

CRIMINAL MISCELLANEOUS APPLICATION NO. 2410 OF 2023

CENTRAL CGST, Rajkot.

F. No. GEXCOM/AE/INV/6418/2023-AE

under Sections 132 (1) (a), 132 (1) (b)

and 132 (1) (l) of the Central Goods and

Services Tax Act, 2017.

ORDER BELOW BAIL APPLICATION OF ACCUSED -**DIVYESHKUMAR PRAFULLACHANDRA KANANI.**

1. This is an application seeking release of the aforesaid accused on default bail under the provisions of Section 167 (2) of the Code of Criminal Procedure, 1973 (for short, "*the Code*"). The State i.e. Central CGST, Rajkot has not filed any written objection against this application.

2. Perused the present application. Heard learned Advocate Mr Apurva N Mehta for the applicant - accused and learned Special Public Prosecutor Ms HD Joshi for the opponent –

State. Perused the relevant provisions of law as pointed out by the learned Counsel for both the sides. Perused the endorsement made by the Registrar of this Court to the effect that charge-sheet is still not filed till 21-09-2023 which is made on the present application that is presented on 21-09-2023.

3. The facts of the present application are briefly stated as under:

The accused is facing allegation for having committed the offences punishable under Section 132 (1) (a), (b) and (l) of the Central Goods and Services Tax Act, 2017 (for short, "*the GST Act*"). The maximum punishment that can be awarded for the aforesaid offences is imprisonment for a term which may extend to five years and with fine. Therefore, the provisions of sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (for short, "*the Code*") are applicable to the facts of the present case. In the present case, the accused is in judicial custody since 21-09-2023, and the maximum statutory period for which the accused can be detained pending investigation, as prescribed under Section 167 (2), is 60 days. The period of 60 days has expired on 19-11-2023. The prosecution has still not submitted

any complaint before the Hon'ble Court and, thus, it has not completed the inquiry into the alleged offences within the period of 60 days. Therefore, the accused is entitled to be released on bail.

4. On the basis of the aforesaid facts, learned Advocate for the applicant submitted that the accused may be released on bail. He has also submitted that the accused is ready and willing to abide any terms and conditions which this Court may be pleased to impose while releasing the accused on bail. In support of his submissions, he has relied upon the following decisions:

- (a) The judgment dated 26-10-2020 of the Hon'ble Supreme Court of India in the case of ***M Ravindran Vs Intelligence Officer, Directorate of Revenue Intelligence in Criminal Appeal No. 699 of 2020.***
- (b) The order dated 13-09-2019 passed by the Hon'ble High Court of Gujarat in the case of ***Sandeep Maganbhai Chaniyara Vs Commissioner, Central Excise and CGST, Rajkot in Criminal Miscellaneous Application No. 16087 of 2019.***

(c) Order dated 15-03-2021 passed by the learned Chief Judicial Magistrate, Rajkot in State Goods and Services Department F No. IV/06-380/CPI/2020-21.

(d) Order dated 02-04-2021 passed by the learned Chief Judicial Magistrate, Rajkot in Directorate General GST Intelligence (DGGI) F No. DGGI/RU/12(1)-14/2020-21.

5. On the other hand, learned Special Public Prosecutor for the opponent – State has opposed the bail application on the following grounds and submitted that the bail application be rejected:

(a) The investigating agency is not intending to delay the submission of the complaint before the Hon'ble Court but it is awaiting the reports from the FSL, Junagadh. There are many cases referred to the said FSL and there is delay in returning the results of the cases. Under these circumstances, it has not been possible to submit the complaint before the Hon'ble Court.

(b) The officers of the GST are not the police officers and,

therefore, the provisions of Section 167 (2) of the Code cannot be made applicable.

- (c) The applicant – accused could have pursued his application for obtaining regular bail before the Hon'ble High Court of Gujarat but he has withdrawn the same.

6. In support of her submissions, she has relied upon the following decisions of the Hon'ble High Court of Gujarat:

- (a) ***Umedsinh Vakmatji Jadeja Vs State, LAWS (GJH) – 1975 – 2 – 12.***
- (b) ***Mamad Abbas Jasraya Vs Assistant Collector of Customs, LAWS (GHC) – 1993 – 5 -3.***

7. In the present case, the following facts are not disputed:

- (a) Till date, the accused in judicial custody for a period of more than 60 days.
- (b) Till date, the prosecution has not submitted any complaint before this Court against the accused, and, thus, it has not completed the inquiry into the

allegations against the accused within the period of 60 days.

8. Learned Special Public Prosecutor for the opponent – State has submitted that the provisions of Section 167 (2) of the Code do not apply to the investigations under the GST Act and, therefore, the accused is not entitled to be released on bail. She further opposed grant of the bail application looking to the nature and gravity of the offence. In support of her submissions, she relied upon the decision in the case of *Mamad Abbas Jasraya (supra)*.

9. As against the aforesaid submission, learned Advocate for the applicant – accused submitted that the decision in the case of *Mamad (supra)* is rendered in the backdrop of the provisions of Section 104 of the Customs Act, 1962 and, therefore, the decision is not applicable to the facts of the present case.

10. With regard to the aforesaid submissions, it would be profitable to rely upon the decision of the Hon'ble Supreme Court of India in the case of *Directorate Of Enforcement Versus Deepak Mahajan And Another, 1994 (0) AIJEL-SC 8170*, wherein it is held that, the operation of Section 4 (2) of the Code is

straightaway attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special acts also *inasmuch* as there is no specific provision contrary to that excluding the operation of Section 167. In view of this decision, I am of the view that the submission of learned Additional Special Prosecutor for the State is liable to be rejected and, therefore, it is rejected accordingly.

11. Learned Special Public Prosecutor for the opponent – State has also relied upon the decision of the Hon'ble High Court of Gujarat in the case of *Umedsinh Vakmatji Jadeja Vs State, LAWS (GJH) – 1975 – 2 – 12* wherein it is held that, if the charge-sheet was filed pending an application of bail under Section 167 of the Code, the accused cannot be said to be in detention under the provisions of Section 167 of the Code and that no order could be passed to release him on bail under *proviso* (a) to sub-section (2) of Section 167 of the Code.

12. Against the aforesaid submission, learned Advocate for the applicant – accused has submitted that, in the present case,

no complaint is still filed and, therefore, the decision in the case of *Umedsinh Vakmatji (supra)* would not be applicable. He has also further submitted that, in view of the decision of the Hon'ble Supreme Court of India in the case of *M Ravindran (supra)*, wherein it is held that the right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing for the charge-sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court, the submission made by the learned Special Prosecutor for the State becomes unsustainable.

13. With regard to the above submissions, it is required to be noted that the decision in the case of *Umedsingh Vakmatji (supra)* is rendered in the reference made to the Hon'ble Division Bench of the Hon'ble High Court of Gujarat in view of the difference of opinion i.e. one of the views was that the accused must be automatically released on bail and the circumstance that the police subsequently submitted a charge-sheet to the Court

need not come in way of the accused being so released *whereas* the other view was that the accused cannot be said to be in detention under the provisions of Section 167 of the Code and that no order could be passed to release him on bail under *proviso* (a) to sub-section (2) of Section 167 of the Code if the charge-sheet was filed pending an application of bail under Section 167 of the Code. However, in view of the decision of the Hon'ble Supreme Court of India in the case of *M Ravindran (supra)*, as pointed out by learned Advocate for the applicant – accused, the submission of learned Special Public Prosecutor becomes unsustainable. Therefore, it stands rejected accordingly.

14. At this stage, let it be also stated that the Hon'ble High Court of Gujarat has been pleased to grant default bail to the applicant – accused in the case of *Sandeep Maganbhai (supra)* wherein the applicant – accused, like the present applicant – accused, was facing allegation under the GST Act.

15. So far as the contention of the learned Special Public Prosecutor for the State that the investigating agency is awaiting the reports from the FSL is concerned, in my view, again considering the above stated observations in the case of *M*

Ravindran (supra), such ground for the refusal of bail becomes untenable. Therefore, the submission of learned Special Public Prosecutor for the State is rejected.

16. Considering the aforesaid facts and circumstances of the case and particularly in view of the fact that the present applicant – accused meets the requirements stipulated under the provisions of *clause (ii) of proviso (a)* to sub-section (2) of Section 167 of the Code to enable him to seek bail, I am of the view that the present application deserves to be allowed. As a result, I pass the following order:

ORDER

- (1) The present application is allowed.
- (2) The applicant - accused stands released on bail in connection with offence being registered as F. No. GEXCOM / AE / INV / 6418 / 2023 - AE under Sections 132 (1) (a), 132 (1) (b) and 132 (1) (l) of the Central Goods and Services Tax Act, 2017 registered with CENTRAL CGST, Rajkot, on his furnishing bond in the sum of Rs. 1.00 Lakh (Rupees

One Lakh Only) with one surety of like amount subject to the following conditions:

- (a) The accused shall not take undue advantage of liberty or misuse his liberty.
- (b) He shall not act in a manner injurious to the interest of the prosecution.
- (c) He shall surrender passport, if any, before this Court within a week of his release from judicial custody, or, if he does not have any passport, he shall submit an affidavit to that effect.
- (d) He shall not leave the State of Gujarat without the prior permission of this Court.
- (e) He shall mark his presence before the concerned authority on any day of the first week of each English Calender Month for a period of six months, and, thereafter, on any day of the first week of every three English Calendar Months till the filing of the complaint.
- (f) He shall submit a *purshis* declaring his latest complete

residential address as well as that of his surety with latest proof like electricity bill, water bill, property tax bill, etc, his mobile number as well as that of his surety and also his nearest police station as well as that of his surety to the Court as well as the Investigating Agency.

- (g) He shall file an undertaking not to change his residential address without prior permission of the Court.

Pronounced in the open Court today i.e.
24th November, 2023.

Place : JAMNAGAR (SHAMNATH CHANDRAMOHAN VEMULLA)

Chief Judicial Magistrate And
Additional Senior Civil Judge.

Date : 24-11-2023

Code No. GJ00818