

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 1312 of 2023**

- Ashish Kumar Tiwari S/o Sh. Om Shankar Tiwari Aged About 30 Years  
R/o Lig - 1/250, Housing Board Colony, Kumhari, District - Durg -  
490042 (C.G.) --- **Applicant.**

**Versus**

- Union Of India Central Gst And Central Excise, Through The  
Superintendent (Preventive) Police Station - Central Gst,  
Commissionerate, Gst Bhawan, Dhamtari Road, Tirkapara, District -  
Raipur 492001 (C.G.) --- **Respondent.**

**With****MCRC No. 3901 of 2023**

- Mohd. Tabrez Amdani S/o Sh. Abdul Raof Aged About 40 Years  
Residing At House No. 74, Shiva Residency, Dhebar City, Bhatagaon,  
Raipur, District - Raipur Chhattisgarh. 492001 --- **Applicant.**

**Versus**

- Union Of India Through Commissioner, Central Gst Raipur, District -  
Raipur Chhattisgarh. --- **Respondent.**

*CAUSE TITLE TAKEN FROM CIS PERIPHERY*

-----

For Applicants	:	Mr. Vivek Sharma and Mr. Praveen Das, Advocates.
For Respondent/UOI	:	Mr. Maneesh Sharma, Adv. with Mr, Ashesh Pathak, I/O for GST, Raipur

-----

**Hon'ble Shri Justice Deepak Kumar Tiwari****Order On Board****17.07.2023**

This application under Section 439 Cr.P.C. for grant of bail has been filed by the accused/applicant who is languishing in jail since 29.11.2022 in connection with Crime No.114/GST/2022-23 registered at Police Station Central GST, Raipur for the offence punishable under Section 132 (1) (b) & (c) of the Central Goods and Services Tax Act, 2017 (for short the "**CGST Act, 2017**").

2. Briefly, the allegation against the applicants is that the

accused/applicants without delivering any goods, issued fake invoices and fraudulently availed Input Tax Credits (for short "ITC") of Rs.114,70,55,251/- and also passed forged bill to the tune of Rs.1,04,33,454/-. During investigation, it has been found that before filing of the complaint, the applicants have reversed the amount of Input Tax credit to tune of Rs.113,90,49,678/-. It is alleged that the Applicant - Mohd. Tabrez Amdani is Director of M/s. Topisto Products Pvt. Ltd. and Applicant - Ashish Kumar Tiwari is Accountant in the said firm through which they availed the aforesaid ITC. It is also alleged that they have formed following 4 other firms to avail ITC in a fraudulent manner i.e. (1) M/s Andomeda Pvt Ltd, GSTIN-22AASCA8880H1Z8 (2) M/s Mahamaya Agency and Borewells, GSTIN-22ADVPT4978Q2Z6 (3) M/s. Next Teaser, GSTIN-22AQWPD1778J1ZH and (4) M/s Paul Enterprises, GSTIN-22AVQPP2777A2ZI. On the basis of aforesaid allegations, offences mentioned above have been registered against the applicants and they have been arrested on 29.11.2022.

**3.** Learned counsel for the applicants submit that the applicants being innocent have been roped in a false case. It is further submitted that the Applicant - Mohd. Tabrez Andani is the Director of M/s. Topisto Products Pvt. Ltd. and Applicant - Ashish Tiwari is merely an employee of the said firm and managing the work of accounts. It is submitted that M/s. Topisto Products Pvt. Ltd. has already returned ITC to the tune of Rs.113,90,49,678/- on 12.01.2023 and thus, the remaining amount comes to Rs.1,04,33,454/- which is less than Rs.5 Crore. Therefore, an offence under Section 132 (i) does not attract in the matter and only

an offence under Section 132 (1) (b)(c) & (ii) is attracted, which itself is compoundable and bailable in nature. Counsel further submit that the offence is triable by learned JMFC and learned Magistrate can award sentence up to 3 years.

In support of his contention, learned counsel places reliance on the matter of **Ratnambar Kaushik Vs. Union of India, (2023) 2 SCC 621** whereby, the Hon'ble Supreme Court has passed an order for release of the petitioner on bail observed that "even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under Section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to 5 years and fine". It is also observed in the said order that the petitioner has undergone incarceration for more than four months and completion of trial in any event would take some time. It is further observed that in the case filed by the Department of GST/UOI, the evidence would essentially be documentary and electronic and the ocular evidence will be through official witnesses, due to which, there can be no apprehension of tampering, intimidating or influencing.

Learned counsel for the applicants submit that the applicants are languishing in jail since 29.11.2022 i.e. for more than 7 months and there is no flight-risk therefore, they should be freed on bail. They submit that the applicants would abide by all the terms and conditions imposed on them while granting bail.

4. Vehemently opposing the prayer for bail, Shri Maneesh Sharma, learned counsel for the respondent/UOI submits that the applicants with an intent to enrich themselves formed four firms fraudulently including M/s. Topisto Products Pvt. Ltd. and when

GST Department found that this Firm has wrongly availed ITC of Rs.114,70,55,251/- and thereafter to save themselves, they have reversed some amount. It is further submitted that this High Court has dealt with similar type of bail application in the matter of **Basudev Mittal Vs. Union of India** passed in MCRC No.3919 of 2022 wherein the applicant was involved in the crime of availing ITC amount to the tune of more than Rs.5 Crores. In the said application, the argument was advanced that they had already deposited Rs.76 Lacs therefore, remaining amount being less than Rs.5 Crore in view of Section 132(4)(5) of the G.S.T Act, falls within the category of bailable offence. He submits that such contention advanced on behalf of the applicant was not accepted and his bail was rejected on 15.07.2022 and the said order was duly affirmed by the Hon'ble Supreme Court vide SLP (Crl) No.8128/2022 order dated 12.12.2022. Therefore, the contention of counsel for the applicant that said offence is bailable in nature has no merit. In support of his contention, learned counsel refers to **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. Learned counsel for the respondent also places reliance in the matter **P.V. Ramana Reddy Vs. Union of India** {2019 SCC OnLine TS 2516} wherein the High Court of Telangana at Hyderabad dismissed the application filed by the petitioner seeking relief against the arrest and said matter has been affirmed by the Hon'ble Supreme Court in SLP (Cr) No.4430/2019 vide order dated 27.05.2019. He further submit that the said view has also been

reiterated in SLP (CrI) No.4322-4324/2019 vide order dated 29.05.2019. He also submits that in the matter of **Ratnambar Kaushik** (Supra) the allegation was with regard to Section 132 (1) (a), (h), (k) and (l) r/w Section 132 (5) of the CGST Act, 2017, whereas, in the present case the allegation is relating to creating fake firms and availing ITC in a fraudulent manner, therefore, the said judgment is of no help to the applicant.

In view of the aforesaid submissions, learned counsel for the respondent submits that this bail application is liable to be rejected.

6. Heard learned counsel for the parties and also gone through the bail application as well as the documents annexed thereto carefully.

7. Keeping in view the background of the case, this Court deems it appropriate to reiterate the principles laid down in the matter of **Mohd Sharief vs Union Territory Of J&K And Ors** reported in **2020 SCC OnLine J&K 649**, where, while exercising a petition for the bail, the following was materially observed:-

**“8. It is a settled position of law that grant of bail is a rule whereas its refusal is an exception. The question whether bail should be granted in a case has to be determined on the basis of the facts and circumstances of that particular case. A Coordinate Bench of this Court, while discussing the principles to be followed in a case where intermediary quantity of contraband was recovered from the accused, has, in the case of Mehraj-ud-Din Nadroo and others Vs. State of J&K (BA No.74/2018 decided on 07.07.2018), observed as under:**

**“The settled position of law as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail is that there is no strait jacket formula or settled rules for the use of discretion but at the time of deciding the**

question of "bail or jail" in non-bailable offences. Court has to utilize its judicial discretion, not only that as per the settled law, the discretion to grant bail in cases of non-bailable offences has to be exercised according to rules and principle as laid down by the Code and various judicial decisions. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses, if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson".

8. Further, in the recent judgment of **Ratnambar Kaushik Vs. Union of India, (2023) 2 SCC 621**, the following was observed in

the paragraphs 8 and 9:-

**8. In considering the application for bail, it is noted that the petitioner was arrested on 21.07.2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under Section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to 5 years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.**

**9. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial Court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial Court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial Court forthwith, to ensure compliance of this order.”**

**9.** In light of the aforesaid principles and legal proposition and also considering that applicants have reversed a substantial amount of ITC i.e. Rs.113,90,49,678/-; further considering that applicants have been in jail since 29.11.2022; that offence is triable by JMFC and maximum sentence for the offence is up-to 5 years; further



considering that material evidences appears to be documentary and electronic in nature, so, there is no chance of tampering or influencing the evidence and no likelihood of flight-risk of the applicants, I find it appropriate to release the applicants on bail.

**10.** Accordingly, the application is **allowed** and it is directed that on each of the applicants furnishing a personal bond in the sum of **Rs.2,00,000/- (Two Lacs)** with **two** sureties each for the like sum to the satisfaction of the concerned Court, they shall be released on bail on the following conditions:-

- (a) the applicants shall furnish an affidavit before the trial Court showing details of movable & immovable property and bank account held by them and they shall not alienate any immovable property without prior written permission of the trial Court.
- (b) they shall not act in any manner which will be prejudicial to fair and expeditious trial.
- (c) they shall appear before the trial Court on each and every date given to them by the said Court till disposal of case,
- (d) they shall not involve themselves in any offence of similar nature in future.

Sd/-  
**(Deepak Kumar Tiwari)**  
**Judge**

*Ajay*