

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - BEFORE CHARGESHEET) NO. 7408 of 2024

DIPEN CHAMPAKLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR. APURVA N MEHTA(7202) for the Applicant(s) No. 1

MR. TIRTHRAJ PANDYA, APP for the Respondent(s) No. 1

CORAM:**HONOURABLE MR. JUSTICE M. R. MENGDEY**

Date : 30/04/2024

ORAL ORDER

1. **RULE.** Learned APP waives service of rule for the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with **File No. STO - 3/U - 98/JMR/SEC - 69/VOLT METAL IND / 2023 - 24 / O.W. NO. 17 dated 12.02.2024 registered with State Tax Officer (3) Unit- 98, Jamnagar.**

3. Learned Advocate appearing on behalf of the applicant submits that applicant is the proprietor of M/s. Volt Metal Industries which is engaged into the business of manufacturing and trading of brass products, metal scrap, etc. at Jamnagar. A vehicle bearing Registration No.KA-02-AH-7875 carrying the goods belonging to the applicant was intercepted by the State Tax Officer, Jamnanagr on 08.04.2022. The applicant had purchased the said goods from one M/s. Om Bana Enterprise which is registered at Coimbatore, Tamilnadu with GST Registration No. 33BNZPM4418H1ZL through valid tax

invoices, delivery of the goods had been taken of and the transactions have been done through banking channels. The applicant had paid the required amount towards the purchase of the goods. All the documents demonstrating genuineness of the transactions including proof of delivery are already in the possession of the complainant. No further recovery is pending against the present applicant. The complainant has not produced any incriminating material to show that the accused has committed any such offence and there is no direct material linking the applicant to the offence in question.

3.1 Learned advocate for the applicant has submitted that the allegations in the Arrest Memo are absolutely general and vague in nature. The entire case of the prosecution is based on presumption and assumptions and there is not even an iota of evidence against the applicant. He submitted that the arrest memo is totally silent in so far as the details of offences committed by the present applicant is concerned. No subjective satisfaction is recorded. It is simply states that the applicant has committed offence under Section 132(1)(c) of the GST Act.

3.2 Learned advocate for the applicant has submitted that mere claiming of ineligible tax credit would not attract the offence under Section 132 (1)(c) of the Gujarat Goods and Services Tax Act, 2017 without there being any allegations of only receipt of invoices without the corresponding delivery of goods. Further, the complainant has only doubted purchases of the applicant and not its sales. It is settled position of law that

there cannot be any sales without any purchase. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail, inter alia, contending that the present applicant was arrested on 12.02.2024 at 23:05 hours under Section 69 of the GST Act on the allegation of commission offence punishment under Section 132(1)(c) of the GST Act vide Arrest Memo dated 12.02.2024. He further submitted that the present applicant has availed ineligible input tax credit of Rs.6.67 Crores on the basis of purchases made from several registered entities, which according to the revenue are found to be non-existing. He further submitted that the quantum of tax evasion exceeds the necessary limits for the arrest of the accused as provided under Section 132 of the GST Act. He, therefore, submitted to dismiss the present application.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. The role attributed to the present applicant is to the effect that present applicant has availed ineligible input tax credit on the basis of purchases made from several registered entities, which according to the revenue are found to be non-existing. This Court has also considered punishment prescribed for the offence in question and also considered the fact that the applicant is in custody since 12.02.2024.

6. This Court has also taken into consideration the law laid

down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with file being **File No. STO - 3/U - 98/JMR/SEC - 69/VOLT METAL IND / 2023 - 24 / O.W. NO. 17 dated 12.02.2024 registered with State Tax Officer (3) Unit- 98, Jamnagar** on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand 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 & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the **State Tax Officer**

**(3) Unit- 98, Jamnagar** once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

- (f) furnish the present address of his 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 Trial Court;

9. The authorities 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.

10. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

11. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

12. Rule is made absolute to the aforesaid extent.

**Direct service** is permitted.

**(M. R. MENGDEY,J)**

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