

**In the Court of Vimal Sapra (UID No.HR0112),
Additional Sessions Judge, Panipat.**

CIS No.BA-286 of 2021.
CNR No.HRPP01-000967-2021.
Bail application No.58 of 2021.
Date of Institution: 5.2.2021.
Date of Decision: 10.2.2021.

Mohit Bathla son of Shri Ashok Bathla, aged about 30 years,
Resident of House No.865-L, Model Town, Panipat.

...Applicant.

Versus

Central Goods and Service Tax Division Panipat, CGST
Commissionerate, Panchkula, GST Bhawan, Plot No.5, Sector-
25, Panchkula Extension, Haryana.

...Respondent.

**Under Sections: 69 read with section
132(1) of the CGST Act, 2017.**

Application for regular bail.

Present: Sh. Piyush Hans, counsel for the applicant-
accused.
Sh. Sourabh Goel, Advocate, Senior Standing
counsel CGST with S/Sh. Jasbir Rathee and
Sanjeeva Kumar, Advocates, counsel for the CGST,
Panchkula.

ORDER:

This order shall dispose of an application for regular bail
moved on behalf of the applicant-accused, named above.

2. Briefly, the case of the prosecution is that on 24.12.2020, a
search operation at the premises of M/s S.B. Chemicals of applicant-
accused Mohit Bathla was conducted by the team of Joint Commissioner,
Anti Evasion, Panchkula, CGST Commissionerate under section 67(2) of

Central Goods & Service Tax, 2017 (*hereinafter referred to as 'CGST Act'*) on the basis of information received from Commissioner, CGST & CX, Kutch, Gandhi Dham, Gujarat and during search and seizure operation, the statements of Mohit Bathla and others were recorded under section 70 of the Act. During search, it was found that three other firms, namely, M/s Hind International, M/s Hans Petroleum Products and M/s Jey Oil & Bitumin Products India Pvt. Ltd. (*hereinafter referred to as 'HHJB Firms'*) were operating from the same premises. Applicant-accused Mohit Bathla had made the statement that all financial transactions of the said four firms were being looked after by him. Said firms had their inward supplies from firms, namely, M/s Krishna Enterprises, M/s Vinayak Traders and M/s Om Enterprises (*hereinafter referred to as 'KVO Firms'*). One Amit Kumar, made a statement that he is sole proprietor of KVO Firms and these are fake and bogus firms and are indulged in the business of issuance of fake invoices without actual supply of goods. He admitted that these firms never supplied any goods to the four firms, namely, M/s S.B. Chemicals etc. He also admitted that under the garb of trading of Bitumen, applicant-accused Mohit Bathla indulged in issuance of fake invoices alongwith the bilties to various traders whereas the firms M/s Saurabh Roadways, M/s Sethi Roadlines and M/s Balaji Bulk Carriers, whose bilties are shown to have been issued, were being managed/operated by applicant-accused Mohit Bathla.

The bilty book of M/s Saurabh Roadways was seized/resumed and it was found that there was no inward and outward supply of goods and only bogus invoices have been circulated and cash has been routed through agent. The complainant team, on checking the GSTN portal, had found that KVO Firms had issued fake invoices for the taxable value of Rs.24,01,25,141/- involving tax amount of Rs.4,32,22,526/-. The team had further recorded the statement of Rajeev Kumar, supervisor of applicant-accused, who admitted that KVO Firms never supplied any goods to any of *HHJB Firms* and admitted that applicant-accused Mohit Bathla had purchased goods-less invoices issued by 11 other bogus/fake firms. In his statement, the applicant-accused had admitted that Amit Kumar was his commission agent and Rajeev Kumar was his supervisor in his firm M/s S.B. Chemicals. He admitted that he availed ITC credit on the invoices issued by several other firms named by him. Thus, the amount of ITC availed, as admitted by the accused, came to Rs.6.25 crores approximately. He also admitted that he had availed ITC credit amounting to Rs.13.31 crores approximately on the invoices issued by 11 firms. Applicant-accused Mohit Bathla was arrested for commission of offences under Section 132(1)(c) read with section 132(1)(b) of the Act on 25.12.2020 and his judicial remand was sought.

3. The applicant-accused has moved the instant application for regular bail with the averments that he has not committed any offence

and has been falsely implicated in the case. It is averred on his behalf that during the conduct of search proceedings, the respondent brought their own witnesses in complete violation of provisions of Code of Criminal Procedure and no independent witness was joined during conducting search. The signatures of the applicant-accused were taken on dotted lines of blank papers and the respondent had taken away the entire records of the applicant-accused. He further averred that the respondent had wrongly clubbed the amount of ITC alleged to have wrongly taken by four different firms to exceed figure beyond Rs.500 lacs. It is further averred that in similar matter in case titled '**Rohit Kumar Goyal Vs. Director General of GST Intelligence**' CRM-M-673-2021, Hon'ble High Court had granted bail to the accused as constitutional validity of sections 69 and 132 of the CGST Act are under challenge before the Hon'ble High Court. In several other matters of similar nature, the accused have been granted bail or their interim bail was extended due to the same reason. He relied upon several judgments of Hon'ble Apex Court and contended that the object of bail is neither punitive nor preventive and it is to secure the appearance of the accused at his trial and hence the bail should be granted to the accused. He further contended that the accused-applicant is in custody since 25.12.2020. The trial will take sufficiently long time and no useful purpose will be served by keeping him in further custody. With these

averments, he prayed for concession of regular bail. He further contended that applicant is entitled for concession of bail on medical grounds also.

4. On notice, the respondent filed detailed reply to the instant application denying the allegations. It is averred on behalf of the respondent, that the applicant-accused himself was responsible for conducting of business of all the firms namely *HHJB Firms* and this fact was admitted by him in his own statement. The entire liability of payment of GST was upon him. It is further averred that the investigation is still pending and the record from CS Kutch, Gandhi Ram, Gujarat is yet to be collected and it is yet to be verified about the existence of the firms which had issued the fake invoices to the applicant-accused and as the complaint has not yet been filed, it is not in the interest of justice to release the applicant-accused on bail. He lastly prayed for dismissal of the application.

5. I have heard learned Special Public Prosecutor and the counsel assisting him and learned defence counsel for the applicant-accused and have gone through the record very carefully.

6. Opening his argument, learned counsel for the applicant-accused has contended that firstly, the offence under section 132(1)(b) of the CGST Act is not made out against the applicant-accused and from the allegations in the application for judicial remand, only the offence under section 132(1)(c) of CGST Act can be attracted. He contended that in the

application for judicial remand, wrong facts were mentioned as no ITC credit was availed by *HHJB Firms* of the applicant-accused from M/s Global Enterprises. He pointed out that the respondent had illegally clubbed ITC credits availed by four different firms, which is not permissible under the law. He pointed out that M/s S.B. Chemicals is in the name of mother of the applicant-accused and M/s Hind International is registered in the name of father of the applicant-accused and their tax liability cannot be clubbed with the tax liability of other two firms in which the applicant is the proprietor or partner. He further contended that the ITC credit of the firm in the name of mother of the applicant, i.e. M/s S.B. Chemicals itself is of Rs.4.32 crores and if that amount is deducted from the ITC credit, allegedly availed by the applicant as per the respondent, the said amount comes less than Rs.5 crores and in that case, the offence becomes bailable. He further contended that the respondent has not shown any material which could prove that KVO firms were bogus firms and had issued bogus invoices. He argued that the provisions of section 41(1) of Cr.P.C. were not followed in view of the directions of Hon'ble Apex Court in the case of '**Arnesh Kumar Vs. State of Bihar**' 2014(8) SCC 273. So, on this ground itself, the applicant-accused deserves to be released on bail. He contended that as per section 69 of CGST Act, the Commissioner has the power to arrest a person who has committed any offence specified in sections 132(1)(a)(b)

(c) of the CGST Act but for that, he must have the reason to believe that the said person has committed such offence. There is no material on case file which could prove that the Commissioner has reason to believe that the applicant-accused had committed any offence under section 132(1)(b) (c). He relied upon the citations in cases titled '**Subhash Chander Vs. State of Punjab & Anr.**' 2020(8) TMI 212, '**M/s Stalwart Alloys India Pvt. Ltd. & Ors. Vs. Union of India & Ors.**' CWP-13995-2020, '**Akhil Krishan Maggu & Anr. Vs. Dy. Director, Directorate General of GST Intelligence & Ors.**' CWP No.24195 of 2019 (O&M) and '**Deepak Mittal Vs. Directorate General of GST Intelligence, Gurugram Zonal Unit, Gurugram**' CRM-M-2140-2020 and contended that in such circumstances, the applicant deserves the concession of regular bail. He further argued that in case titled '**C. Pradeep Vs. The Commissioner of GST & General Excise Selam & Anr.**' SLA (Crl.) No.6834/2019, Hon'ble Apex Court had allowed bail to the accused subject to the condition that he deposits 10% of the ITC credit liability and if in the present case, the Court directs, the applicant-accused is ready to deposit 10% of the ITC credit liability. He has further relied upon the orders passed by different Session Courts of Haryana and Punjab where on these grounds, the bail to accused was allowed. He had further argued that the constitutional validity of Sections 69 and 132 of CGST Act is under challenge in Hon'ble High Court and on this ground, the accused in

several cases were released on bail by Hon'ble High Court and on the ground of parity, the applicant-accused is also entitled for concession of bail.

7. Learned Special Public Prosecutor on behalf of the respondent has reiterated the version stated by the respondent in its application for judicial remand. He further argued that the condition of deposit of 10% of ITC amount comes into picture when the matter is adjudicated and the amount is found confirmed and recoverable and at this stage, the applicant-accused cannot be released on bail, even if he deposits 10% of the ITC amount. He contended that the investigation in the matter is still pending and the statement of one witness, namely, Chander Prakash has been recorded recently on 16.1.2021 and in his statement, he had disclosed several other facts which implicate the applicant-accused further and his liability has increased. Thus, the applicant is not entitled for concession of regular bail. He contended that recently Hon'ble Punjab & Haryana High Court in case titled '**Sanjay Dhingra Vs. Director General of Goods and Services Tax Intelligence**' CRM-M-50256 of 2019 and '**Rakesh Kumar Vs. State of Punjab**' CRM-M-1511-2021, had dismissed the application for bail of the accused by observing that in economic offences, the accused is not entitled for bail in casual manner.

8. The facts of the case and contentions of counsel for the parties and the law cited by them have been considered by me. The first contention of the counsel for the applicant-accused was that the Commissioner had no reason to believe that the applicant-accused had committed the offence punishable under sections 132(1)(b)(c) as required under section 69 of CGST Act vide which he had the power to authorize arrest of the applicant. He contended that in absence of any cogent and credible material, if the subjective satisfaction is arrived at by the authority concerned for the purpose of arrest, then such action amounts to malice in law. However, this question cannot be gone into at this stage and moreover, if the application for judicial remand moved by the respondent is perused, it comes out that the respondent had received information from the Commissioner, Kutch, Gandhi Dham, Gujarat about the fake invoices issued by KVO Firms without delivery of goods and those KVO firms did not exist. Thus, the respondent had the reason to believe that applicant-accused Mohit Bathla, who was responsible for the business of *HHJB Firms*, had prima-facie committed the offence under section 132 of CGST Act. Thus, on this ground, the applicant-accused cannot be given any benefit.

9. The next contention of the applicant-accused was that the availment of ITC credit liability of four firms has been clubbed to make the present case cognizable and non-bailable. However, this contention

of learned counsel for the applicant-accused is also devoid of any merits. The applicant-accused had himself admitted in his statement made to the search party that he is solely responsible for the conduct of the business of *HHJB Firms*. Moreover, this aspect also can be seen during the course of trial and at this stage, while considering the application for bail, the Court cannot give any opinion in this regard.

10. The next contention of counsel for the applicant-accused was that the procedure prescribed under 41(1) of Cr.P.C. was not complied with and as the offence for which the applicant-accused was challaned attracts punishment which may extend to five years, the arrest of the applicant-accused was illegal and on this ground, he is entitled for concession of bail. A perusal of section 41 of Cr.P.C. shows that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, cannot be arrested by a police officer only on his satisfaction that such person had committed the offence punishable, as aforesaid. It is further provided that a *Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any*

inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. The respondent had arrested the applicant-accused as the respondent was satisfied that such arrest is necessary to prevent him from committing any further offence and for proper investigation of the offence and there was apprehension that the applicant-accused may cause the evidence of the offence disappear or temper with such evidence in any manner. There was apprehension that his presence in the Court, whenever required, cannot be ensured if he is not arrested. Thus, at this stage, it cannot be said that the provisions of section 41 Cr.P.C. were not complied with by the respondent before arresting the applicant-accused.

11. The counsel for the applicant-accused had further argued that as the constitutional validity of sections 69 and 132 of CGST Act is under challenge, it cannot be said at this stage that the said offence was committed by the applicant-accused. In **Rakesh Arora's case (supra)** it was held by Hon'ble High Court that merely because the vires of sections 132 and 69 of the CGST Act are under challenge, bail cannot be granted to the accused as there is always presumptions of validity and operation of the provision has not been stayed. He contended that on this very ground, Hon'ble High Court had granted bail to several persons.

However, I am not convinced with his contention. Until the sections 69 and 132 of CGST Act are declared ultra-virus, the same exist in the Statue Book and it cannot be said that the same are not attracted, if the ingredients mentioned in it are fulfilled. Hon'ble High Court in its wisdom had granted bail to accused in similar type of cases but the powers of High Courts are unfettered and moreover, in most of the cases, the interim bail was granted to the accused persons in the wake of COVID-19 pandemic and later-on, the interim bail was made absolute. On the other hand, in the case of '**State of Gujarat Vs. Mohan Lal Jitmalji Porwal & Ors.**' 1987(2) SCC 364, Hon'ble Supreme Court had held as under:-

“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 11 of 13 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.....”

12. Similarly, in case titled '**Y.S. Jagan Mohan Reddy Vs. CBI**'
2013(7) SCC 439, Hon'ble Supreme Court had held as under:-

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

35. 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."

13. Considering this legal position, Hon'ble Punjab & Haryana High Court in **Sanjay Dhingra's case (supra)** & **Rakesh Arora's case (supra)** had declined the concession of bail. It may further be observed that the investigation in the case is under process and the respondent has recently recorded the statement of one Chander Prakash on 16.1.2021 who in his statement had further implicated the applicant-accused for availment of ITC credit on the basis of goods-less invoices from other

non existent firms. There was sufficient material available with the respondent to show that the applicant is involved in commission of offence. The statement of Amit Kumar proprietor of KVO firms has categorically stated before the respondent during investigation that those firms had not supplied any goods to the applicant-accused and the invoices were fake. Even the employee of the applicant-accused had corroborated the version of Amit Kumar. Furthermore, it is not only the case of availment of ITC credit to the tune of Rs.6.25 crores only, rather it was further found that the applicant-accused had availed ITC credit invoices on the basis of fake invoices issued by 11 other firms to the tune of Rs.13.31 crores approximately. The respondent has got the time of 60 days to complete the investigation and during that period, it would file the complaint but even the period of 60 days has not yet elapsed and if the applicant-accused is released on bail, he may try to destroy the evidence and may flee from justice. The record from CS Kutch, Gandhi Dham, Gujarat is also to be procured by the respondent.

14. It was lastly argued by counsel for the applicant-accused that the respondent has booked the applicant-accused merely on the statements of Amit Kumar, Rajeev Kumar and the applicant-accused himself, and there is no evidence that KVO firms do not exist and the invoices issued by it were fake. However, the applicant-accused himself has also failed to show that the said invoices are genuine and goods was

supplied on the basis of the said invoices. On the other hand, the record of the transporters was also seized by the respondent and it was found that no goods were delivered on the basis of said invoices.

15. In case titled '**Nimmagadda Prasad Vs. Central Bureau of Investigation**' 2013(3) SCC (Criminal) 575, Hon'ble Apex Court had held as under:-

“28. 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 grave offences, affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

16. In view of the above discussion and in view of the law laid down in the above reported cases, if the nature of conclusion, nature of evidence in respect thereof, severity which conviction will entail, reasonable possibility of securing the presence of the accused at the trial and the solely interest of the public and the State, are considered, it is found that the applicant-accused is not entitled for concession of bail. As far as the law laid down in the reported cases, relied upon by the applicant-accused, is concerned, the same is distinguishable on the facts of the present case. Some judgments of Session Court of Punjab & Haryana have also been relied upon by the counsel for the applicant-

accused but the same have no binding effect on this Court. As regards the contention of the counsel for the applicant regarding grant of bail subject to deposit of 10% of liability amount is concerned, such order was passed by Hon`ble Apex Court in its wide powers but as per the CGST Act, the said amount can be ordered to be deposited only when the adjudication had taken place and amount has been confirmed. The applicant has also cited medical grounds for seeking bail but on that ground also, he is not entitled to regular bail as he is already getting treatment in Jail. If any further treatment will be required, he will be taken to the hospital.

17. As a sequel to the above discussion, the application for regular bail, being devoid of any merit, is hereby **dismissed**. Papers be tagged with the main case file.

Announced in open Court:
10.2.2021.
(Som Pal Kamboj)
Stenographer Gr-I.

(Vimal Sapra)
Additional Sessions Judge,
Panipat, UID No.HR0112.