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 bank guarantee whereof shall be furnished.

Order Date :- 27.7.2022

Atul kr. sri.