

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on 10.1.2022****Order delivered on 18.1.2022****MCRC No.6764 of 2021**

1. Paritosh Kumar Siingh @ Diwakar Choudhary M/o Smt. Kamlavati Devi Aged About 39 Years H.N. 3399 Rawatpura Sarkar Colony, Ward No. 61, Raipur (CG)
2. Ravi Kumar Tiwari @ Bablu Mishra S/o Late Shri Umashankar Tiwari Aged About 36 Years R/o H.N. 3399, Rawatpura Sarkar Colony, Ward No. 61, Raipur (CG)
3. Munna Tiwari S/o Late Shri Uma Shankar Tiwari Aged About 38 Years R/o Village Belwasa Mathia, P.O. & Police Station Aandar, District- Siwan (Bihar)
4. Kaushal Tiwari S/o Late Shri Uma Shankar Tiwari Aged About 38 Years R/o Village Belwasa Mathia, P.O. & Police Station Aandar, District- Siwan (Bihar).

---- Applicants (In Jail)**Versus**

- Senior Intelligence Officer, through Directorate General of GST Intelligence, 4th Floor, RIO Complex, Lalpur, Dhamtari Road, Opp. Fruit Market, Raipur (CG)

....Non-applicant

For Applicant : Mr. B.P. Sharma, Advocate with Mr. M.L. Saket & Mr. Nitesh Jain, Advocates

For Non-applicant : Mr. Maneesh Sharma, Advocate.

Per Parth Prateem Sahu, J;**CAV Order**

1. This is first application on behalf of applicants under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail as applicants are in custody since 25.1.2021 in connection with Crime/DDGI Case No.124/2020-21 registered in the office of the Directorate of GST Intelligence, GST, Raipur for commission of offence punishable under Section 132 (1) (b) (c) of the Goods and Services Tax Act, 2017 (henceforth 'the GST Act').
2. Case of non-applicant Department, in brief, is that based on GST Intelligence report, non-applicant started investigation, during course of investigation it revealed that M/s Manoj Enterprises, Raipur had never made any kind of purchase from

any entity, it is non-existent firm at the registered address. It further revealed that applicants have formed forged firms in Chhattisgarh, Jharkhand, Madhya Pradesh, West Bengal and Maharashtra; availed illegal benefits of input tax credits and thereby caused loss of Rs.258 Crore approximately to the government ex-chequer during financial years 2018-19, 2019-20 & 2020-21. Applicants were arrested by non-applicant Department on 25.1.2021. After part investigation, complaint case was filed before the Court of Magistrate on 25.3.2021. Application for grant of bail filed by applicants before the Court below came to be rejected vide order dated 13.8.2021.

3. Mr. B.P. Sharma, learned counsel for applicants would submit that applicants have created firms for which registration is not mandatory. Allegation of non-applicant based on statements of some persons alleged to have been recorded during investigation that firms created by applicants are not in existence, in itself is not sufficient to hold that firms created by applicants are non-existent. Before filing of complaint or concluding investigation, applicants were illegally arrested on 25.1.2021. Non-applicant instead of filing charge sheet, submitted complaint under Section 200 CrPC which clearly indicates that procedure adopted by non-applicant Department is clear abuse of process of Court and abuse of process of law. As non-applicant could not be able to conclude investigation and not in a position to file charge sheet within time, they chose to file complaint. Allegations in complaint are that 30 firms created by applicants were not found to be working at the given addresses, whereas it is not necessary that firm must run from given address only. Allegation against applicants is that they have committed offence punishable under Section 132 (1) (b) & (c) of the Act of 2017, however, if entire allegations contained in complaint are taken to be correct, then other firms which are beneficiaries of issuance of invoice or bills, have not been made accused. There is allegation in complaint that applicants have caused huge loss of Rs.258 Crore to the government ex-

chequer, but there is no data to substantiate aforementioned allegation. It is also argued that since stand of non-applicant is that investigation is yet not complete, then as to on what basis non-applicant Department arrived at a conclusion that applicants have committed offence as alleged against them. He referred to some paragraphs of complaint filed against applicants in the Court of Chief Judicial Magistrate, Raipur and argued that even if entire complaint is taken on its face value, then also no offence as alleged against applicants would be made out against them. One of accused by name Santosh Doshi has already been granted bail by Pune Bench of High Court of Bombay (Maharashtra), who was also made accused arising out of transactions as alleged against applicants. Applicants are in jail since 25.1.2021, no further custodial interrogation of applicants is required; witnesses shown in Annexure-A (part of complaint) are employees of the Goods and Services Tax Department, hence there is no apprehension of witnesses being influenced and evidence being tampered with by applicants. Referring to Section 138 of the Act of 2017, it is argued that offence under Section 132 (1) of the Act of 2017 is made punishable with maximum sentence of five years only and is compoundable. As applicants are in jail for last more than 11 months, they may be enlarged on regular bail.

In support of his contention, learned counsel relied upon decisions of Hon'ble Supreme Court in case of **Prasad Purshottam Mantri vs. Union of India & ors** reported in **2019 SCC Online Bom 13061** and order dated 21.12.2021 passed by this Court in MCrC No.6331/2021.

4. On the other hand, Mr. Maneesh Sharma, learned counsel for non-applicant Department opposes submissions of learned counsel for applicants and submits that based on intelligence input, it revealed that applicants have created fake firms. Fake business transaction of Rs.1400 Crore approximately has been shown in the name of these fake firms involving input tax credit of Rs.258 Crore approximately. During course of investigation,

applicant Nos.3 & 4 were also interrogated, their statements under Section 70 of the Act of 2017 were recorded in which they admitted their involvement in generation of fake input tax credits for monetary benefits. Applicants were arrested on 26.1.2021 in Siwan (Uttar Pradesh) and based on transit remand, they were produced before the court of Chief Judicial Magistrate, Raipur on 28.1.2021, and were remanded to judicial custody. During investigation it revealed that money was transferred to various firms without procuring any goods or service from them. Details of firms, their bank accounts as also amount transferred are specifically given in complaint. He pointed out that applicants are instrumental in creating fictitious firms across the country. Applicant No.1 admitted the fact of availing input tax credits by issuing invoices without actual supply of goods. Fake invoices are forwarded to beneficiaries, most of them are situated in Maharashtra. DDGI, Mumbai Zonal Unit has already initiated investigation against those firms. Matter is still under investigation, release of applicants on bail would hamper further investigation, hence they may not be enlarged on regular bail. He submits that non-applicant collected material during investigation which will be proved during trial. The case diary is very bulky as is available with him. He places his reliance on decision in case of **Arvind Kumar Munka Vs. UOI** reported in **2020 SCC Online Cal 531**; order of High Court of Orissa, Cuttack dated **8.6.2021** in **BLAPL No.958/2021 (Rajeev Mishra vs. State of Odisha**; order dated 29.5.2019 SLJ 4322-4324/2019 (**Union of India vs. Sapna Jain & Ors**); order dated 27.5.2019 passed in SLP No.4430/19 (**PV Ramanna Reddy vs. UOI & ors**).

5. I have heard learned counsel for parties and perused case diary placed before this Court.
6. Allegations against applicants are that they have committed economic offence causing loss of Rs.258 Crore approximately to the government ex-chequer by forming thirty fake companies. Applicant Nos.1 & 2 got prepared two Adhar Cards

and PAN Cards in two different names with same photograph i.e. applicant No.1 in the names of Paritosh Kumar Singh & Diwakar Choudhary; applicant No.2 in the names of Ravi Kumar Tiwari & Babul Mishra. Copies of PAN Cards and Adhaar Cards of applicants No.1 & 2 are seized by non-applicant Department during course of investigation. Perusal of list of firms/companies created by applicants would reveal that fake firms/companies are created in both names. This shows that intention of applicants since inception was to commit crime in a planned manner with calculation. Further, statement of bank accounts seized reflects huge transactions of money at a time, as appearing in Paragraph-8 of complaint, without there being any sales and purchases.

So far as submission of learned counsel for applicants that there is no material to show that firms stated to have been created by applicants are not in existence, is concerned, during course of investigation applicants failed to bring on record any material establishing existence of firms/companies created by them. Mere fact that applicants are in jail since 25.1.2021 cannot be a ground to enlarge them on bail, particularly when it is the submission of learned counsel for non-applicant Department that different zones of Department are investigating into matter arising out of transactions with the firms/companies created by applicants. Further, during search and inspection conducted by non-applicant Department it revealed that no business was actually being conducted at the declared place of business, the purchases and sales shown in the name of fictitious firms. Hence, the manner in which crime is committed reveals that applicants with cool mind and deliberate design with an eye on personal profit regardless of consequence of community affecting economy of the country as whole, have committed crime in question. Act of applicants is an attempt to destroy system of the Government of collecting taxes under GST scheme. Economic offences constitute a class apart and even bail matters are required to be decided

with different approach as it involves huge loss of public funds.

7. Hon'ble Supreme Court in case of **Nimmagadda Prasad vs. Central Bureau of Investigation** reported in **(2013) 7 SCC 466** observed as under:-

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber 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 vs. Mohanlal Jitamalji Porwal and Anr (1987) 2 SCC 364** this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed 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 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, Court has to keep in mind the nature of accusations, 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 it 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 grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

8. True it is that offence committed under Section 132 (1) of the Act of 2017 is made compoundable under Section 138 of the Act of 2017, subject to deposit of amount assessed. Present is not the case where applicants being businessmen in the course of their business inadvertently committed any offence as defined under Section 132 (1) (b) (c) of the Act of 2017. From the documents collected by non-applicant Department during investigation and contents of complaint filed by non-applicant, it is apparent that applicants with intention to commit economic crime, created fictitious firms in a planned manner. Hence, I do not find present to be a fit case where applicants should be enlarged on regular bail, more so when it is stand of non-applicant Department that investigation is in furtherance at different zones of the Department.
9. Bail application is accordingly rejected.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-