

IN THE COURT OF SH. MANOJ KUMAR RANA, LD. ACJM,
GURUGRAM

Bail Application No. _____/2022

In the Matter of:

CGST, GURUGRAM

VERSUS

SUNIL MEHLAWAT

WRITTEN SUBMISSIONS ON BEHALF OF THE

APPLICANT/SUNIL MEHLAWAT

MOST RESPECTFULLY SHOWETH:

1. The Applicant aged about 29 Years, is married and has a minor child and aged father (*mother already passed away*), is sole bread earner of the family, since his wife is a housewife. There is no one else to take care of his family.
2. The applicant has never been involved in any other case till date. He has been practicing as a C.A. since the past 6 years.
3. As per the Department, the Applicant voluntarily joined investigation on Summon being issued to him on 17.05.2022 and it is also not the case of the Department that the Applicant did not cooperate in the investigation or evaded any Summons.

4. Further, admittedly, the entire investigation is based on documents. Therefore, no useful purpose will be achieved by keeping the Applicant in further custody.
5. U/s 132 of the CGST Act, 2017 maximum punishment of only 5 Years can be imposed and therefore, on account of the Applicant cooperating and voluntarily joining investigation, there was no reason to Arrest the Applicant as per the settled guidelines of the Hon'ble Supreme Court of India in *Arnesh Kumar Vs State of Bihar* (2014) 8 SCC 273.
6. As per the Arrest Memo dated 18.05.20022, the Applicant is stated to have been Arrested u/s 132 (1) (a) **or** (b) **or** (c) **or** (d). Therefore, it is clear that the Sanction to Arrest u/s 69, issued by the Commissioner was only in relation to the said offences and **not any other offence**.
7. However, **surprisingly**:
 - 7.1 The allegations raised against the Applicant in the Remand Application dated 19.05.2022 does not disclose commission of the aforesaid offences u/s 132 (1) (a) **or** (b) **or** (c) **or** (d). As, it is the admitted case of the Department that Applicant has **neither** issued any invoice **nor** supplied any goods **nor** availed any Input Tax Credit **nor** collected any Tax **nor** failed to Deposit it.
 - 7.2 The Remand Application dated 19.05.2022 states that the Applicant has also been arrested u/s 132 (1) (f), for which the Commissioner never provided any Sanction, which is clear from the Arrest Memo dated 18.05.2022.

7.3 In case if, the Commissioner's Sanction to Arrest the Applicant u/s 69 was also issued u/s 132 (1) (f), then the Arrest Memo is bad in law. On the other hand, in case there was no sanction u/s 69 for Arrest u/s 132 (1) (f) then the Remand Application dated 19.5.2022 is bad in law.

7.4 Therefore, even in alleged offence u/s 132(1) (f) is considered by this Hon'ble Court, there is no doubt that the same is **bailable** as per Section 132 (5).

7.5 NOT even a single document bears the genuine signature of the Applicant, rather, it is the case of the Department in the Remand Application dated 19.05.2022 that accused Gaurav Dhir is main accused and Garuv Dhir has only forged the signatures of the Applicant Sunil Mehlawat on the alleged documents and therefore, as such the Applicant appears to be victim rather than accused.

7.6 NOT even a single rupee has been received by the Applicant in his accounts from the alleged offence. Therefore, it is clear that the Applicant is not the beneficiary of the alleged offence.

7.7 The Department has to *prima facie* establish the *mens rea* on part of the Applicant. However, as per the Remand Application, the only case of the Department is that the Applicant Sunil Mehlawat was tricked into providing the OTP received on his mobile by the Accused Garuv Dhir to Accused Garuv Dhir and Accused Gaurav Dhir has forged the signatures of the Applicant Sunil Mehlawat on the alleged documents. Hence, it is clear that there is no *mens rea* on part of the Applicant Sunil. In absence of evidence in respect of *mens rea* on part of the

Applicant Sunil, it is humbly submitted that the Applicant Sunil Mehlawat deserves the concession of bail in the present case.

8. It is further submitted that the Applicants continued detention in the present case is causing extreme hardship and social humiliation for the family of the Applicant and may ultimately lead to complete destruction of the carrier of the applicant and social reputation of the Applicant, which cannot be the intent of the CGST Act, 2017. Otherwise, punishment of more than 7-10 Years would have been prescribed under the CGST Act, 2017 rather than 5 Years.

Submitted Please.

Through:

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Dated: 21.05.2022

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