

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 91 of 2022

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MOHSIN SALIMBHAI QURESHI

Versus

STATE OF GUJARAT

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Appearance:

MR NIRUPAM NANAVALY SENIOR ADVCOATE WITH MR. RAHUL R
DHOLAKIA(6765) for the Applicant(s) No. 1

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 2

MR PRANAV TRIVEDI APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 07/03/2022

CAV ORDER

1. The present application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the offence being File No.DGGI/AZU/Gr.E/12(4)510/2020-21 registered with the office of DGGI, AZU, Ahmedabad for the offences punishable under sections 132(1)(b), 132(1)(c) read with section 132(1)(i) and section 132(5) of the Central Goods & Services Act, 2017 and section 132(1)(b), 132(1)(c) read with section 132(1)(i) and section 132(5) of the Gujarat GST Act, 2017 and section 120(B) of the IPC.

2. The facts arising out of the said case in nutshell, are narrated hereinbelow:

2.1 The officers of the Directorate General of GST

Intelligence, Zonal Unit, Ahmedabad, (hereinafter referred to as 'DGGI' for short), which works under Central Board of Indirect Tax and Customs (CBIC) under the Ministry of Finance, Government of India, had got intelligence that certain firms were operating only on paper and passing on inadmissible Input Tax Credit (hereinafter referred to as 'ITC' for short) by issuing invoices only, without any actual supply of goods mentioned therein. An inquiry was conducted against one such firm M/s. Ronak Traders, which confirmed that the unit was non-existing and no eligible ITC was available with the firm, as its GSTR-2A was nil and M/s. Ronak Traders passed on fraudulent ITC of Rs.10.36 crore to S.K. Traders by showing entire supply to them in their GST returns. M/s. S.K. Traders was also found to be non-existing, which in turn, has passed on ITC of Rs.10.29 crore to the two firms M/s. Alina Traders having legal name as Mohsin Salimbhai Qureshi having GSTIN 24AAIPQ1079MIZB and M/s. Glaxy Traders having legal name as Mohsin Salimbhai Qureshi having GSTIN 24AAIPQ1079M2ZA, both companies having business at Ahmedabad. The said two firms are proprietorship firms of Shri Mohsin Salimbhai Qureshi, the present applicant, who was found indulged in receiving and passing of fraudulent ITC to their buyers by way of creating a chain of bogus firms, without physical receipt and supply of goods.

2.2 It is stated in the memo of arrest that as per the

investigation two firms under the proprietorship of the present applicant - Mohsin Salimbhai Qureshi namely M/s. Alina Traders and M/s. Galaxy Traders have availed and utilised ITC of Rs.8.18 crore and Rs.2.11 crore respectively on the basis of invoices issued by M/s. S.K. Traders, which is non-existing firm which in turn received Rs.10.36 crore from another non-existent firm i.e. M/s. Ronak Traders which has no GSTR-2A, without receipt of goods mentioned therein and since the entire payment has been made through utilisation of ITC which was not legally available to both these firms, and therefore no tax has been paid in respect of the invoices issued by these two firms and therefore the availment of ITC of Rs.10.29 crore was not admissible as per section 16(2)[(b) & (c)] of CGST Act, 2017.

2.3 The applicant was arrested on 01.09.2021 under the provisions of section 69 of the Central Goods and Services Tax Act, 2017 and produced before the Court of Additional Chief metropolitan Magistrate, Ahmedabad, thereby he was sent in judicial custody. The applicant thereafter preferred bail application under the provisions of section 437 of the Code before the court of learned Magistrate, which came to be rejected vide order dated 14.09.2021. Against the same, the applicant approached the Court of learned City & Sessions Judge, Ahmedabad by preferring Criminal Misc. Application No.7105 of 2021, however, the same also came to be rejected vide judgment and order dated 11.10.2021.

2.4 It is stated that, after completion of investigation in connection with the present offence, a complaint came to be filed before the Court of learned Magistrate on 29.10.2021 for the offences punishable under sections 132(1)(b), 132(1)(c) read with section 132(1)(i) & 132(5) of the CGST, 2017 and section 132(1)(b), 132(1)(c) read with section 132(1)(i) & 132(5) of the Gujarat GST Act, 2017 and section 120B of the IPC.

2.5 It is stated that post filing of the complaint, the applicant had preferred Criminal Misc. Application No.3907 of 2021 for regular bail, however, the same came to be rejected vide order dated 22.11.2021. Being aggrieved by the same, the present applicant has preferred Criminal Misc. Application No.8614 of 2021, which also came to be rejected vide order dated 07.12.2021 by the Additional Sessions Judge, Ahmedabad. Hence, the present application.

3. Mr. Nirupam Nanavaty, learned senior advocate with Mr. Rahul R.Dholakia, learned advocate for the applicant stated that, the applicant had appeared before the complainant on 31.08.2021 and was interrogated and thereby arrested on 01.09.2021 without any basis or evidence. Mr. Nanavaty submitted that the applicant is holding GST registration for M/s Alina Traders w.e.f. 01.07.2017 and for M/s. Galaxy Traders w.e.f. 09.11.2018 and the applicant is engaged in the

business of ferrous scrap, iron and steel scrap in both the firms and that the applicant was holding registration certificate under the erstwhile VAT law w.e.f. 13.12.2016 at the very same premises and was migrated from VAT to GST regime under section 139 of the CGST Act, which reveals that the applicant is tax paying citizen and not conducting business only on paper.

3.1 Mr. Nanavaty, senior advocate, stated that during the procedure of desealing the premises of the applicant, search operations were carried out on 23/24th February, 2021 and panchnamas were drawn and various documents containing 19 box files were seized and order of seizure in FORM GST INS-02 was issued. During the said procedure, the officers also found stock containing iron scrap at the business premises of the applicant and therefore there ought not to be any dispute or doubt about the transactions of sales and purchase by the applicant, which are supported by legal and valid documents and invoices. It is stated that both the firms had taken ITC after making payment of goods and tax to its suppliers as also verifying their status on website at the time of purchase of goods and the status of all the suppliers were active on the date of the purchase of goods and initially the allegation was to the tune of Rs.10.29 crores while the applicant was arrested, however, the same was worked out to be Rs.14.89 in the complaint sans any admissible evidence.

3.2 Mr. Nanavaty submits that the words 'reason to believe' used in section 69(1) of the Act suggest that a statute be it of any nature, civil, criminal, quasi criminal, quasi civil has a definite destination to reach which in legal parlance is described as 'attainment of the object for which the law has been enacted for' and to analyze the character of a statute, it has to be read as a whole then only its true character and application can be understood. He states that the GST Act is essentially a fiscal statute and the statement of object and reason has to be read together which is aimed at realization of revenue. He submits that in the present scenario, the statute itself provides a mechanism to recover the amount payable to the government, however no such steps are taken by the government till date and the applicant without any show cause notice or any adjudication is declared to be the offender of evasions of CGST to an extent of amount of Rs.14.89 crores.

3.3 Senior Advocate Mr. Nanavaty states that, from the provisions invoked in the complaint, the alleged sections are mainly applicable to the original beneficiaries and not the applicant, even, as per the prosecution case and statement of the independent witnesses, it is evident that the applicant was neither the administration or operator of the alleged bogus firms. It is submitted that the premises of the applicant was raided and the necessary goods and documents were already

seized and the statement of the applicant was also recorded by the authority; therefore, there is no question of tampering with evidence or winning over witnesses in this case and thus urged that no useful purpose would be served by keeping the applicant in jail and therefore, urged to release the applicant on bail. He submits that there are no antecedents against the present applicant and as the offences are triable by the court of Judicial Magistrate, wherein the maximum punishment is upto 5 years and fine only.

3.4 Relying on the case of **Arnesh Kumar Vs. State of Bihar & Anr.**, reported in **2014 (8) SCC 273**, senior Advocate Mr. Nanavaty stated that, in the said case the Hon'ble Supreme Court held that in the cases where offence is 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, the arrest of the accused may only be made where there is a necessity for arrest. He also relied on the case of **Sanjay Chandra Vs. Central Bureau of Investigation [2012 (1) scc 40]**, **Shri P.Chidambaram Vs. Central Bureau of Investigation [in Criminal Appeal No.1603 of 2019]** and **Gurucharan Singh & Ors. Vs. State (Delhi Administration) [AIR 1978 SC 179]**.

4. Mr. Utkarsh R.Sharma, learned advocate for respondent no.2 relied on the affidavit-in-reply filed by

respondent no.2 and placing emphasis on the facts of the case stated that, the present applicant is a mastermind/kingpin, who had created and operating 3 proprietary firms namely; M/s. Alina Traders (GSTIN: 24AAIPQ1079MIZB), M/s. Galaxy Traders (GSTIN:24AAIPQ1079M2ZA) and M/s. Green Life Traders (GSTIN:24AANPQ9065EIZD). He submits that the department had collected specific intelligence which indicated that there were certain firms who were operating only on paper and were passing on inadmissible ITC by issuing invoices without supplying the goods mentioned therein. It is stated that M/s. Alina Traders and M/s. Galaxy Traders had received inadmissible ITC from M/s. S.K. Traders, who in turn had received inadmissible ITC from M/s. Ronak Traders. There was no GSTR-2A return which confirms that M/s. Ronak Traders had no inward supply and no ITC in their account, whereas all the payment of GST amounting to Rs.10.36 crores for their outward supply had been shown to be made only to M/s. S.K. Traders by utilising ITC. He stated that similarly, M/s. S.K. Traders have shown outward supply on payment of GST amounting to Rs.8.18 crores to M/s. Alina Traders and outward supply on payment of GST amounting to Rs.2.11 crores to M/s. Galaxy Traders using ITC, which was wrongfully passed on by M/s. Ronak Traders.

4.1 Mr. Sharma further stated that based on these facts, a search warrant was issued to search principal

place of business of M/s. Ronak Traders stated to be at Shop No.4, Survey No.239, Plot No.58-59, Sarkhej Road, Fatehwadi, Ahmedabad; however, the premises could not be located. He submits that further a search was conducted on 11.02.2021 at the principal place of business of M/s. S.K. Traders for Shop No.6, behind Telephone Hotel, Sarkhej Road, Juhapura, Ahmedabad and the same was also found to be non-existing and accordingly, panchnama dated 11.02.2021 was drawn.

4.2 Advocate Mr. Sharma submitted that as M/s. S.K. Traders have passed on their ITC to M/s. Alina Traders and M/s. Galaxy Traders, proprietorship firms of the applicant, having principal place of business at Pirana Road, Shawasi, Ahmedabad, a search was conducted on 12.02.2021, however the premises was found to be locked and on being contacted the applicant, showed his inability to come at the premises for the reason that his son was hospitalized, therefore, the premise was sealed under panchnama dated 12.02.2021.

4.3 Mr. Sharma stated that an e-mail dated 16.02.2021 was issued to the applicant asking him to approach the DGGI office for desealing of the premises and for completion of proceedings but no response received from him, yet e-mail dated 18.02.2021 was issued in this regard. He stated that vide letter dated 23.02.2021 the applicant has requested to open the seal and deputed Shri Irfanbhai as his authorised person and

another search was conducted on 23-24.02.2021 under panchnama and the premise was found to be a shop where iron scrap weighing to 11,145 kgs. were lying and as Mr. Irfanbhai could not produce any stock register/records regarding said stock, mandatory under section 35 of CGST Act, 2017, the said goods were seized under the provision of section 67 of CGST Act, 2017.

4.4 Mr. Sharma further submitted that another attempt was made to find the principal place of business of M/s. Ronak Traders, however the same could not be located and hence, it was concluded that the unit was not in existence and the same exists only on papers and accordingly the panchnama dated 26.02.2021 was drawn and for further investigation, various correspondences with the applicant were made. Mr. Sharma stated that summons dated 26.02.2021 was issued to him directing him to appear on 02.03.2021 for tendering his statement; however, he did not appear and vide letter dated 02.03.2021, he informed that he will not appear before the DGGI authorities as an inquiry was undergoing against his firms before the State GST authorities and requested to close the inquiry by transferring the inquiry to State GST authorities under section 6 of Central/Gujarat GST Act 2017.

4.5 Mr. Sharma contended that vide letter dated 02.03.2021, the applicant was informed that the inquiry at SGST was closed, as his request for transfer of case to

SGST does not fall under section 6 of the said Act, 2017 thus another summons dated 09.03.2021 was issued to him directing to appear on 11.03.2021 to tender his statement and to approach the SGST authorities for closure report. Mr. Sharma stated that another summons was issued directing him to appear on 17.03.2021 to tender his statement, but he neither appear nor made his statements/submissions.

4.6 Mr. Sharma submits that it can be seen from letter dated 24.02.2021 of the Assistant Commissioner of State Tax, Ahmedabad that their inquiry was related to availing of fake ITC of Rs.10,03,035/- by M/s. Alina Traders from M/s. Alfa Enterprises and against the said inquiry of the State GST, M/s. Alina Traders made payment of Rs.10,03,035/- along with interest and penalty, which clearly establishes that the applicant was involved in receiving and utilising fake ITC in the past also.

4.7 Mr. Sharma further stated that during ongoing investigation, statements of two of the transporters, whose vehicles were mentioned in the purchase invoices of M/s. Alina Traders and M/s. Galaxy Traders, were recorded under section 70 of CGST Act, 2017, which clearly establishes that no goods were received from M/s. S.K. Traders. He states that a show cause notice dated 17.08.2021 was issued to M/s Alina Traders and M/s. Galaxy Traders for disposal of goods seized under

panchnama dated 23-24.02.2021 and another summons was issued on 31.08.2021 recording his statement in connection with availment and utilization of huge amount of ITC; however he did not accept the facts and failed to give basic details of his employees/accountants etc. and gave only their names and therefore it was clear that the applicant, proprietor of M/s. Alina Traders and M/s. Galaxy Traders, had availed ITC of Rs.10.29 crores from a non-existent firm being M/s. S.K. Traders, without receipt of goods, and has availed and utilized ITC in contravention of Section 16 of CGST Act, 2017 and hence he was arrested on 01.09.2021.

4.8 Mr. Sharma states that after arrest of the applicant, on 01.09.2021 further investigation in the matter was carried out and it was found that one more supplier of M/s. Alina Traders being A.One Traders, is existing only on papers and there was no ITC in GSTR-2A returns of the said company; however all the payment of GST had been shown to be made through ITC only. He submits that total fraudulent ITC were availed and utilized by the firms of the applicant increased from Rs.10.29 crores to Rs.13.97 crores, which establishes the fact that the applicant was involved in the offence to defraud the government exchequer by availing and utilizing the fraudulent ITC. Further huge sum of money have been transferred to various firms with whom no business activity was noticed.

4.9 Mr. Sharma further stated that after further investigation, recording statements and gathering of necessary evidences, the DGGI made an application before the Additional Chief Metropolitan Court, sought permission to record the statement of the applicant in the jail itself, which was granted and the statement of the applicant was recorded on 26.10.2021 from which it revealed that the applicant is the mastermind of the scam of issuing fake invoices without supply of the goods and availing and utilising the ITC of Rs.14.89 crore. He stated that since the amount involved is more than Rs.500 Lakh, the said offences are cognizable and non-bailable as per section 132(1)(i) and 132(5) of the CGST Act, 2017 and therefore urged not to exercise discretion in favour of the applicant to enlarge him on bail.

4.10 Mr. Sharma contended that the evidence collected so far clearly indicates that the accused is the mastermind in creating fake firms who subsequently defrauded the government exchequer to the tune of Rs.14.89 crores. Further, from the statement of Shroffs/Angadiya, it is clearly established that the accused is operator of non-existent firms and directly involved in this scam. He contend that the applicant had never cooperated with the investigation and considering the nature of offence committed by the applicant he was arrested on 01.09.2021 and prosecution was launched on 29.10.2021, but the investigation is still going on and the other stake holders or beneficiaries of said illegal

activities of availing and utilizing bogus ITC on the basis of invoices without receipt of goods are also under investigation and if he released on bail, he may tamper with the evidence and influence other stakeholders or witnesses in the case.

4.11 Mr. Sharma submitted that M/s. Ronak Traders, M/s. S.K. Traders and M/s. A.One Traders are non-existent at the registered premises while M/s. Green Life Traders, M/s. Lina Traders and M/s. Galaxy Traders do exist at the registered premises, but are involved mostly on paper transactions and the applicant is the operator of the non-existent firms M/s. S.K. Traders and M/s. A.One Traders and he handles the Bank Accounts and he is beneficiary of the entire transactions and has transferred the funds to the tune of Rs.37 crores in the Bank Account of Shroff firms namely M/s. Shreeji Enterprise and M/s. Manali Corporation and receives back cash from them after giving commission @ Rs.100/- per lakh. He has tried to mislead the investigation by putting the onus on one Shri Ayazbhai.

4.12 Mr. Sharma stated that the case law relied on by the applicant in case of Arnesh Kumar Vs. State of Bihar (supra) is not applicable in the present case as the case law is of pre-GST era and have totally different circumstances to this case and stated that further in this case the Hon'ble Supreme Court has observed that, if there are reasons to believe that the accused will further

commit the offence, tamper the evidence, prevent any person from making and inducement etc., the person may be arrested and in the present case, it is on record that the accused had never cooperated with the investigation, submitted wrong facts, therefore, there are chance that he will try to hamper the investigation and will try to induce the witnesses, therefore, urged that the present application may be rejected.

4.13 Advocate Mr. Sharma states that as per observation of the Hon'ble Supreme Court in case of **Nimmagadda Prasad Vs. C.B.I, Hyderabad**, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail and the economic offences having deep rooted conspiracies and involving huge loss of public funds, which 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.

4.14 In support of his submissions Mr. Sharma relied on the judgments of (i) **Vimal Yashwantgiri Goswami Vs. State of Gujarat**, rendered in Special Civil Application No.13679 of 2019 with allied matters (ii) **Union of India Vs. Rajnish Kumar, Tuli**, [special Leave Criminal Appeal No.30 of 2010], (iii) **Dukshishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Vs. Arun Kumar**

Bajoria [(1988) 1 SCC 52] (iv) **Paresh Nathalal Chauhan Vs. State of Gujarat** [Criminal Misc. Application No.6237 of 2020] (v) **P.V. Ramana Reddy Vs. Union of India** [Writ Petition Nos.4764 of 2019 & Ors.] (vi) **Union of India Vs. Sapna Jain** [SLP (Crl.) 4322-4324/2019] (vii) judgment of Bombay High Court in case of **Mr. Tejas Pravin Dugad Vs. Union of India & Ors** [Criminal Writ Petition No.1715 of 2020] (viii) **Ramjas Foundation and Ors. Vs. UOI And Ors.** [Civil Appeal No.6662 of 2004].

4.15 Shri Sharma submitted that length of the punishment prescribed to the offence should not weigh higher than magnitude of the total scam undertaken to defraud the government. The fraudulent ITC claim has created a huge liability for the Government and submitted that if the applicant is released on bail he may try to influence the witnesses, who have given evidence against him and thus may try to weaken the case of the Department. Mr. Sharma submitted that while securing the right of the accused, it would be equally necessary that the Department gets an opportunity to present their case uninfluenced by the hindrances, which may be created by the applicant, who probably would attempt to run away from the departmental actions for the recovery of the taxes and penalties and may not cooperate during such proceedings when the applicant has not shown his willingness to deposit the loss caused to the government

exchequer by wrongly availing the ITC.

5. The applicant has been arrested on 01.09.2021. The complaint was filed on 29.10.2021. The reply filed in the present matter reflects the course of action adopted for investigation and necessary statements were recorded. The statement of the applicant was also recorded while visiting him in the judicial custody. The details of manipulations by the present applicant is stated to have been found during the investigation. The shell companies details have been recorded. The facts of the money transferred through Shroff firms and the same being traced back to him, has been found during the investigation and the chargesheet in the form of complaint dated 29.11.2021 shows the applicant as the mastermind operating fake firms to defraud the government exchequer. The facts of the complaint would require to be proved by the Directorate General of GST Intelligence, which is filed under section 132(1)(b) and 132(1)(c) read with section 132(1)(i), 132(5) of Central Goods And Services Act, 2017 and section 132(1)(b) and 132(1)(c) read with section 132(1)(i), 132(5) of Gujarat GST Act, 2017 and section 120B of the IPC. The Additional Chief Metropolitan Magistrate, Ahmedabad had ordered to register the complaint and had issued summons to the accused under section 204(a) of the Cr.P.C. making it returnable on 03.11.2021. The applicant is still in jail. Pre-charge evidence would be recorded. The trial will take its own time to conclude.

5.2 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 be prolonged beyond the statutory period of punishment which is for five years.

5.3 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.

5.4 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.

6. 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.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with offence being File No.DGGI/AZU/Gr.E/12(4)510/2020-21 registered with the office of DGGI, AZU, Ahmedabad on executing a personal bond of Rs.1,00,000/- (Rupees One Lakh only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[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 concerned trial court;

[e] furnish the present 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 concerned trial court;

8. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

Pankaj

(GITA GOPI, J.)