

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 11390 of 2022

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NILESHBHAI NATUBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:

MR ND NANA VATY, SENIOR COUNSEL with MR CHETAN K
PANDYA(1973) for the Applicant(s) No. 1
MR MITESH AMIN, Learned PUBLIC PROSECUTOR with MR PRANAV
TRIVEDI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 05/08/2022

CAV ORDER

1. This application has been filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with the File No. ACST(3)/ENF-1/SUMMONS/2020-21 and DCST /ENF-2/AC-6/CONFIDENTIAL/2021-22 registered with Office of the Chief Commissioner of State Tax, Enforcement, Coordination Branch, Ahmedabad.
2. The applicant was arrested on 23.02.2022 by the Assistant Commissioner of State Tax-4, Enforcement Division – 2 (the respondent No.3), in connection with the alleged offences punishable under Section 132(1)(c) of the Central Goods and Services Tax Act, 2017 (in

short referred to herein as ‘CGST Act, 2017) and Section 132(1)(c) of the Gujarat Goods and Services Tax Act, 2017 by exercising powers under Section 69 of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to in short as the ‘GGST Act, 2017’).

3. The learned Additional Chief Metropolitan Magistrate, Ahmedabad by an order dated 24.02.2022 had granted custody for interrogation upto 15.00 hours of 03.03.2022. On 03.03.2022, the respondent No.3 moved an application for further custody for 5 days which was rejected by the Court vide order 03.03.2022. The respondent No.3 had challenged the order dated 03.03.2022 by preferring Criminal Miscellaneous Application No.38 of 2022 before the learned City and Civil Sessions Court, Ahmedabad and after hearing both the sides, the Sessions Court rejected the application by an order dated 08.03.2022.

4. The registration of 39 suppliers of M/s. Madhav Copper Limited has been cancelled *ab initio* on the ground that those registered dealers were fictitious entities. Hence, the Input Tax Credit (ITC) availed from these registered dealers were not available to M/s. Madhav Copper Limited. On completion of the investigation, the

respondent No.3 - Assistant Commissioner of State Tax-4, Enforcement Division – 2 filed a Criminal Complaint No.40504 of 2022 for the offences punishable under Section 132(1)(c) of the GGST Act, 2017 and CGST Act, 2017 read with Section 120B of the Indian Penal Code against the applicant and M/s. Madhav Copper Limited.

5. It is stated by the applicant that M/s. Madhav Copper Limited purchased goods under Tax Invoice after verification of GST registration on the web portal of GST Department. M/s. Madhav Copper Limited is engaged in business of manufacturing of copper bus bar, copper rod, profile, copper fabricated products, enameled copper wire, paper covered copper conductor, poly wrap submersible winding wire, fibre glass conductor, tap insulated copper conductor, bare copper wire and copper strips for which the company purchases copper scrap from various suppliers from within India and abroad. It is contended by the applicant that M/s. Madhav Copper Limited had never purchased raw materials from any unregistered dealer or supplier and all the purchases have been made from the registered dealer / supplier against Tax Invoice, E-way bill upon payment of the applicable

SGST/CGST/IGST and these dealers were holding a valid GSTIN. According to the applicant, out of 131 suppliers, 39 suppliers are in question and their registration was cancelled suo moto under GST *ab initio* by the GST Department and therefore, Input Tax Credit availed from such suppliers have been made ineligible.

6. It is the case of the applicant that M/s. Madhav Copper Limited had made payment of Goods as well as tax to its supplier through banking channel. M/s. Madhav Copper Limited have manufactured the final products of copper out of the material purchased under the Tax Invoice and then sold to its buyers under the Tax Invoice and passed on Input Tax Credit received by M/s. Madhav Copper Limited. It is further the case of the applicant that M/s. Madhav Copper Limited had filed regular returns for the business transactions and the company has not received any show cause notice either under Section 61 / 73 or 74 of Central Goods and CGST Act, 2017 or the GGST, 2017, except the show cause notice for the tax period 01.07.2017 to 03.10.2019 under Section 74/122 of the GGST Act, 2017 for Rs.20,86,67,524/-, to which M/s. Madhav Copper Limited has filed a reply and had also deposited

Rs.7,71,22,360/- under protest. It the say of the applicant that the show-cause notices have not been adjudicated. It is further submitted that the business transaction of M/s. Madhav Copper Limited for the period 01.07.2017 to 03.10.2019 has been assessed and show-cause notice has been passed and therefore, for the same period, there cannot be a second show-cause notice unless the first notice is adjudicated.

7. Learned Senior Counsel Mr. N.D. Nanavaty appearing for the applicant submits that after the arrest, the complaint in the form of charge-sheet is filed on 22.04.2022. The applicant had co-operated with the investigation and order of remand was sought for from the learned Additional Chief Metropolitan Magistrate and during the period, necessary interrogation was made of the applicant. It is also submitted that the applicant is having a manufacturing unit where comes the raw material and finished products are supplied. There is a valid registration with the GST Numbers. It is also submitted that the applicant is not a Proprietor of any bogus company.

8. It is submitted that there should not be any indiscriminate use of Section 69 of the GGST Act, 2017,

where the powers so delegated should be only after proper application of mind and the Commissioner has to give 'reasons to believe' that the person has committed the offence as alleged and for that purpose, the officer concerned was required to determine the tax liability under Sections 73 or 74 of the GGST Act, 2017. In this case, it is submitted that earlier the notice has not been adjudicated and without any assessment or adjudication or determination of GST, without following the procedure of Chapter XI and XIV, powers under Section 69(1) read with Section 132 of the GGST Act, 2017 cannot be invoked. Section 132 of the CGST Act clearly suggests that the Commissioner has to have material on record to form a belief that offence is committed, has retained the benefit arising out of the same and the Commissioner would not have "reason to believe" without any initiation of process of tax and assessing liability of the responsible person. The Commissioner is required to show exceptional situation for the arrest of the applicant before the issuance of show-cause notice.

9. It is further submitted that the relevancy of the statement recorded under Section 70 of GGST Act can be considered only when someone is examined as a

witness as per Clause (b) of Section 136 and contended that none of the so-called firms or persons in whose name the entities are registered are shown as witnesses in the complaint before the Magistrate. The condition precedent of Section 132(6) of the CGST Act, 2017 and GGST Act have been completely bypassed.

10. Relying on the decision of the Hon'ble Apex Court in the case of **Arnesh Kumar v. State of Bihar** reported in **2014 8 SCC 273**, it is submitted by learned Senior Counsel Mr. N.D. Nanavaty that Section 69 of the CGST Act gives powers to the authority to arrest/release the prisoner on bail and the said powers are subject to the same provisions as Officer Incharge of the Police Station. It is submitted that for the offences punishable with imprisonment for a term less than 7 years or extend upto 7 years with or without fine, the arrest of the accused can only be made when there is an exclusive necessity for arrest. Learned Senior Counsel Mr. N.D. Nanavaty has also relied on the following decisions :-

(i) **Satender Kumar Antil v. Central Bureau of Investigation and Another** reported in **2022 SCC Online SC 825** and;

(ii) **Mohammed Zubair v. State of NCT of Delhi and Others** reported in **2022 LiveLaw (SC) 629**.

11. Learned Public Prosecutor Mr. Mitesh Amin alongwith learned Additional Public Prosecutor Mr. Pranav Trivedi appears for the respondent – State. It is submitted that the present applicant is the Director of M/s. Madhav Copper Limited. The scam alleged is of fake purchases to the tune of Rs.762.66 Crores from 36 fictitious entities and thereby availing Input Tax Credit of Rs.137.28 Crores wrongly. It is further submitted that about 39 supplier firms to Madhav Copper Limited were found fake. It is also submitted that it is the magnitude of the benefit illegally availed to be taken into consideration and the offence can be classified under Class ‘A’ and by running a Company by fake purchases, the applicant has defrauded the State Exchequer of almost Rs.138.70 Crores. The purchase has been shown of the raw material from the grey market, thus the cost would be low in selling the goods. It is further submitted that the applicant and the other accused are knowing the fake suppliers. However, no information is disclosed about the identity of the persons. It is contended that by fake supplies, the applicant has ensured that all the money goes back

to M/s. Madhav Copper Limited. It is also submitted that the payment going to the fake companies are withdrawn by cash periodically or that amount is given to them by way of Angadias or through another person or internally, it would be transferred from one fake company to another.

12. Learned Public Prosecutor Mr. Mitesh Amin submitted that the applicant had not co-operated with the Agency prior to his arrest and even thereafter, there are some prima-facie evidence against him and statements of the persons complacent in the crime have not co-operated with the Agency by disclosing true facts. It is further submitted that the anticipatory bail application of the present applicant was dismissed by the Hon'ble Apex Court on 21.09.2021 in Writ Petition (Criminal) No.301 of 2021 and Special Leave to Appeal No.9541 – 9542 of 2021 was also dismissed on 11.02.2022. Referring to the orders of the High Court and the Hon'ble Apex Court in the case of **Kirtiraj Pankajbhai Sutariya v. The State of Gujarat and Others** in **Special Leave to Appeal (Crl.) No.2358 of 2022**, it is submitted that the Hon'ble Apex Court had considered the allegation against the said applicant as serious and perusing the prima-facie finding in deciding the bail

application, the Hon'ble Apex Court had observed that no case is made out for release on bail. Placing reliance on the order of the Hon'ble Apex Court in the case of **Sandeep Goyal v. Union of India in Special Leave to Appeal (Crl.) No.1803 of 2020**, it is submitted that the fake firms had committed the fraud which is serious. Reliance is also placed on the observations of this Court dated 05.05.2020 in the case of **Paresh Nathalal Chauhan v. State of Gujarat in Criminal Miscellaneous Application No.6237 of 2020** and thereafter, the order was challenged before the Hon'ble Apex Court by way of Special Leave to Appeal.

13. Learned Public Prosecutor Mr. Mitesh Amin submits that summons was issued to the Director of M/s. Madhav Copper Limited namely Divya Arvindbhai Monpara, Rohitbhai Bhikhabhai Chauhan and Pankajbhai Manjibhai Goyani and the co-conspirator Mukeshbhai Pravinbhai Chadotara. However none of them had co-operated with the investigating agency. It is further submitted that the anticipatory bail order of **Mohammad Abbas Shabbirali Savjani** was rejected by this Court on 13.06.2022 in Criminal Miscellaneous Application No.18055 of 2021. This Court had not exercised the discretion of granting anticipatory bail to

the present applicant – **Nileshbhai Natubhai Patel** vide common judgment dated 14.10.2021 in Criminal Miscellaneous Application No.17697 of 2011 and allied matters. It is further submitted that the bail application of **Mohammed Abbas Shabbirali Savjani v. The State of Gujarat and Another** in Special Leave to Appeal (Crl.) No.6085 of 2022 was even rejected by the Hon'ble Apex Court and therefore, no relief has been granted to Mohammed Abbas Shabbirali Savjani (Mohamad Tata).

14. It is also submitted by the learned Public Prosecutor that the Whatsapp Chat of Mohammed Abbas Shabbirali Savjani (Mohamad Tata) with the present applicant and the Whatsapp Chat of Afzal Sadikali Savjani with the present applicant shows a connection of illegal transactions and the said Whatsapp Chat would reveal the connection with the Angadia Companies. It is submitted that both Mohammed Abbas Shabbirali Savjani (Mohamad Tata) and Afzal Sadikali Savjani had not co-operated with the investigation. Mohammed Abbas Shabbirali Savjani (Mohamad Tata) is still on the run. The questions raised during the investigation of the present applicant reflects his denial of knowing Afzal Sadikali Savjani

and further, has not given any information with regard to his connection with the Angadia.

15. Learned Public Prosecutor Mr. Mitesh Amin stated that the statement of Angadias – Ranchhodbhai Joitabhai Patel of V.K. Angadiyu, Jagdish Maganbhai Prajapati of P. Umesh Angadiyu and Rameshbhai Ishwarbhai Patel of S.R. Angadiyu discloses the fact that they are knowing the present applicant which disclosed the fact that money was routed through the Angadias. The forensic report of the Mobile and phone connection audit shows the inter-se relation between the present applicant with Mohammed Abbas Shabbirali Savjani (Mohamad Tata). Thus, it is submitted that the investigation is required to be permitted to be proceeded further for a few months so that more facts would be discovered alongwith evidence, to support the prosecution case.

16. Countering the above argument of learned Public Prosecutor Mr. Mitesh Amin, learned Senior Counsel for the applicant Mr. N.D. Nanavaty submits that till today, no showcause notice has been sent to the present applicant. Further, Afzal Sadikali Savjani and Mahmad Abbas Rafikali Meghani have been granted

bail. Learned Senior Counsel Mr. N.D. Nanavaty has relied on the observations made by the Division Bench of this Court in the case of **State of Gujarat v. M/s. Madhav Copper Limited** in Miscellaneous Civil Application (for Direction) No.1 of 2022 in Special Civil Application No.15201 of 2021 to submit that the learned Additional Public Prosecutor had not pressed the relief in terms of Paragraph 11.1 and the observations of the Court was to the effect that there is already co-operation received from the respondent who had been arrested since his anticipatory bail application was not entertained by the Hon'ble Apex Court.

17. On hearing learned Senior Counsel Mr. N.D. Nanavaty assisted by learned Advocate Mr. Chetan K. Pandya for the applicant and learned Public Prosecutor Mr. Mitesh Amin, assisted by learned Additional Public Prosecutor Mr. Pranav Trivedi and on going through the records of the case, it appears that the arrest memo was made on 23.02.2022, the complaint came to be filed on 22.04.2022. The applicant was taken for custodial interrogation during judicial custody. The facts of the complaint would be required to be proved by the Director General of GST Department who has filed the complaint. The learned Additional Chief

Metropolitan Magistrate has ordered to register the complaint vide order below Exhibit 1. The learned Magistrate on 22.04.2022 ordered to register the complaint and issue summons to the accused under Section 132(1)(c) of GGST Act, 2017 and CGST Act, 2017 read with Section 120B of the Indian Penal Code making it returnable on 05.05.2022 under Section 204(a) of the Code of Criminal Procedure, 1973. The applicant is still in jail. Thus as per circumstances, summons would have been served in jail. The trial would begin on the recording of the evidence from the side of the Department. There is no time bound procedure after the cognizance of the offence. Further, the trial will take its own time to conclude.

18. In the case of **Sanjay Chandra v. Central Bureau of Investigation** reported in (2012) 1 SCC 40, a reference has been made to the decision in the case of **Sanjay Raghunathprashad Gupta v. State of Gujarat** in Criminal Miscellaneous Application No.4146 of 2016, to observe that the important factor while deciding the bail application certainly would be to take into consideration, the delay in concluding the trial.

19. Section 132(1)(i) (**Punishment for certain Offences**)

provides for punishment as under :-

“[Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely :-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rule made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

shall be punishable -

(i) 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.”

19.1 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.

19.2 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.

20. Here in this case, the allegations are of wrongfully availing Input Tax Credit to the tune of Rs.138.71 Crores. Almost 39 firms are alleged to have illegal dealings with M/s. Madhav Copper Limited. The authority has alleged that without any bills / invoices, the present applicant had shown the suppliers only on

paper without any actual transfer of the goods and in conspiracy with the shell companies had defrauded the Government Exchequer to the tune of Rs.138.71 Crores, while on the contrary the applicant has stated that he was dealing in purchase of goods under tax invoices after verification of the registration on the web portal of GST Department and has indicated that M/s. Madhav Copper Limited is engaged in the business of manufacturing of copper busbar, copper rod, profile, copper fabricated products, enameled copper wire, paper covered copper conductor, polywrap submersible winding wire, fibre glass conductor, tap insulated copper conductor, bare copper wire and copper strips by making purchases of copper scrap from various suppliers from India and abroad and has individually purchased from registered dealers or suppliers. According to the applicant, the purchases have been made by tax invoices and E-Way Bills upon payment of applicable GST while dealing with the dealers having valid GSTIN. Taking into consideration the maximum punishment for the alleged offence and the provisions of compounding the offences, this Court deems it just and proper to exercise discretion is exercised in favour of the applicant, as trial will take its own time to conclude.

21. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the First Information Report in connection with the File No. ACST(3)/ENF-1/SUMMONS/2020-21 and DCST /ENF-2/AC-6/CONFIDENTIAL/2021-22 registered with Office of the Chief Commissioner of State Tax, Enforcement, Coordination Branch, Ahmedabad on executing a personal bond of **Rs.2,00,000/- (Rupees Two Lacs 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;

22. 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.

23. 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.

Sd/-
(GITA GOPI, J)

CAROLINE

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