

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 75

CRIMINAL MISC. BAIL APPLICATION No. - 53010 of 2023

Rajiv Jindal	----	Applicant
	Vs.	
State of U.P.	----	Opposite Party

With - Criminal Misc. Bail Application Nos. **52966/2023, 53475/2023, 55125/2023, 55131/2023, 51907/2023, 51920/2023, 52254/2023, 53246/2023, 50362/2023, 50510/2023, 55268/2023, 55161/2023, 55235/2023, 55245/2023, 6728/2024, 8746/2024, 9061/2024, 10526/2024, 10527/2024, 10528/2024, 6882/2024, 5007/2024, 50753/2023, 10603/2024, 8643/2024, 11406/2024, 11452/2024, 11581/2024, 50337/2023, 2994/2024, 2742/2024, 525/2024, 561/2024, 56396/2023, 8136/2024, 52956/2023, 53087/2023, 53088/2023, 18705/2024, 12687/2024, 13150/2024, 13386/2024, 16146/2024, 16288/2024, 16413/2024, 16981/2024, 16999/2024, 17749/2024, 17802/2024, 17809/2024, 18616/2024, 19304/2024, 26838/2024, 26942/2024.**

Appearance:

- Mr. Kamal Krishna Sr. Advocate
- Mr. Manish Tiwary, Sr. Advocate
- Mr. Vinay Saran Sr. Advocate
- Mr. Arvind Srivastava, Advocate
- Mr. Prakhar Saran Srivastava, Advocate
- Mr. Eshan Lamba, Advocate
- Mr. Aushim Luthra, Advocate
- Mr. Vineet Sankalp, Advocate
- Mr. Sikandar Khan, Advocate
- Mr. Siddharth Srivastava, Advocate
- Mr. Bharat Singh Pal, Advocate
- Mr. Amit Kumar, Advocate
- Mr. Jitendra Dwivedi, Advocate
- Mr. Vinod Kumar Tripathi, Advocate
- Mr. Sudhir Kumar Agarwal, Advocate
- Mr. Deo Kumar Tripathi, Advocate
- Mr. Prashant Kumar Singh, Advocate
- Mr. Ashok Kumar Dubey, Advocate
- Mr. Alok Kumar Singh, Advocate
- Mr. Krishna Kant Dubey, Advocate
- Mr. Hitesh Pachori, Advocate
- Mr. Saurabh Basu, Advocate
- Mr. Abhinay Bhattacharya, Advocate
- Mr. Jagdish Prasad Mishra, Advocate

... For Applicants

Mr. Manish Goel, Sr. Advocate/ Additional Advocate General, U.P.
Mr. Amit Singh Chauhan, AGA-I
Mr. Mayank Awasthi, Brief Holder
Mr. Rishi Kumar, Additional Chief Standing Counsel
Mr. Nitesh Srivastava, AGA

... For Opposite Party

Hon'ble Mrs. Manju Rani Chauhan,J.

1. This bunch of bail applications arises out of three first information reports, which are: **(i)** FIR /Case Crime No. 203 of 2023, dated 04.05.2023, under Sections 420, 467, 468, 471 IPC, Police Station Noida Sector-20, District Gautam Buddh Nagar **(ii)** FIR/Case Crime No. 248 of 2023, dated 01.06.2023, under Sections 420, 467, 468, 471 IPC, Police Station Noida Sector-20, District Gataum Buddh Nagar, and **(iii)** FIR/Case Crime No. 255 of 2023, dated 08.06.203, under Sections 420, 467, 468, 471 & 120B IPC, Noida Sector-20, District Gataum Buddh Nagar.

2. For ready reference, it would be appropriate to refer the details of bail applications preferred by the applicants under relevant sections, detailing case crime numbers, police stations and districts in the form of a chart, which are being summarized as under:

Sl. No.	Bail Application No.	Applicant's Name	Case Crime No.	Under Sections	Police Station	District
1.	53010/2023	Rajiv Jindal	0248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
2.	52966/2023	Rajiv Jindal	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
3.	53475/2023	Rajiv Jindal	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
4.	55125/2023	Manan Singhal	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
5.	55131/2023	Manan Singhal	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
6.	51907/2023	Mahesh	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
7.	51920/2023	Mahesh	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar

8.	52254/2023	Mahesh	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
9.	53246/2023	Nand Kishore	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
10.	50362/2023	Nand Kishore	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
11.	50510/2023	Nand Kishore	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
12.	55268/2023	Manan Singhal	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
13.	55161/2023	Sumit Garg @ Chacha	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
14.	55235/2023	Sumit Garg @ Chacha	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
15.	55245/2023	Sumit Garg @ Chacha	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
16.	6728/2024	Dolsy Murjhani	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
17.	8746/2024	Dolsy Murjhani	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
18.	9061/2024	Dolsy Murjhani	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
19.	10526/2024	Jatin Murjani	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
20.	10527/2024	Jatin Murjani	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
21.	10528/2024	Jatin Murjani	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
22.	6882/2024	Gaurav Singh @ Gaurav Singhal	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
23.	5007/2024	Amit @ Moti @ Motu	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
24.	50753/2023	Akash Saini	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
25.	10603/2024	Akash Saini	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
26.	8643/2024	Akash Saini	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
27.	11406/2024	Ajay Mintu @	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
28.	11452/2024	Ajay Mintu @	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
29.	11581/2024	Ajay Mintu @	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar

30.	50337/2023	Vishal	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
31.	2994/2024	Vishal	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
32.	2742/2024	Vishal	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
33.	525/2024	Praveen Kumar	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
34.	561/2024	Praveen Kumar	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
35.	56396/2023	Praveen Kumar	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
36.	8136/2024	Piyush Kumar Gupta	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
37.	52956/2023	Ashwani	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
38.	53087/2023	Ashwani	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
39.	53088/2023	Ashwani	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
40.	18705/2024	Atul Gupta	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
41.	12687/2024	Pritam Garg @ Chacha	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
42.	13150/2024	Pritam Garg @ Chacha	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
43.	13386/2024	Pritam Garg @ Chacha	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
44.	16146/2024	Gaurav Singh @ Gaurav Singhal	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
45.	16288/2024	Gaurav Singh @ Gaurav Singhal	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
46.	16413/2024	Atul Gupta	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
47.	16981/2024	Amit @ Moti @ Motu	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
48.	16999/2024	Amit @ Moti @ Motu	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
49.	17749/2024	Rakesh Dialani	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
50.	17802/2024	Rakesh Dialani	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
51.	17809/2024	Rakesh Dialani	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar

52.	18616/2024	Atul Gupta	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
53.	19304/2024	Dilip Sharma	203/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
54.	26838/2024	Piyush Kumar Gupta	255/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar
55.	26942/2024	Piyush Kumar Gupta	248/2023	420, 467, 468, 471 & 120B IPC	Noida Sector-20	Gataum Buddh Nagar

3. As per prosecution version in **FIR/Case Crime No. 203/2023**, dated 04.05.2023 under Sections 420, 467, 468, 471 IPC, Police Station Noida Sector-20, Gataum Buddh Nagar, the informant Saurabh Dwivedi is a journalist and works as an Editor of the Lallantop internet news portal and India Today Hindi Magazine. He came across two GST registrations viz. 03AUSPD7067N1Z3 and 27AUSPD7067N1ZT obtained in the State of Punjab and Maharashtra respectively w.e.f. 20.03.2023. These have been applied on informant's PAN AUSPD7067N (Exhibit 1) and bear his name, Saurabh Dwivedi as legal name of the business entity. The details of both the registrations obtained from GST portal are enclosed as Exhibit 2 to the complaint. The registered address mentioned for the given two registrations are as under – (a) 03AUSPD7067N1Z3 having registered address as 787, Ground Floor, Railway Office, ATI Road, Ludhiana, Punjab, 141008, (b) 27AUSPD7067N1ZT having registered address as 172, Sau Alakatal Uttamrao Nikalaje Path, Solapur, Solapur, Maharashtra, 413003. These have not been obtained with his consensus and he is totally unaware of the person who applied for these registrations and whose contact details are updated in these GST registrations. It is also mentioned that the two registrations are already authenticated for Aadhaar verification whereas as on date no email ID and mobile number is linked with his Aadhaar. Copy of Aadhaar Card along with screenshot showing the absence of any email ID or mobile number in

Aadhaar details is enclosed as Exhibit. Further it has been learnt that similar registration has been applied in the UT of Delhi, however, the same got rejected by the GST authorities. The acknowledgement number generated after filing of GST registration application is AA070323054161Q. Hence, the FIR has been lodged.

4. As per prosecution version in **FIR/Case Crime No. 248/2023**, dated 01.06.2023 under Sections 420, 467, 468, 471 IPC, Police Station Noida Sector-20, Gataum Buddh Nagar, the informant – Sumit Yadav came to know about registration of fake firm, Yadav Traders, against his PAN Card No. AHFPX9874Q and the address is recorded as Ground Floor JL No. 219 Khatian No. 2275 dag no. 1835, Sahibganj Road, near Sahibganj, High School, Kharimala, Khagrabari Cooch behar West Bengal – 736101. Said Firm is got registered fallaciously against informant's PAN Card AHFPX9874Q. It has been registered illegally by some unknown miscreants. Informant has mentioned his permanent address as K-11 Gyan Sarowar Colony, Ramghat Road, Aligarh, and present address as J-41, Senior Citizen Society, Greater Noida. Thus, the FIR has been lodged.

5. As per prosecution version in **FIR/Case Crime No. 255/2023**, dated 08.06.2023 under Sections 420, 467, 468, 471, 120-B IPC, Police Station Noida Sector-20, Gataum Buddh Nagar, the informant - Arvind Kumar Yadav, on being known about arrest of some persons who illegally got GST registration using PAN Card of the persons, checked on GSTSEARCH.in and found that three fake GST Numbers detailed in the FIR bearing: (1) GST No. 24ABBP43323J12N, (2) GST No. 24ABBPY43323J2ZM and (3) GST No. 06ABBPY3323J12L have been obtained by someone, whereas he or his family member never obtained any GST Number and has no concern with the firms. He has stated that his documents have been misused. Hence, the FIR has been lodged.

6. The applicants have preferred bail applications in respective First Information Reports/ Case Crime Numbers, details whereof according to case crime number, are being enumerated in following chart:

(i) Bail Applications in FIR/Case Crime No. 203 of 2023, dated 04.05.2023:

Sl. No.	Bail Application No.	Applicant's Name
1.	53475/2023	Rajiv Jindal
2.	13386/2024	Pritam Garg @ Chacha
3.	16146/2024	Gaurav Singh @ Gaurav Singhal
4.	16999/2024	Amit @ Moti @ Motu
5.	17749/2024	Rakesh Dialani
6.	19304/2024	Dilip Sharma
7.	18616/2024	Atul Gupta
8.	55131/2023	Manan Singhal
9.	55245/2023	Sumit Garg @ Chacha
10.	56396/2023	Praveen Kumar
11.	8136/2024	Piyush Kumar Gupta
12.	53087/2023	Ashwani
13.	50337/2023	Vishal
14.	10603/2024	Akash Saini
15.	11452/2024	Ajay @ Mintu
16.	10526/2024	Jatin Murjani
17.	51907/2023	Mahesh
18.	53246/2023	Nand Kishore
19.	6728/2024	Dolsy Murjhani

(ii) Bail Applications in FIR/Case Crime No.248/2023, dated 01.06.2023:

Sl. No.	Bail Application No.	Applicant's Name
1.	53010/2023	Rajiv Jindal
2.	12687/2024	Pritam Garg @ Chacha
3.	16288/2024	Gaurav Singh @ Gaurav Singhal
4.	16413/2024	Atul Gupta
5.	17809/2024	Rakesh Dialani
6.	55125/2023	Manan Singhal
7.	55235/2023	Sumit Garg @ Chacha
8.	561/2024	Praveen Kumar
9.	53088/2023	Ashwani
10.	5007/2024	Amit @ Moti @ Motu

11.	2994/2024	Vishal
12.	8643/2024	Akash Saini
13.	11406/2024	Ajay @ Mintu
14.	8746/2024	Dolsy Murjhani
15.	10527/2024	Jatin Murjani
16.	52254/2023	Mahesh
17.	50362/2023	Nand Kishore
18.	26942/2024	Piyush Kumar Gupta

(iii) Bail Applications in FIR/Case Crime No.255/2023, dated 08.06.2023:

Sl. No.	Bail Application No.	Applicant’s Name
1.	13150/2024	Pritam Garg @ Chacha
2.	16981/2024	Amit @ Moti @ Motu
3.	17802/2024	Rakesh Dialani
4.	18705/2024	Atul Gupta
5.	55268/2023	Manan Singhal
6.	55161/2023	Sumit Garg @ Chacha
7.	525/2024	Praveen Kumar
8.	52956/2023	Ashwani
9.	6882/2024	Gaurav Singh @ Gaurav Singhal
10.	2742/2024	Vishal
11.	50753/2023	Akash Saini
12.	11581/2024	Ajay @ Mintu
13.	9061/2024	Dolsy Murjhani
14.	10528/2024	Jatin Murjani
15.	52966/2023	Rajiv Jindal
16.	51920/2023	Mahesh
17.	50510/2023	Nand Kishore
18.	26838/2024	Piyush Kumar Gupta

7. Sri Arvind Srivastava, learned counsel for the applicant submits that instant bail application being Criminal Misc. Bail Application No. 51920 of 2023 has been preferred by the applicant – Mahesh with a prayer to release him on bail in Case Crime No. 255 of 2023, under Sections 420, 467, 468, 471 and 120B IPC, Police Station Noida Sector-20, District Gautam Buddh Nagar.

8. As per prosecution story the informant on being searched on internet found that three fictitious firms have been formed with his PAN and three GST Numbers have been obtained, whereas the applicant neither got any such firm opened nor obtained any GST Number, thus he prayed for legal action against the accused who have manipulated and misused his documents and lodged the first information report on 08.06.2023.

9. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He is not named in first information report¹. Placing forth the facts, learned counsel next submits that on 07.07.2023 when the applicant came back from Delhi after appearing in a competitive examination of IELTS, he along with his brother (deponent) were quizzed and exerted pressure to produce their father, however, on being asked the reason, the applicant was challaned on 09.07.2023.

10. To show the fair background of the applicant, it is stated that the applicant is a student of K.R. Mangalam University, Gurugram, State of Haryana, he is aged about 20 years and is a meritorious student. However, due to arrest he has missed his one semester. In paragraph-15 of the application, the applicant has averred that he is a heart patient and his bypass surgery has been done, for the said purpose he has been undergoing medical treatment at Narayan Hrudayalaya Super Speciality Clinic & Diagnostic Centre, Bangalore.

11. Learned counsel for the applicant contended that there is no evidence in the entire case diary against the applicant as nothing has been recovered from him to prove the offence against him. However, the chargesheet has been submitted on 03.10.2023 only the basis of alleged circumstantial evidence. It is argued on behalf of the applicant that prima face if no offence is made out against the applicant, he

1 FIR

should not ordinarily be apprehended. Article 21 of the Constitution of India mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice.

12. Learned counsel for the applicant contends that the complainant is resident of New Delhi whereas he has filed first information report in Gautam Buddh Nagar without there being any reason as to why the applicant came to Noida to lodge the FIR. He raises question over the genuineness of the complaint stating that the territorial jurisdiction is decided on the basis of place of occurrence. In support of his submission, learned counsel for the applicant has placed reliance on a judgement of the Supreme Court in the case of **Dinesh Gupta v. State of Uttar Pradesh and another**². Paragraph Nos. 24, 36 & 38 of the said judgement are quoted as under:

“24. The falsehood in the complaint, filed with reference to the addresses of the accused, was established at the time of filing of charge-sheet. Whereas in the FIR, the addresses of all the accused given were incomplete merely mentioning the address as ‘Sector 20, Gautam Budh Nagar’, in the charge-sheet addresses of not only the appellants, namely, Rajesh Gupta and Dinesh Gupta, were found to be ‘D-393, New Friends Colony, New Delhi, even Sushil Gupta and Baljeet Singh were also found to be residents of New Delhi. ...

***	***	***
***	***	***

36. In view of the aforesaid discussion, we find that the FIR in question, if proceeded further, will result in absolute abuse of process of court. It is a clear case of malicious prosecution. Hence, the same is required to be quashed.

***	***	***
***	***	***

38. Before parting with the judgment, we are reminded of the opening remarks. The respondent Karan Gambhir having misused the legal system by lodging false and frivolous complaint with non-disclosure of necessary facts must bear its costs. The registration of FIR at Noida despite having registered offices of companies in

2 2024 SCC OnLine SC 34

question at Delhi shows a wishful forum shopping by the Complainant, casting serious doubts on their bona fides. The Complainant had already sought remedy against amalgamation order before the High Court and the High Court had dismissed the same. However, Complainant chose to again use judicial mechanisms to raise his grievances. A criminal complaint was filed and FIR was registered against appellants despite the commercial nature of dispute. Such ill intended acts of abuse of power and of legal machinery seriously affect the public trust in judicial functioning. Thus, we find ourselves constrained to impose cost on Complainant with a view to curb others from such acts leading to abuse of judicial remedies.”

13. It is also contended that neither FIR has been lodged at the concerned police station nor investigation has been done by it, thus, it is a malicious prosecution. To strengthen his argument, learned counsel for the applicant has referred two judgements of the Supreme Court in the cases of **Manoj Kumar Sharma and others v. State of Chhattisgarh and another**³. Relevant Paragraph Nos. 27 & 28 of the said judgement are thus:

“27. The territorial jurisdiction of a court with regard to a criminal offence would be decided on the basis of the place of occurrence of the incident. In the instant case, the suicide was committed at Ambala. Ambala Police closed the case after fulfilling the requirements of Section 174 of the Code holding that there was no foul play in the incident and also there was no requirement of lodging FIR under Section 154 as none of the family members of the deceased raised any suspicion over the death even though the death was committed within seven years of marriage. Also, there is no evidence of it being a continuing offence. Hence, the offence alleged cannot be said to have been committed wholly or partly within the local jurisdiction of the Magistrate's Court at Durg. Prima facie, none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction of that Court.

28. In the case on hand, as per the materials on record, in Crime No. 194 of 2005, charge-sheet has been filed and the Judicial Magistrate First Class, Durg has taken cognizance of the proceedings. In the present fact situation, we are of the considered opinion that the court at Durg has no territorial jurisdiction to try the case and the proceedings are liable to be quashed on the ground of lack of territorial jurisdiction since the entire cause of action for the alleged offence had purportedly arisen in the city of Ambala.”

14. He further contends that no recovery has been made from the applicant's possession and the alleged recovery is fake and it does not make any case against the applicant.

15. Mr. Arvind Srivastava, learned counsel argued on behalf of the applicant – Rajiv Jindal in Criminal Misc. Bail Application Nos. 53010 of 2023, 53475 of 2023, 52966 of 2023; applicant – Mahesh in Criminal Misc. Bail Application Nos. 51907 of 2023, 51920 of 2023, 52254 of 2023, and applicant-Nand Kishore in Criminal Misc. Bail Application Nos. 53246 of 2023, 50362 of 2023 and 50510 of 2023.

16. Placing reliance upon a judgement of the Supreme Court in the case of **Haricharan Kurmi and another v. State of Bihar**⁴, learned counsel for the applicants has drawn attention of the Court to Paragraph-13 and argued that it has been held in the said judgement that Section 30 of the Indian Evidence Act, 1872⁵ provides that the court may take confession into consideration and thereby no doubt, makes it evidence on which the court may act; but the section does not say that the confession amounts to proof. Relevant excerpt of Paragraph-13 of said judgement is quoted herein below:

“13. ... Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence”. It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence

4 AIR 1964 SC 1184 : 1964 SCC OnLine SC 28

5 The Act, 1872

adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. ...”

17. Learned counsel for the applicants has vehemently argued that with respect to grant of bail the applicants cannot tamper any evidence and a case of bail is made in their favour as nothing, even *prima facie*, is available on record which may require the applicant to be apprehended, as also it is a settled law that the bail is rule and jail is exception.

18. Placing the three first information reports bearing Case Crime Nos. 203 of 2023, 248 of 2023 and 255 of 2023, lodged by Saurabh Dwivedi, Sumit Yadav and Arvind Kumar Yadav, respectively, learned counsel for the applicants submits that neither the permanent addresses of the informants are shown, nor the alleged forged firms registered on the PAN Card and Aadhaar Card is within the limits of State of U.P., therefore, the registration of proceedings in the State of U.P. is without jurisdiction and the investigation so conducted by the officers is also without jurisdiction and is in teeth of Section 177 Cr.P.C. In support of his submissions, learned counsel for the applicants has relied upon the judgements of Supreme Court in the case of **Dinesh Gupta v. State of U.P.**⁶, **Manoj Kumar Sharma & others v. State of Chhattisgarh & another**⁷, and **Y Abraham Ajith & others v. Inspector of Police, Chennai & another**⁸.

19. The entire investigation started from an input by a secret informer and then on the basis of confessional statement of co-accused persons, the name of other co-accused persons came into light, thus, the implication of the applicants on the basis of confessional statements of co-accused cannot be taken as a substantial piece of evidence. In

6 2024 SCC OnLine SC 34

7 (2016) 9 SCC 1

8 (2004) 8 SCC 100

support of his submissions, learned counsel for the applicants has relied upon the judgements of Supreme Court in the cases of **Haricharan Kurmi & another v. State of Bihar**⁹, **Narcotics Control Bureau v. Pallulabid Ahmad Arimutta**¹⁰, **Union of India (NCB) etc. v. Khalil Uddin etc.**¹¹, **Bharat Chaudhary v. Union of India**¹², **Sanjeev Chandra Agarwal v. Union of India**¹³, **Dinesh Kumar v. State of Himachal Pradesh**¹⁴, **Dipakbhai Jagdishchandra Patel v. State of Gujarat**¹⁵, and **Surinder Kumar Khanna v. Directorate of Revenue Intelligence**¹⁶.

20. From the investigation as carried out, there is no evidence against the applicants regarding commission of the alleged offence as there is no allegation against the applicants of any overact or any meeting of mind between the applicants or other co-accused persons for commission of the offence. Thus, no offence under the relevant Sections is made out against the applicants. He has relied upon the judgements of Supreme Court in the cases of **Rajender Singh & others v. State of Bihar**¹⁷, **Ramashish Yadav & others v. State of Bihar**¹⁸, and **Kehar Singh v. State (Delhi Admn.)**¹⁹.

21. As the applicants have not taken the benefit of any document (ITC) nor has facilitated any person in any manner to take these documents, hence no proceeding, against the applicants under the Goods and Services Tax Act²⁰, can be initiated. In the entire investigation there is no allegation against the applicants that they have prepared incorrect Form GSTR-I under Rule 59(1) of the Central

9 1964 SCC OnLine SC 28

10 (2022) 12 SCC 633

11 2022 SCC OnLine SC 2109

12 (2021) 20 SCC 50

13 (2021) 20 SCC 57

14 (2020) SCC OnLine HP 899

15 (2019) 16 SCC 547

16 (2018) 8 SCC 271

17 (2000) 4 SCC 298

18 (1999) 8 SCC 555

19 (1988) 3 SCC 609.

20 GST Act

Goods and Services Tax Rules, 2017²¹ or the Form GSTR-2A under Rule 60(2) of the Rules, 2017, or the Form GSTR-2B under Rule 60(7) of the Rules, 2017 or the Form GSTR-3B of the Rules, 2017.

22. There is no case of theft of GST, as a result no criminal proceedings under Section 132 of the GST Act has been initiated against the applicant. Even otherwise, an elaborated provision has been given in Rule-8, 9 & 10 of the Rules, 2017 for registration of firm and it is clearly stipulated that the registration can be done only after PAN is validated online by a Common Portal from the Database maintained by Central Board of Direct Taxes²² and the mobile number is verified with One Time Password sent on the same mobile number. No such evidence has been collected, therefore, the implication of the applicant is false.

23. The Bail is the Rule and Jail is an exception. Said view has been taken by the Apex Court in the cases of **Arnab Manoranjan Goswami v. State of Maharashtra**²³, **Sanjay Chandra v. CBI**²⁴, **Susanta Ghosh v. State of W.B.**²⁵, and **Satender Kumar Antil v. CBI**²⁶.

24. Relying upon the the judgement of the Supreme Court in the case of **State of Haryana v. Ram Singh**²⁷, learned counsel for the applicants submits that no evidence exists and no recovery against the applicant Rajiv Jindal, co-accused Mahesh and Nand Kishore, for the alleged forged GST papers and for misappropriation of any tax or use of any ITC has been collected. The recoveries shown are planted without there being any independent witness and these recoveries are held to be having no credibility and these recoveries cannot be taken as a piece of credible evidence.

21 The Rules, 2017

22 CBDT

23 (2021) 2 SCC 427

24 (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S)

25 (2012) 2 SCC 680 : (2012) 1 SCC (Cri) 979

26 (2022) 10 SCC 51

27 (2002) 2 SCC 426

25. Sri Kamal Krishna, learned Senior Advocate assisted by Sri Prakhar Saran Srivastava, learned Advocate argued the matter on behalf of the applicant - Manan Singhal in Criminal Misc. Bail Application Nos. 55125 of 2023, 55131 of 2023, 55268 of 2023, and applicant – Sumit Garg alias Chacha in Criminal Misc. Bail Application Nos. 55161 of 2023, 55235 of 2023, and 55245 of 2023.

26. Learned Senior Counsel submits that pursuant to the first information reports, the Investigating Officer proceeded with the investigation on receiving information about the accused Yaseen from an informer. Accordingly, Yaseen and Ashwani Pandey were arrested from Film City Flyover. Rs. 10,000/-, 5 SIM Cards, Aadhaar Card, PAN Card and a mobile phone were recovered from Ashwani Pandey. Two mobile phones, Rs. 1,88,000; 5 keypad mobile phones, 12 SIM Cards and a laptop were recovered from the possession of Yaseen. A data of 1891 and 680 firms was found on different excel sheets in the laptop. Fake PAN Cards, Aadhaar Cards and photographs were also found in pdf file. The data of informants of Case Crime Nos. 203 of 2023 and 248 of 2023 was also found in the laptop.

27. The accused Yaseen allegedly confessed that they worked in a group and their office is at Madhu Vihar, New Delhi. The Investigating Officer proceeded to the said office and arrested Deepak Murjhani, Vinita, Vishal Singh, Akash Saini, Atul Sengar and Rajiv therefrom. Total recovery of Rs. 12,66,000/-, 24 computer systems, 4 laptops, 30 mobile phones, 50 fake PAN and Aadhaar Cards, 60 SIM Cards and 3 cards parked near the office was made.

28. The aforesaid arrested persons confessed about the involvement of Anchit Goyal, Pradeep Goyal, Archit, Mayur, Charu Nagpal, Rohit Nagpal and Deepak Singhal, to whom the alleged firms were allegedly

sold. **Names of applicants Manan and Sumit have not been surfaced till date.**

29. On 05.06.2023 and 08.06.2023, supplementary statements of arrested accused persons were recorded, wherein name of Manan and Sumit have not been mentioned.

30. In the supplementary statement dated 08.06.2023, **names of Rajiv Maheshwari, Rahul Gupta, Gaurav Singhal and Gurmeet Batra surfaced**, after which Gaurav Singhal and Gurmeet Batra were arrested on 08.06.2023 and Cash Counting Machine, one POS machine, 18 false invoices, 12 Aadhaar Cards, 1 GST registration certificate, 1 PAN Card and a show cause notice from Commissioner of Customs were allegedly recovered. On 10.06.2023 co-accused Rahul and Rajiv Gupta were arrested.

31. Name of Sumit along with 16 other persons figured in the confessional statements of co-accused Gaurav Singhal and Gurmeet Batra alleging their involvement but no specific role has been assigned to accused Sumit. Till this date, i.e., 10.06.2023 name of accused Manan has not been mentioned. On 11.06.2023, names of both applicants Manan and Sumit figured in the joint statements of arrested accused persons, no specific role has been assigned to the aforesaid persons.

32. On 22.06.2023 the alleged accused Manan and Sumit along with co-accused Atul Gupta were allegedly apprehended on the road connecting DND²⁸ and Greater Noida Expressway in Mahindra XUV 700 Car bearing registration no. HR21-Q-0725. Recovery of Rs. 40,500/- from the pocket of accused Sumit, iPhone 10 and Rs. 10,000/- from the pocket of applicant Manan was made. As per the confessional statement, the Car belonged to Goldy. Bills of Shri Radhey Trading

28 Delhi Noida Direct Flyway

Company were recovered from the back seat of the car; key of another car and **few documents were recovered from the dashboard and the car key recovered belonged to Anchit's car as confessed by Manan, Sumit and Atul Gupta.** Copy of recovery memo was given to only co-accused Atul Gupta.

33. On 22.06.2023 Skoda Rapid UP16-BD2278 was recovered from Sector-9, Rohini, Delhi and this car was opened with the key that was recovered from the vehicle from which Manan, Sumit and co-accused Atul Gupta were apprehended and after opening the aforesaid car, documents relating to alleged offence were found from the dashboard.

34. On 19.08.2023 and 20.08.2023 a large number of persons were examined and they made general allegation of misuse of their PAN Cards but they have not taken name of the applicants Sumit Garg and Manan Singhal which could connect them in the present case.

35. On 19.09.2023 a chargesheet has been filed against Sumit, Manan and Atul Gupta, however, no specific role has been attributed to Sumit and Manan, and only general allegations of involvement in conspiring in money trail is there. No offence under the relevant Sections is made out against Manan and Sumit as there is no allegation of any kind of deceit or inducement against them nor any allegation of preparation of any kind of forged document, whereas there are general allegations of conspiracy which are insufficient to attract the specific requirement as settled in Section 120A IPC. Thus, the offence of criminal conspiracy under Sections 120A & 120B IPC is not made out.

36. There is no substantive evidence against Manan and Sumit as the prosecution case hinges upon confessional statement of co-accused and alleged recoveries. Confessional statement of co-accused cannot be made the sole basis or foundation of conviction. In support of his submissions, learned counsel has relied upon the judgements of

Supreme Court in the cases of **Surinder Kumar Khanna v. Intelligence Officer**²⁹ and **Sanju Bansal v. State of Uttar Pradesh**³⁰.

37. There is no independent witness to the alleged recovery and despite the fact that the alleged recovery has been made at the busy place recovery memo has not been given to accused Manan and Sumit, therefore, recovery is false and planted.

38. The alleged recovery from the car, in which the accused Sumit and Manan were travelling has been made prior to arrest, thus, the statement of applicants as such is not admissible under Section 27 of the Evidence Act, as the same has not been recorded in terms of Section 27 of the Act, 1872 and the direction issued by the Supreme Court and this Court, nor any panchnama or disclosure statement has been prepared. Learned counsel for the applicants has relied upon the judgement of the Supreme Court in the case of **Rajesh and another v. State of Madhya Pradesh**³¹. Learned counsel for the applicants submits that provisions of Section 100 Cr.P.C. have not been complied with, therefore, reliance cannot be placed upon the alleged recovery. The alleged accused Manan and Sumit cannot be said to be in conscious possession of the alleged documents recovered from two accused as they are not the owner of the car and they were only travelling in the car with the co-accused Atul Gupta.

39. The alleged documents have been recovered from the dashboard of XUV 700 and Skoda car, therefore, the same cannot be pinned upon the applicants. In support of his submissions, learned counsel has relied upon a judgement of the Supreme Court in the case of **Avtar Singh v. State of Punjab**³². He next submits that the present case is a case of false implication as the police is implicating the friends and family of

29 (2018) 8 SCC 271

30 2024 LiveLaw (SC) 467

31 (2023) SCC OnLine SC 1202

32 (2002) 7 SCC 419

co-accused persons. Cousin of the applicants Manan and Sumit, namely, Gaurav Singhal was initially implicated and when the applicant met the co-accused Gaurav Singhal, they were also implicated in the case and arrested on 20.06.2023.

40. Raising objections on the issue of jurisdiction, learned counsel for the applicants submits that the informant is resident of Delhi and the alleged firms were registered in other States, therefore, no jurisdiction is vested in Police Station Sector-20 Noida, Gautam Buddh Nagar in Case Crime No. 255 of 2023. In support of his submissions, learned counsel has relied upon a judgement of the Supreme Court in the case of **Dinesh Gupta v. State of U.P.**³³

41. He next submits that there is an inordinate delay in framing of charges despite submission of chargesheet and cognizance on 20.09.2023. In order to defeat the provisions of Section 167 Cr.P.C. chargesheet has been submitted in a hasty manner, hence, the charges are not being framed due to insufficiency of evidence. Thus, they are entitled for being released on bail under the provisions of Section 437(6) Cr.P.C. In support of his submission, learned counsel has relied upon a judgement of this Court in the case of **Yogendra Kumar Mishra v. State of U.P.**³⁴. Lastly, he submits that the offence in the present case is triable by Magistrate. The applicants are languishing in jail since more than one year, hence, they are entitled to be released on bail as there is a little possibility of early completion of trial. In support of his submission, he has relied upon a judgement of the Supreme Court in the case of **Mohd. Muslim v. State (NCT of Delhi)**³⁵.

42. Learned Senior Counsel submits that till date charges have not been framed and the delay is not on the part of the applicants. Despite application moved by the accused, documents have not been provided,

33 2024 SCC OnLine SC 34.

34 2011:AHC:52011

35 2023 SCC OnLine SC 352

there is no chance of conclusion of trial in near future, thus, the principal that 'bail is rule and refusal is exception' has to be followed and the applicant is entitled to be released on bail due to his prolong incarceration in jail. In support of his submissions, he has relied upon a judgement of the Supreme Court in the case of **Manish Sisodia v. Directorate of Enforcement**³⁶.

43. Sri Vinay Saran, learned Senior Advocate assisted by Sri Eshan Lamba, learned Advocate argued the matter on behalf of the applicant – Dolsy Murjhani in Criminal Misc. Bail Application Nos. 6728 of 2024, 8746 of 2024 & 9061 of 2024, and applicant – Jatin Murjhani in Criminal Misc. Bail Application Nos. 10526 of 2024, 10527 of 2024 and 10528 of 2024. He submits that the applicants are neither named in all three first information reports nor have been arrested from the alleged place of incident where raids were apparently made by police personnel.

44. The applicant Jatin Murjhani is 21 years old student of B.Com. and applicant Dolsy Murjhani is an unmarried 23 years old girl. They have been falsely implicated being the son and daughter of co-accused Deepak Murjhani. On 01.06.2023 first statement of accused Yaseen Sheikh and Deepak Murjhani were recorded along with others and none of them stated that the applicants were involved in the controversy in any manner. After a lapse of 4 days i.e. on 05.06.2023 second statement of Deepak Murjhani and Yaseen Sheikh were recorded by the Investigating Officer and the earlier statements were reiterated. Deepak Murjhani has categorically stated that he has kept the alleged laptop and mobile hidden from his children, thus, Jatin Murjhani and Dolsy Murjhani had no knowledge about the said laptop and mobile.

36 (Arising Out of SLP (Criminal) No. 8772 of 2024), decided on 09.08.2024

45. On 08.06.2023 statements of Deepak Murjhani and Yaseen Sheikh were recorded. They for the first time introduced the names of Jatin Murjhani and Dolsy Murjhani. In their statements, no specific role has been assigned to the applicants.

46. In the investigation of Case Crime No. 255 of 2023, statements of Deepak Murjhani were recorded and for the first time he disclosed the name of his son Jatin Murjhani. Statements of co-accused Gaurav Singhal and Gurmeet were recorded by the Investigating Officer on 10.06.2023. They did not level any allegation against the applicants Jatin Murjhani and Dolsy Murjhani. The applicants have been falsely implicated being the son and daughter of accused Deepak Murjhani.

47. On 18.07.2023 Jatin Murjhani and Dolsy Murjhani were arrested showing recovery of one mobile phone, having IMEI No. 354016094312491/9. Learned counsel for the applicants submits that there is no material on record to connect the said mobile phone having IMEI No. 354016094312491/9 with Jatin and Dolsy Murjhani.

48. On 26.08.2023 in CD Parcha No. 69, the Investigating Officer has noted down the report of running IMEI matching of mobile sets and tablets of all mobile phones allegedly recovered during the investigation from different accused persons. However, the aforesaid mobile did not find place in the said report.

49. On 02.10.2023 Parcha No. 85 noted down the report of running IMEI of SIM Cards alleged recovery during the investigation from different accused persons. However, mobile having IMEI – 354016094312491/9 did not find place in the said report.

50. Learned counsel for the applicants submits that barring the statements of co-accused Yaseen Sheikh, Deepak Murjhani, Gaurav Singhal, Gurmeet Singh and Nandlal recorded under Section 161 Cr.P.C. along with confessional statement of the applicants Jatin

Murjani and Dolsy Murjhani, there is nothing on record to connect the applicants with the present offence, especially when the so called mobile phone having IMEI-354016094312491/9 could not be connected by any way with the commission of the offence in question. He seeks benefit of Section 437 Cr.P.C. in respect to the matter of Dolsy Murjhani.

51. Sri Manish Tiwary, learned Senior Advocate assisted by Sri Aushim Luthra, learned counsel for the applicant – Gaurav Singh alias Gaurav Singhal argued the case in Criminal Misc. Bail Application Nos. 6882 of 2024, 16146 of 2024 and 16288 of 2024.

52. Upon receipt of an information from a secret informer on 31.05.2023, Yaseen and Ashwani Pandey were arrested on 01.06.2023 from a flyover at Film City located at 16-A, Noida, U.P. and certain recovery of money, SIM Cards, Aadhaar Cards, PAN Cards, Mobile Phones, Laptops were shown from their possession. Their arrest and recovery from their possession has been transcribed in the case diary, from where it transpires that the accused Yaseen and Ashwani Pandey were taken to their office situated at Madhu Vihar, New Delhi.

53. While, the police raided the office at Madhu Vihar, New Delhi, it found 6 other accused persons, namely, Deepak Mujhane, Vineeta W/o Deepak Murjhani, Vishal Singh, Rajeev, Akash Saini and Atul Sengar. Yaseen confessed before the Investigating Officer that they worked for Deepak Mujhane and their office is at Madhu Vihar, New Delhi. A total of Rs. 12,66,000/-, 4 laptops, 30 mobile phones, 50 PAN Cards and Aadhaar Cards, 60 SIM Cards of different companies and 3 Cars were recovered.

54. The Investigating Officer has recorded in Parcha No. 7, dated 01.06.2023, that upon enquiry it was found that the office belongs to Deepak Murjhane, and his wife Vineeta, Vishal Singh, Akash Saini,

Atul Sengar and Rajeev were found working in the office of Deepak Murjhani and the aforesaid persons were arrested. Laptop of accused Yaseen is said to have contained excel sheets where details of approximately 2571 Firms, having different GST Numbers, had been mentioned, and it was informed by the co-accused Yaseen that the said Firms are fake Firms and had been created for claiming Input Tax Credit³⁷.

55. Statements of accused persons were recorded and the name of applicant – Gaurav Singh alias Gaurav Singhal does not find any mention whatsoever. The Investigating Officer has recorded statements of co-accused Ashwani Pandey, Yaseen Sheikh, Deepak Murjhani, Vishal Singh, Akash Saini, Atul Sengar, Rajeev and Vineeta wife of Deepak Murjhani. Investigation has been carried out, the role of the accused persons in commission of offence has come up in the aforesaid statements. Names of accused persons, namely, Anchit Goyal, Pradeep Goyal, Archit, Mayur alias Mani Nagpal, Charu Nagpal, Rohit Nagpal and Deepak Singhal came into light on the basis of statements of co-accused persons.

56. The second confessional statement of accused Deepak Murjhani, Yaseen Sheikh, Ashwani Pandey, Vishal Singh, Akash Saini, Atul Sengar and Rajiv Agarwal were recorded and the name of the applicant – Gaurav Singh alias Gaurav Singhal does not find place.

57. The confessional statement of Yaseen Sheikh, Deepak Murjhani and Rajiv were again recorded. It was for the first time that name of Gaurav Singhal surfaced on 08.06.2023 i.e. after lapse of more than a month. The applicant was arrested along with one Gurmeet Singh Batra alias Sahil on 10.06.2023. The arrest and recovery memo as recorded by the Investigating Officer would go to reveal that the same was made

37 ITC

from the house of the applicant – Gaurav Singh and he confessed to have committed the offence.

58. Cash counting machine, POS machine and certain documents which are alleged to be forged invoices, 6 Aadhaar Cards were alleged to have been recovered from a car (Innova Crysta CS01-CF2606) which was allegedly parked outside the house of the applicant – Gaurav Singh and similar recovery was shown from the car of co-accused Gurmeet Batra.

59. Learned counsel for the applicant submits that the applicant is not named in the FIR bearing Case Crime No. 203 of 2023 lodged on 04.05.2023. On the basis of information by a secret informer, co-accused Ashwani Pandey and Yaseen Sheikh were apprehended on 01.06.2023. Name of the applicant surfaced in the confessional statement of Yaseen Sheikh, Deepak Murjhani and Rajeev. Accordingly, the applicant and one Gurmeet Singh Batra were arrested on 10.06.2023 showing certain recovery.

60. He further submits that there is no independent witness to the alleged recovery shown from the applicant or the co-accused persons. The alleged forged invoices as recovered from the car of the applicant and another co-accused Gurmeet Singh Batra have not been connected to the offence in question. The applicant is not a beneficiary of the crime in any manner, however, solely on the basis of confessional statement of co-accused and totally false and fabricated recovery, the applicant has been implicated in the present case.

61. The prosecution claims that a total ITC of Rs. 26,45,28,96,500/- had been wrongly claimed by the accused persons, however, it has failed to connect the same to the applicant in any manner. The applicant – Gaurav Singh alias Gaurav Singhal has been granted bail in another offence of GST by a Coordinate Bench of this Court vide order dated

29.05.2024 passed in **Criminal Misc. Bail Application No. 16786 of 2024**³⁸. The applicant has been arrayed as accused in the case at hand because he is cousin of Arit Goyal who is mastermind of the alleged offence and was solely involved in the illegal activities. The police has arrested the applicant from Dehradun on 05.06.2023, however, they have shown his arrest on 10.06.2023.

62. Learned counsel for the applicant next submits that compliance of Section 100 Cr.P.C. has not been done as there was no independent witness to the alleged recovery, as such a recovery shown to be made from the applicant's house is barred and inadmissible. The only evidence connecting the applicant to the offence in question is confessional statement of the applicant and co-accused which is totally inadmissible and cannot be read against the applicant in view of Sections 25 and 27 of the Indian Evidence Act. Placing reliance upon Section 27 of the Indian Evidence Act, learned counsel for the applicant submits that the aforesaid section is applicable only if the confessional statement leads to discovery of some new fact. Relevance is limited as it relates distinctly to the fact thereby discovered. In support of his submissions he has relied upon a judgement of the Supreme Court in the case of **Navaneethakrishnan v. State By Inspector of Police**³⁹.

63. Placing reliance upon Section 25 of the Indian Evidence Act and corresponding provisions of Section 23(1), he submits that the confession made by an accused to the police is not admissible. The alleged recovery is also not a proper one as no memo of recovery has been made in the present case, as has been held in the case of **Sanju Bansal v. State of Uttar Pradesh**⁴⁰. He, lastly, submits that there is no chance of early conclusion of trial in near future, thus, bail can be granted if there is undue delay in trial as held by the Supreme Court in

38 Gaurav Singhal v. Union of India

39 AIR 2018 SC 2027

40 2024 LiveLaw (SC) 467

the case of **Mohd. Muslim v. State (NCT of Delhi)**⁴¹. He has also placed reliance on a judgement in the case of **Union of India v. K.A. Najeeb**⁴².

64. Sri Bharat Singh Pal, learned counsel appeared on behalf of the applicant Vishal in Criminal Misc. Bail Application Nos. 50337 of 2023, 2994 of 2024 and 2742 of 2024. He submits that the FIR was lodged on the basis of written application of Saurabh Dwivedi against unknown persons. There is delay in lodging the FIR which is not explained. No specific time and place of the incident has been provided in the FIR.

65. The Investigating Officer on the basis of aforesaid FIR arrested Ashwani Kumar Pandey and Yaseen Sheikh from Film City Flyover on 01.06.2023 on the basis of information of the informant and recovered money, SIM Cards, Mobile etc. At the instance of Yaseen Sheikh, police went to the office of Jiwalo Pvt. Ltd. located at Madhu Vihar, Delhi, where the police found some people working on computer and laptops, and others were sitting idle. The police arrested all accused persons from the office and the applicant-Vishal is also said to be arrested from there, and from right pocket of his pant two mobile phones (Samsung Galaxy and iPhone Pro) were recovered. From his table 3 Keypad Phones and 12 SIM Cards were recovered. The police recorded statements of Ashwani Pandey, Yaseen Sheikh, Deepak Murjhani, applicant-Vishal Singh, Akash Saini, Atul Sengar, Rajeev and Vineeta. In CD Parcha-7 dated 01.06.2023 the Investigating Officer added Section 120B IPC in Case Crime No. 203 of 2023. Learned counsel further submitted that only Yaseen Sheikh took name of the applicant in his statement and none other referred applicant's name or

41 2023 LiveLaw (SC) 260

42 (2021) 3 SCC 713

assigned any role to him. In the statement of Yaseen it is stated that the applicant was hired to bring material for preparing forged documents.

66. Pointing out the real story, learned counsel for the applicant submits that the applicant was lifted from his house and the same can be verified from CCTV footage. Thus, the arrest and the alleged recovery shown from the applicant on the said date, i.e., 01.06.2023 from the office at Madhu Vihar, Delhi are false and illegal. On 05.06.2023, statements of Deepak Murjhani, Yaseen Sheikh, Ashwani Pandey, applicant-Vishal Singh, Akash Saini, Atul Sengar and Rajeev Agrawal were recorded. None of them took name of applicant except Yaseen Sheikh. On 08.06.2023 statement of Yaseen Sheikh, Rajeev Jindal and Deepak Murjhani were recorded. None of the accused took name of the applicant or assigned him any role. On 10.06.2023 the police arrested Gaurav Singhal and Gurmeet Singh Batra and recovered certain things. Their statements were recorded but they did not take name of the applicant nor assigned any role in commission of the alleged offence.

67. On 12.06.2023 statement of Sahil Gupta, landlord of the property on which the office of Jiwalo Pvt. Ltd was situated, was recorded. He did not take name of the applicant which could show that the applicant took the office on rent from the landlord nor he has been assigned any role in setting up the said office. On 23.06.2023 Atul Gupta, Sumit Garg and Manan Singhal were arrested and their statements were recorded. Certain things were also recovered from their possession. None of them disclosed name of the applicant. On 09.07.2023 Amit, Ajay alias Mintu and Mahesh were arrested. Their statements were recorded and certain things were recovered from them. They also did not take name of the applicant.

68. Honda City Car bearing registration no. DL8C-NA4506 which is registered in the name of the applicant has been taken to connect the applicant in the aforesaid offence. **The applicant had only attached his car with the office on rent. There is no evidence that the car has been used by the applicant in commission of offence.** On 15.07.2023 Pritam Garg alias Chacha was arrested and certain things were recovered from his possession and also his statements were recorded. He also did not take name of the applicant.

69. The police arrested Rohit alias Jatin and Dolsy Murjhani on 18.07.2023 and recovered certain things and documents and also recorded their statements. On 26.07.2023 Nand Kishore alias Nand Lal alias Nandu was arrested. Certain things were recovered from them and their statements were recorded. Said persons did not take name of the applicant, nor they assigned any role to the applicant in commission of the alleged offence. On 15.08.2023 the Investigating Officer recorded statements of witnesses of arrest and recoveries, namely, SI Satan Kumar, SI Mukul Yadav, SI Birbhadra Singh, HC Sunil Kumar, C Ashish Kumar, WC Shailesh Kuntal, HC Vinod Kumar, Kailash Nath, Satish Kumar, Jitendra Singh, Rohit Sahrawat, Mukesh Rathor, Ram Niwas Singh, Deena Nath Yadav, Amit Balyan, Rajesh Babu, Anand, Manish Badhana, Ranjeet Kumar, Saurabh Chauhan, Jitendra Singh, Vishwesh, Vipin, Amit Kumar, Priyansh, Idrish, Akhil Kumar, Shilpa Chikara and Kavita. All the said witnesses are police personnel and there is no independent witness to support the arrest or recovery.

70. On 19.08.2023 statements of the victim/ witnesses, namely, Amit Kumar, Amit Agrawal, Vivek Garg, Sumit Anand, Anup Kumar Singh, Saurabh Kumar, Vivek Kumar, Sumit Gautam, Amit Kumar Chaturvedi, Amit Chauhan and Vivek Sharma were recorded. None of them named the applicant nor assigned any role to him. On 20.08.2023, 21.08.2023 and 22.08.2023 statements of victim/ witnesses were

recorded. None of them named the applicant nor assigned any role to him. On 26.08.2023 the Investigating Officer has noted that by way of 22 mobile phones recovered from the applicant - Vishal Singh and Akash, on the basis of report obtained from GST Department, 53 GST Firms have been found to be registered.

71. From the aforesaid, it can be said that the Investigating Officer has not collected any credible evidence against the applicant connecting him in the alleged offence. Chargesheet has been submitted on 29.08.2023.

72. Learned counsel Sri Amit Kumar, Sri Jitendra Dwivedi and Sri Vinod Kumar Tripathi appearing on behalf of the applicant – Praveen Kumar in Criminal Misc. Bail Application Nos. 56396 of 2023, 525 of 2024 and 561 of 2024, submit that pursuant to the three first information reports, the matter was investigated simultaneously by the Investigating Officer. The applicant's name came to light from the joint statements of all the accused. Neither the applicant is named in the FIR nor he has committed any theft of PAN Card of the informant nor has registered any Firm using informant's PAN Card. He has no previous criminal history.

73. The alleged recovery shown by the Investigating Officer is planted, false and fabricated. The applicant's name came for the first time in the statements of co-accused on being interrogated by the Investigating Officer on 11.06.2023, which is CD Parcha No. 16. There is no independent witness to the said recovery. There is no evidence against the applicant except the confessional statement of co-accused.

74. The applicant was arrested on 30.09.2023 and from his possession one mobile of Oppo company, one debit card, one Tax Invoice (two copies) in the name of Ram Enterprises to Keshav Traders (applicant's firm) were shown.

75. The applicant is the Director of the Firm running in the name and style of Keshav Traders which is registered with PAN Card of the applicant and said Firm has been registered under the relevant provisions of the Companies Act.

76. Learned counsel Sri Deo Kumar Tripathi and Sri Prashant Kumar Singh appearing on behalf of the applicant - Ashwani in Criminal Misc. Bail Application Nos. 52956 of 2023, 53087 of 2023 and 53088 of 2023, submit that the statements of informant were recorded on 05.05.2023 after lodging of the FIR on 04.05.2023, and on information of private informant police team arrested Ashwani and Yaseen Sheikh from Film City Flyover. The police party saw that the accused Yaseen has passed some documents and money to the applicant Ashwani, however, nothing incriminating was recovered from their possession. Recoveries from the office of Jiwalo Pvt. Ltd., Delhi were made. From the possession, recovery of Ashwani Rs. 10,000/-, 5 SIM Cards of different mobile companies, 1 Aadhaar Card, PAN Card and one mobile phone was made.

77. The applicant - Ashwani has confessed his guilt. He stated that he is employee of HDFC Bank and was engaged in opening of bank accounts. He had opened three fake bank accounts in the name of Rajneesh Jha, Jhameli Chaupal, Jiwalo Pvt. Ltd. and Vivek Kumar Jha. He also confessed that he had provided the documents of the said bank accounts to Yaseen Sheikh and had received Rs. 10,000/- for each forged bank account. He further disclosed that the said bank accounts were used by Yaseen to get GST registration numbers from GST Department. The police team further recovered 1 Aadhaar Card, Pan Card, Rs. 10,000/- which were handed over to Yaseen and by using the same he got OTP to open the bank accounts. **No *farad* recovery has been made.**

78. The investigation is silent as to which firms are connected with the Bank Accounts. Co-accused Yaseen has confessed that he worked in a group in the office of M/s JIWALO PVT LTD., from where co-accused persons have been arrested and alleged recovery has been made.

79. There is no evidence to connect the applicant in the commission of alleged offence, on the basis of statements of the applicant as well as other co-accused persons who were arrested from the office.

80. Sri Prashant Kumar Singh, learned counsel informs the Court that one co-accused Anshul Goyal was granted anticipatory bail by the Supreme Court by an order dated 29.04.2024 passed in Petition for **Special Leave to Appeal (Crl.) No. 5472 of 2024** (Anshul Goyal v. State of U.P. & Anr.)⁴³, which has been made absolute by the Apex Court vide judgement dated 27.08.2024, passed in **Criminal Appeal No. 3566 of 2024**⁴⁴.

81. Sri Alok Kumar Singh, learned counsel appearing on behalf of accused-Ajay alias Mintu in Criminal Misc. Bail Application Nos. 11406 of 2024, 11452 of 2024 and 11581 of 2024, submits that the applicant is not named in the FIR. His named surfaced for the first time in the confessional statement on 09.07.2023. Recovery of a car AMEO, HR 242 48842, which is shown to have been recovered from joint possession, does not belong to the applicant. From the said car 4 keypad mobile phones, 6 tax invoices, 3 aadhaar cards have been recovered. A mobile phone (Apple) in switched off condition, was recovered from the applicant, same belongs to him. Only on the basis of confessional statement of the applicant and other co-accused persons, the applicant has been arrested. The role of the applicant as per statements of other co-accused persons is of collection of payments.

43 Arising out of Judgement and Order dated 07.03.2024 in CRMABA No. 12724 of 2023 passed by Allahabad High Court

44 Arising out of SLP (Criminal) No. 5472 of 2024

82. Sri Saurabh Basu and Sri Abhinay Bhattacharya, learned counsel for the applicant – Rakesh Dialani in Criminal Misc. Bail Application Nos. 17749/2024, 17809/2024 & 17802/2024, and applicant – Pritam Garg alias Chacha in Criminal Misc. Bail Application Nos. 13386/2024, 12687/2024, 13150/2024 submit that name of the applicants surfaced in the statements of co-accused after they were arrested. From the applicant - Rakesh Dialani's possession recovery of 2 mobile phones, 1 Passport, SIM Cards, Aadhaar Cards and ID Cards was shown, whereas from the applicant - Pritam Garg recovery of fake tax invoice, 3 mobile phones, Aadhaar Card and ID card was also shown. No other substantive recovery has been shown, thus it is clear that no recovery of any item which coincides with the allegations of the informant or the case of the prosecution and investigating agency can be made out.

83. Learned counsel for the applicants further submits that from a perusal of the FIRs, it is transpires that firstly there is no disclosure by the informant as to how he has come to know about the fact that his PAN Card and Aadhaar Card are linked with a fake firm.

84. The informant has nowhere disclosed about any offence or any loss incurred by him during the alleged commission of offence. From a perusal of entire case diary, no offence can be made, which has been alleged by the informant in regard to commission of any offence whereby recovery of GST from the Government Portal is being made. The allegation about fake IDs and fake accounts being created by the alleged accused is totally on the basis of statements made by other accused persons. No linking material to connect the same has been collected by the Investigating Officer. The applicants have been entangled into this case without any material evidence. They have been falsely implicated in the present case. The applicant Rakesh Dialani was taken into custody on 06.12.2023 but actual date of arrest is

07.12.2023, whereas the applicant - Pritam Garg is in jail since 15.07.2023.

85. The GST Department has not got registered any FIR against the applicants while fake firms are alleged to have been registered. The primary allegation was with regard to Aadhaar and PAN linked with the Department, which raises fake invoices and by such fake invoices they have received GST returns but the prosecution has failed to show any such recovery from the accused and no such allegation has been levelled against the applicants in this regard.

86. There is no witness or evidence to connect the applicants with the instant case.

87. Mr. Siddharth Srivastava, learned counsel for the applicant – Akash Saini in bail application nos. 50753 of 2023, 8643 of 2024 and 10603 of 2024 submits that they adopt the arguments advanced by learned counsel for the applicant in **Criminal Misc. Bail Application No. 51920 of 2023**⁴⁵.

88. Learned counsels representing the applicants in rest of bail applications have adopted the arguments as placed by learned counsel for the applicants, mentioned above.

89. Sri Manish Goel, learned Additional Advocate General assisted by Sri Nitesh Srivastava, learned AGA and Sri Rishi Kumar, learned Additional Chief Standing Counsel, appearing for the State submits, insofar as involvement of the applicants in the offence is concerned, that they formed a syndicate and their modus operandi configures four segments: (i) assignment of job of collection of SIM Cards and personal data of people that have been uploaded on the portal of Goods & Service Tax; (ii) to use personal data for creation of fake Firms by uploading it on GST Portal; (iii) there will be one actual Firm which

⁴⁵ Mahesh v. State of U.P.

will be working and money transaction will flow to this actual Firm and the input tax will be availed; and (iv) distribution of monetary benefits among all. He has very strenuously argued that to divulge the involvement of the applicants, the dots are required to be joined to examine as to who has done it.

90. It is submitted by Mr. Goel that 2600 fake firms were found to be registered and the input tax credit availed with these 2600 Firms was more than Rs. 40,00,00,00,000/- (Rupees Four Thousand Crore). In the present matter anticipatory bail application was filed and after due consideration the Court has rejected the anticipatory bail of the applicant.

91. In response to the submissions advanced by learned counsel for Dolsy Murjhani that SIM numbers which have been recovered at the relevant point of time do not match, learned counsel for the State submits that there are two statements on the record and Dolsy Murjhani in her confessional statement specifically stated that she was helping her father and is involved in the offence. There are several SIM Cards that were being utilized and only one card recovered at the relevant point of time has not been matched. It is also contended that there are confessional statements of co-accused about involvement of Dolsy Murjhani and her brother Jatin Mujhani, on the basis of which recovery has been made which discourse the fact connecting them in the organized criminal offence.

92. Learned Additional Advocate General has further contended that from the material i.e. statements of Krishna Singh, Deepak Murjhani and from her (Dolsy Murjhani) own statement, it is evident that it is a case where a number of SIM Cards have been utilized, therefore, it is a case where the entire family is involved and if the bail is granted to one person, it will perpetuate illegality. He has drawn attention of the Court

to Paragraph-12 of the Counter Affidavit, stating that as to how from IMEI number which has been recovered, Dolsy Murjhani has nexus with the fake firms, of which account has been ceased.

93. The FIR was lodged by one Saurabh Dwivedi, who is a journalist and Editor of The Lallantop Internet News Portal. About unknown GST registrations applied on his PAN showing the addresses of Punjab and Maharashtra. The said GST registrations have been obtained without consensus. It has also been alleged that two registrations are already authenticated for Aadhaar verification whereas as on date no email ID or mobile number is linked with the Aadhar.

94. Learned Additional Advocate General submits that the informant finds his name as a business entity. There are already two registrations for which he has never applied and there are two different addresses which have been shown. The informant in the FIR has emphatically stated that he never applied for such registrations and there is no consensus on his part. It is also stated that similar registration has been applied in the UT of Delhi, however, same has been rejected by the GST authorities.

95. Mr. Goel submits that the argument with regard to applicability of the provisions of GST Act, the informant levelled allegations of misusing his Aadhaar and PAN Cards for GST registration, thus, FIR has rightly been lodged under the relevant Sections 420, 467, 468, 471 IPC.

96. As regards matter regarding jurisdiction as has been argued by learned counsel for the applicants, the same is demolished by bare reading of the FIR. Addressing the aspect with respect to jurisdictional issue of Gautam Buddh Nagar, learned AAG further submits that the person, who is making complaint, is having his identity of Gautam Buddh Nagar. In the FIR two GST Registration Nos.

03AUSPD7067N1Z3 and 27AUSPD7067N1ZT are mentioned, against which Tam Enterprises and Tam Traders have been registered, which are situated at Punjab and Maharashtra, whereas the complainant has stated that these firms bear his name as legal name of business entity. Thus, on the same GST registrations, name of Saurabh Dwivedi is registered besides the firms shown. Learned Addl. A.G. contends that the matter is as clear as it is there, that both firms have been registered with PAN numbers of Saurabh Dwivedi, hence submission as observed by learned counsel for the applicants has no legs to stand.

97. Learned AAG submits that the third submission of the applicants, which has been made the basis in all bail applications is with respect to the statement of co-accused, which cannot be read. Most of the judgements, placed before this Court, are with respect to cases in trial and not with respect to cases in bail, which say that at the time of consideration of bail application, it is the duty of the Court to examine all the material on record. Once it is duty of the court to examine all material, it includes the statement of co-accused too. Thus, the parameter for grant of bail is entirely different to that of the parameter taken to be considered under trial. He has relied upon judgements of the Apex Court in the cases of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another**⁴⁶, **Masroor v. State of Uttar Pradesh and another**⁴⁷, **State of U.P. Through CBI v. Amarmani Tripathi**⁴⁸, **Mehboob Ali and another v. State of Rajasthan**⁴⁹, **P. Chidambaram v. Directorate of Enforcement**⁵⁰, and **Sunil Kumar v. Stte of Bihar and another**⁵¹.

46 (2004) 7 SCC 528

47 (2009) 14 SCC 286

48 (2005) 8 SCC 21

49 (2016) 14 SCC 640

50 (2019) 9 SCC 24

51 (2022) 3 SCC 245 : (2022) 1 SCC (Cri) 603 : 2022 SCC OnLine SC 88

98. Mr. Goel has drawn attention of the Court to Paragraph-8 of the judgement of the Supreme Court in the case of **Union of India (NCB) etc. v. Khalil Uddin etc.**⁵². Paragraph-8 of the said judgement reads thus:

“8. The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in **Tofan Singh vs. State of Tamil Nadu**⁵³. In **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.**⁵⁴, the rigour of law lay down by this Court in Tofan Singh was held to be applicable even at the stage of grant of bail.”

99. It is also contended on behalf of the State that the judgements referred by learned Senior Advocate Mr. Kamal Krishna are also with respect to trial not to bail.

100. With regard to arguments of learned counsel for the applicants that once chargesheet has been submitted in economic offence, the person should be released, learned AAG contends that each economic offence has distinct parameter while consideration of bail, which can be summarized in three counts: (i) Gravity of Economic Offence, (ii) Impact, if the person is released on bail or the person is detained, and (iii) Interest of the Nation. It is argued that economic offence is not possible at the hands of one person and the present case is organized crime where crores of government money has been siphoned by registration of fake firms in which all applicants are connected in one or the other way.

101. In regard to the case of Dolsy Murjhani, learned AAG for the State submits that she had chip of the SIM Card, hence her involvement cannot be denied. The entire focal point is that the modus operandi was utilized by SIM and Aadhaar for GST registration. SIM Cards that have

52 2022 SCC OnLine SC 2109

53 (2021) 4 SCC 1

54 2022 LiveLaw (SC) 69

been recovered, are not mentioned, however, she has made a statement to the effect that her father is the main accused and the entire family was involved in the offence. The said statement has come on the record. Nine SIM Cards were being utilized at the time when she was intercepted, just because one SIM recovered at that point of time, was not being utilized, cannot go to prove her innocence.

102. Mr. Manish Goel next submits that the GST Act does not impliedly or explicitly repeal the provisions of the Indian Penal Code, 1860, or the Code of Criminal Procedure, 1973, hence investigation for offences under the IPC is permissible. In support of his submission, he has relied upon the judgements of the Apex Court in the cases of **Shahzad Alam v. State of U.P.**⁵⁵, and **Govind Agarwal v. State of U.P.**⁵⁶

103. Likewise with respect to economic offences, there are several decisions of the Supreme Court, wherein the Apex Court has held that the statement of co-accused as well as confessional statements are required to be considered while considering bail application of an accused. Learned counsel for the State Mr. Goel further emphasized that in view of the law laid down by the Apex Court, entire material as come in the case diary alongwith other material has to be looked into while considering bail application, thus, it is imperative to take into account all material whether it may or may not have evidential value and the Court should deal with it strictly while hearing economic offence.

104. With respect to consideration of bail in offences related to GST, learned AAG has placed reliance on various judgements of the Apex Court in the cases of **Yogesh Jagish Kanodia v. State of Maharashtra**

⁵⁵ 2020 SCC OnLine All 1901 : (2020) 35 GSTL 529

⁵⁶ 2020 SCC OnLine All 1902 : (2020) 35 GSTL 551

and another,⁵⁷ **Ajay Khanna v. State Tax Anti Evasion Bureau, Jabalpur (M.P.)**⁵⁸, **Rajesh Jindal v. Commissioner of Central Tax GST, Delhi (West)**⁵⁹, **Jagdish Kanani v. Commissioner of CGST & Central Excise, Indore**⁶⁰, **Ranjeet @ Ranjeet Singh v. Union of India**⁶¹.

105. It has also been argued that the Supreme Court has viewed the matters of economic offences and laid down law while considering bail applications in the cases of **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation; Central Bureau of Investigation**⁶², **Central Bureau of Investigation v. Ramendu Chattopadhyay**⁶³, **Tarun Kumar v. Assistant Director, Directorate of Enforcement**⁶⁴, **State of Bihar and another v. Amit Kumar alias Bachcha Rai**⁶⁵, **Nimmagadda Prasad v. Central Bureau of Investigation**⁶⁶, **Serious Fraud Investigation Office v. Nittin ohari and another**⁶⁷, and **State of Gujarat v. Mohanlal Jitamalji Porwal and another**⁶⁸.

106. Learned Additional Advocate General for the interpretation of Section 27 of the Indian Evidence Act, 1872, has placed Section 3 of the said Act, which defines ‘fact’, ‘relevant’, ‘proved’, which are as follows:

“3. ...

Fact”.—“Fact” means and includes—(1) anything, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

57 (2021) 90 GSTR 402 : 2021 SCC OnLine Bom 154 : (2021) 2 Bom CR (Cri) 112

58 (2020) 73 GSTR 296 2019 SCC OnLine MP 2130 : (2019) 30 GSTL 44

59 2018 SCC OnLine Del 1344 : (2019) 21 GSTL 471

60 2019 SCC OnLine MP 7108 : (2019) 12 GSTL 460

61 2018 SCC OnLine All 6085 : (2018) 17 GSTL 381

62 (2013) 7 SCC 439

63 (2020) 14 SCC 396

64 2023 SCC OnLine SC 1486

65 (2017) 13 SCC 751

66 (2013) 7 SCC 466

67 (2019) 9 SCC 165

68 (1987) 2 SCC 364

“Relevant”. — One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Proved”.—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

107. He has also placed Section-4 of the Act, 1872 wherein the words ‘may presume’, ‘shall presume’ and ‘conclusive proof’ have been explained which are as follows:

“4. “May presume”.—Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

“Shall presume”.—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

“Conclusive proof”.—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.”

108. From a reading of the aforesaid sections, it is clear that the material collected by the Investigating Officer at this stage is relevant for the purposes of considering that the applicants are involved in the commission of offence as the deposition made by co-accused persons leading to discovery of such information or fact is not required to be proved and is admissible piece of evidence as per Section 27 of the Act, 1872.

109. As argued by Mr. Amit Singh Chauhan, learned AGA-I and Sri Mayank Awasthi, learned Brief Holder, for the State, the following material has been collected to show the involvement of the applicants in the present case:

- (i) C.D. Parcha No. 2 bears details of Mobile No. 8800966916 which was used to register the GST firms

mentioned in the FIR, its CDR⁶⁹/ CAF⁷⁰ reports were obtained from Surveillance Cell.

(ii) CDR/ CAF reports were received which reveal that accused's location is of Preetampura Delhi, said information forms part of C.D. Parch No. 4, whereafter informer as per CD Parcha No. 5 disclosed the names of Deepak Murjhani and Yaseen Sheikh found to have been involved in the crime.

(iii) CD-Parcha No. 7 says that on the aforesaid information, police arrested Ashwani Pandey and Yaseen Sheikh along with the recovery of incriminating materials i.e. SIM Cards of different companies, laptops, Aadhaar Cards, PAN Cards. On being checked the laptop, a master file contained in folder at the desktop, names of 1891 GST firms in various names were found, and in another master sheet contained in a separate folder there were details of 680 GST firms. In the said sheet, name of firms mentioned in the the FIR were also found. On the pointing out of Ashwani Pandey and Yaseen Sheikh, the investigating team reached at Madhu Vihar office, where accused Deepak Murjhani, Akash Saini, Vishal Singh, Atul Sengar, Rajiv, Vineet were found and arrested along with huge amount of money and documents relating to fake GST firms. Copy of recovery memo was duly received by the accused persons putting their signatures thereon. The arrested accused persons, in their confessional statements, disclosed names of Anchit Goyal, Pradeep Goyal, Archit Goyal, Mayur alias Mani Nagpal, Charu Nagpal and Deepak Singhal. Consequently, Section 120B IPC was added.

(iv) C.D. Parcha No. 11 shows supplementary statement of accused persons in judicial custody, who said to assist in recovery of incriminating articles from concerned place and persons.

(v) C.D. Parcha No. 14 contains majid-statement of Yaseen Sheikh, Rajiv Jindal and Deepak Murjhani, who disclosed names of Rajiv Maheshwari and Rahul Gupta. In the same parcha the aforesaid accused persons including accused Ashwani Pandey, Vishal and Akash, all of them disclosed the complicity of Rajiv Maheshwari, Rahul Gupta, Gaurav Singhal and Gurmeet Singh

69 Call Details Report

70 Customer Acquisition Form

Batra alias Sahil and confessed that they use to generate fake GST bills/ invoices in the names of registered fake firms on the basis of fake SIM and IDs.

(vi) C.D. Parcha No. 15 shows that at the instance and pointing out of Deepak Murjhani, Ashwani Pandey and Yaseen Sheikh, arrested of Gaurav Singhal and Gurmeet Singh Batra was effected on 10.06.2023 from the residence of Gaurav, i.e., House No. 2/214, Sector-16, Rohini, Delhi, along with huge recovery of incriminating articles. Whereafter, the investigating team reached at Gautam Buddh Nagar along with accused taken in police custody remand alongwith arrested accused persons Gurmeet Singh Batra and Gaurav Singhal, from where accused Rahul Gupta and Rajiv Maheshwari were arrested with several SIMs and other incriminating material and the recovery memo was handed over with consent to Rajiv.

(vii) C.D. Parcha No. 16 shows that the accused taken in police custody remain disclosed the names of Atul Gupta, Sumit Garg alias Sumit Chacha, Mannan Singhal, Baldev alias Balli, Ishwar, Praveen, Sanjay Garg, Banti, Archit Goyal. All of them confessed to prepare fake GST invoices against the names of fake firms at the office taken on rent by Deepak Murjhani and Archit Goyal.

(viii) On being reached at the office of Jiwalo India Pvt. Ltd. (Shop No. 1-F/A-16, Gurudwara Road, Madhu Vihar, Delhi), statement of property owner, namely, Sahil Gupta S/o Sri Prakash Chandra Gupta was recorded, which revealed that the shop was taken on rent by one Rajnish Kumar Jha along with Raj Kumar Jha, for which a rent agreement was executed in the name of Jiwalo India Pvt. Ltd. The landlord identified the photograph of accused Yaseen Sheikh to be of Rajnish Kumar Jha, which shows the accused impersonated himself to be Rajnish Kumar Jha, thus it is a connecting chain in the commission of present offence. The information forms the part of CD Parch No. 17 (12.06.2023).

(ix) In C.D. Parcha No. 18 (13.06.2023) the Investigating Officer found that fake GST firm - Tam Enterprises mentioned in the FIR does not exist at given address of Ludhiyana, Punjab,

whereas at the relevant place there exists a shop in the name of Kings Footwear being run by one Prabhujeet Singh.

(x) C.D. Parcha No. 22, dated 23.06.2023, shows arrest of Atul Gupta, Sumit Garg alias Chacha and Mannan Singhal along with recovery at two instance of various fake invoices and cars, from which documents relating to A.K. Enterprises were found. Two separate recovery memos were given to the arrested accused persons which bear their signatures. Statements of aforesaid accused persons were recorded, who revealed names of Goldi, Anchit, Anshul, Pradeep Goyal, Praveen, Banti, Puneet, Ishwar, Vikas Dabbas and Sanjay Garg, Mayur alias Mani Nagpal, Charu Nagpal, Rohit Nagpal, Deepak Singhal, Peetam, Mintu, Montu, Ashish, Nandlal, Mahesh, Gaurav Nagpal and Sahil, and admitted to have been working together in this GST fake registrations and for earning undue monetary benefit.

(xi) In C.D. Parcha No. 24 (29.06.2023) the Investigating Officer found that the fake mobile no. 8800966916, which has been used in registration of GST firms with PAN Number, mentioned in the FIR, was found to have been used in four different mobile sets bearing different IMEI Numbers, therefore, the CDR/CAF report reveals that one of the IMEI in which the aforesaid mobile number was used, it was recovered from the possession of accused Yaseen Sheikh on 01.06.2023 as mobile set Nokia 1423. CDR and CAF reports are enclosed in the parcha, making evident the complicity of accused Yaseen along with all other accused persons.

(xii) Parcha No. 25 shows (11.07.2023) the Investigating Officer found that fake GST firm - Tam Traders mentioned in the FIR does not exist at given address of Maharashtra and the documents shown were found to be forged.

(xiii) Parcha No. 29 shows (07.07.2023) the details of persons in whose names SIM Cards were procured, have been recovered from the accused Yaseen and Deepak Murjhani.

(xiv) Arrest of accused Ajay alias Minti, Amit alias Montu and Mahesh was made, which is mentioned in C.D. Parcha No. 30 (09.07.2023). Recovery of 07 mobile phones, 06 tax invoices,

one car and 3 aadhaar cards was made from said accused persons.

(xv) In the C.D. Parcha No. 31 the Investigating Officer found that the registration of vehicle mentioned in the invoices were found to be fake and fabricated.

(xvi) In the C.D. Parcha No. 37 arrest of Preetam Garg alias Chacha is mentioned along with recovery of fake tax invoices, mobile, aadhaar and voter ID. In his statement, the accused Preetam Garg confessed that he along with his elder brother Sanjay Garg went to Rohini, New Delhi, where he was introduced with Gaurav Singhal, Pradeep, Atul, Mannan, Sumit, Vikas Dabas, Goldi and Nand Lal, at the office of Arjit and Anchit.

(xvii) In the C.D. Parcha No. 39 the Investigating Officer recorded arrest of Jatin Murjhani alias Rohit and Dolsy Murjhani. In their confessional statements, both have stated to have part of the entire transaction by getting commission.

(xviii) In the C.D. Parcha No. 44 the Investigating Officer recorded arrest of accused Nandlal alias Nandu father of co-accused Mahesh and recovery of tablet (notepad). They informed that said tablet and mobile belong to accused Deepak Murjhani and Dolsy Murjhani. During his confessional statement, he has stated that the mobile recovered was to be returned to Deepak Murjhani as it is used for the purposes of obtaining OTP in registration firms, as also used in collection of payment from the customers.

(xix) In the C.D. Parcha No. 49 the Investigating Officer mentioned details of bank accounts of accused persons.

(xx) In the C.D. Parcha No. 53 the Investigating Officer found the tax invoice of Gurmet Singh Batra to be fabricated.

(xxi) C.D. Parcha No. 55 mentions that DGI, Ghaziabad Unit has provided list of 1192 PAN Cards and on verification from the PAN Card holders they denied knowledge of any such registration of firms.

(xxii) C.D. Parcha Nos. 61 to 65 the Investigating Officer recorded statements of affected persons and victims, in whose names fake GST firms have been registered.

(xxiii) C.D. Parcha No. 69 shows that IMEI Numbers of recovered mobile phones from accused persons were sent to respective companies, namely, AirTel, Jio, Vodafone Idea and on being run it was found that said mobiles with certain IMEI numbers were used in registration of a number of fake firms. They provided information that the mobile (IMEI) recovered from accused Yaseen Sheikh was used in 92 GST registration firms, from Vishal Singh and Akash Saini in 53 GST firms, from Atul Sengar in 45 GST firms, and mobile (IMEI) recovered from Deepak Murjhani was used in 139 fake GST firms.

(xxiv) In C.D. Parcha No. 72 the Investigating Officer has referred the letter sent to DGGI⁷¹, Unit Ghaziabad, in response thereto he had relied that total 2528 GSTIN fake firms were identified which are involved in ITC of Rupees Four Thousand Crore, in respect to the same different Zonal Units have arrested accused, namely, Tushar Gupta, Sanjay Dhingra, Rishabh Jain, Shubham Jindal, Tarun Jindal, A. Suresh Kumar, Sanjay Jindl and Ajay Sharma.

(xxv) In C.D. Parcha No. 75 the Investigating Officer has requested DGGI, Meerut Unit, Ghaziabad to provide entire details along with charge sheet with regard to Sanjay Dhingra, controller of M/s Good Health Industries.

(xxvi) In C.D. Parcha No. 76, a report from DGGI, Meerut Unit was received along with charge sheet filed against Sanjay Dhingra, which reveals that Inspector, DGGI Office, Ghaziabad has informed that accused persons were arrested by the police of P.S. Sector-20 Noida, Gautam Budh Nagar and from their possession list of 2600 fake GST registration firms was recovered. On thorough inquiry it was found that the forged GST firms YOYO Traders has transferred ITC to fake GST firm AKS Traders, from which it was transferred to M/s Good Health Industries Pvt. Ltd., and both YOYO Traders and AKS Traders were found to be registered on fake documents. A complete report of DGGI office containing 28 pages is enclosed along with

71 Director General of GST Intelligence

the parcha. In the said report it has been found that YOYO Traders and AKS Traders are non-existing firms and mobile numbers have been provided which are used in the registration of fake firms.

(xxvii) C.D. Parcha No. 77 shows that on physical verification Investigating Officer found that both firms, namely, YOYO Traders and AKS Traders are non-existent at the principle place of business.

(xxviii) In C.D. Parcha No. 78, the Investigating Officer mentions that mobile number used in the registration of GST firm YOYO Traders i.e. 9873797648 was found to be used in mobile having IMEI No. 862625043825695, the said mobile was recovered at the initial stage from the accused Deepak Murjani.

(xxix) C.D. Parcha No. 79 shows that I.O. verified about whereabouts of the company but found the company YOYO Traders is non-existent, further it was revealed that at the office of M/s Good Health Industries Pvt. Ltd. situated at F-82, Shivaji Palace, Rajori Garde, Delhi, accused Sanjay Dhingra is not present since 15-20 days and the name of the Company has been changed to Live Light. Thereafter, statements of employees of the Company were recorded. They stated to have never seen Sukhveer Yadav and Rajesh Yadav who are also said to be Director of M/s Good Health and they use to report to Sanjay Dhingra who is owner of the said firm. Further, the complicity of Kanika Dhingra and Mayank Dhingra came to light.

(xxx) In C.D. Parcha No. 81 the I.O. recorded arrest of Ashish Allavadi along with the recovery of driving licence of accused Mannan Singhal and voter I.D. of Baldev. In his statement, Ashish stated that he used to bring payment of GST commissions and he has confessed the names of his cousin brother Amit alias Montu, Arjit, Anchit, Atul, Mannan, Baldev, Nandlal, Ajay, Ishwar, Sanjay Garg, Gaurav Singhal, Peetam Chacha and others in the commission of the offence.

(xxxi) C.D. Parcha No. 82 shows the entry of bank account of accused persons wherein concerned GST ITC transaction was

found, as such the accounts were requested to be ceased by the Bank under Section 102(1) Cr.P.C.

(xxxii) In C.D. Parcha No. 84 the I.O. shows arrest of accused Praveen Kumar with the recovery of mobile phone, Debit Card of Atul Gupta and two tax invoices. In his confessional statement he admitted complicity in the offence with other accused persons including Rajiv Jindal. He further disclosed the fact that with regard to the fake invoices GST Department has initiated proceedings against the accused, in which penalty of Rs. 12 lacs was recovered from the company.

(xxxiii) C.D. Parcha No. 85 shows that IMEI of the mobile phones recovered from the accused persons was got run on surveillance of concerned service providers, from where it was found that those IMEI numbers were used in 83 mobile number/ SIMs.

(xxxiv) C.D. Parcha No. 98 refers about the report of one of the DGGI Zonal Units i.e. DGGI Gurugram Zonal Unit. It reveals that from the list of about 2600 fake GST firms which was recovered from the accused persons, out of these 20 companies were found to be common, by which fake ITC claims were received. Further, Annexure-1 of the said report reveals that from these 20 firms, by way of fake tax invoices about Rs. 16,91,74,236/- was misappropriated as a tax claim as such huge loss to the State Exchequer was caused. From Annexure No. 2 it is revealed that fake ITC claims of Rs. 8,57,60,146/- were fraudulently claimed from the fake GST firms. Further, Annexure-3 discloses that fake ITC of Rs. 226.45 crores were claimed in collusion with the accused Sanjay Jindal and Ajay Sharma. The report of DGGI is enclosed along with the said Parcha.

(xxxv) C.D. Parcha No. 105 shows the arrest of accused Rahul Nigam, Piyush Kumar Gupta and Dilip Sharma. They confessed that they use to create fake GST firms and invoices for the accused persons Arjit Goyal alias Adarsh Goyal, Anchit, Pradeep, Vikas Dabas and told that they are somewhere outside but they create fake GST firms and fake invoices on the email

i.d. of adarshgoyal129@gmail.com which is still logged-in on his laptop, wherein many fake GST firms are uploaded. Whereafter, 2 boxes containing 40 stamps, 1 box with 2 bank passbooks and 19 various bank' cheque books, 1 box containing 17 smart mobile phones, 1 box with key-pad mobile phones, 1 box with 20 pendrives, 1 box with one POS machine, and 45 SIM Cards, 12 PAN Cards, 10 Aadhaar Cards and 29 Credit Cards, 1000 fake documents relating to GST firms were recovered and sealed. From the confessional statements of arrested accused, complicity of accused Sachin, Babar, Parmeshwar and Nishant Agarwal came into light.

(xxxvi) C.D. Parcha No. 107 shows the entry of bank account of accused persons wherein concerned GST ITC transaction was found, as such the accounts were requested to be ceased by the Bank under Section 102(1) Cr.P.C.

(xxxvii) C.D. Parcha No. 119 shows the arrest of accused Vikas Dabas and in his confessional statement he disclosed that he along with other persons, at the office of Arjit, Anchit and Pradeep Goyal, used to transfer the said GST firms bills to different places and receive commission thereof. Further, he disclosed the family of Archit and Anchit is mainly involved in this offence and all other accused are involved in different aspects of commission of crime.

(xxxviii) C.D. Parcha No. 125 (09.03.2024) reveals that against the absconding accused (1) Anchit Goyal, (2) Pradeep Goyal, (3) Arjit Goyal, (4) Baldev alias Balli, (5) Rohit Nagpal proceedings of Non-Bailable Warrants, declaration under Sections 82 and 83 Cr.P.C. have been completed and lookout circular (LOC) has been issued as such there is less chances of arrest of the mentioned accused so charge sheet was filed against them under Sections 420, 467, 468, 471, 120-B IPC. Meaning thereby that accused have fled away from the proceedings of law hence shows their guilt.

(xxxix) C.D. Parcha No. 126 (11.03.2024) shows that during the course of investigation accused Kunal Mehta was in judicial custody as such vide judicial permission the statement of accused

Kunal Mehta alias Goldi was recorded in jail, wherein he stated to effect the recovery of forged documents from the office of Balli situated in Rohini, Delhi.

(xl) C.D. Parcha No. 128 (15.03.2024) indicates the recovery of documents relating to fake GST firm from accused Kunal Mehta alias Goldi.

(xli) C.D. Parcha No. 131 (21.03.2024) shows that during investigation it was found that accused Ajay Sharma and Sanjay Jindal, who were arrested by DGGI, Gurugram Unit amongst 8 other persons and also involved in the registration of 2600 fake GST firms, whose information was provided to the police by DGGI Ghaziabad Unit, are in jail, as such the statement of the accused persons were recorded wherein they have confessed their complicity in the present offence and requested the court below for allowing the remand of the accused in the present case crime under Section 420, 467, 468, 471, 120B IPC.

(xlii) In C.D. Parcha No. 135, a letter from DGGI Delhi Unit is submitted by the IO which reveals that the accused Tushar Mehta who was arrested by DGGI Delhi Unit, was involved in recipient of fraudulent ITC to the tune of Rs. 24 crores on the strength of purported invoices issued by the fake GST firm M/s MKJ Enterprises which is a part of Noida fake invoice syndicate.

(xliii) In C.D. Parcha No. 139 (10.04.2024) shows that during investigation it was found that accused Tushar Gupta, who was arrested by DGGI, Delhi Unit amongst 8 persons and also involved in the registration of 2600 fake GST firms, is in jail, as such the statement of the accused persons were recorded wherein they have confessed their complicity in the present offence and requested the court below for allowing the remand of the accused in the present case crime under Section 420, 467, 468, 471 120B IPC.

(xliv) C.D. Parcha No. 146 (01.05.2024) indicates that the accused Sanjay Dhingra along with Mayank Dhingra & Kanika Dhingra was arrested by the police from Delhi on 30.04.2024. At their instance/ possession, 7 mobile phones, 1 tablet, 6 cars, cash

of Rs. 1,41,000/- were recovered. Subsequently, in their confessional statement, Sanjay Dhingra along with accused have confessed their guilt in the alleged offence. Moreover, accused Sanjay Dhingra disclosed that fake GST firms were prepared by him along with Deepak Murjhani and others and it is important to point out that Kanika Dhingra who is wife of Sanjay Dhingra has stated that through M/s Radha Krishna Marketing about Rs. 16,35,00,000/- were transferred to her saving bank account. Copy of recover memo was served upon the accused receiving their signatures thereon.

(xlv) C.D. Parcha No.149 (03.05.2024) shows that mobile phones and table which were recovered from the daughter of Deepak Murjhani, namely, Dolsy Murjhani, were sent to Forensic Science Laboratory, Ghaziabad for examination.

(xlvi) C.D. Parcha No. 156 (13.05.2024) reveals that the data relating to fake GST firms was shared with DGGI Unit, Jaipur, Rajasthan, wherein on 30.08.2023 names of Rishabh Jain, Shubham Jindal and Tarun Jindal came to light in the present offence. The report of DGGI indicates that the computerised data obtained discloses that aforesaid accused persons have received ITC benefits by way of forged GST firms by creating fake bills and invoices.

(xlvii) C.D. Parcha No. 158 (19.05.2024) refers the arrest of accused Rishabh Jain and Tarun Jindal from House No. 105, Prashant Vihar, Rohini, Sector-14 and from their possession recovery of 2 mobile phones, 1 laptop and list of fake GST firms was made. In their confessional statement, said accused stated that they along with Deepak Murjhani, Yaseen, Anchit and Arjit and others have created these forged and fabricated GST firms. In the same parcha, it has been mentioned that accused Shubham Jindal was also arrested from Rajasthan by another team on 18.05.2024, from whose possession 3 mobile phone, 2 laptops and a list of fake GST firms were recovered. It is mentioned that copy of recovery memo was given to accused persons.

(xlviii) C.D. Parcha No. 161 (25.05.2024) shows that confessional statements of accused Anshul Goyal were recorded,

wherein he has stated the complicity of the accused persons naming them.

(xlix) C.D. Parcha No. 162 (26.05.2024) reveals that a report from DGGI, Coimbatore which reveals that names of Smt. Suganya Prabhu and Sri Prabhuparam Shivam came to the light in the complicity of offence, showing huge amount was misappropriated through ITC.

(l) C.D. Parcha No.167 (23.06.2024) details about the arrest of Smt. Suganya Prabhu, her confessional statement was recorded which discloses the complicity in the present case.

(li) C.D. Parcha No.172 (27.06.2024) shows the arrest of accused Babar Khan and recovery of forged tax invoices and other incriminating material and thereafter confessional statement of the accused was recorded.

110. Learned counsel for the State has detailed about the submission of chargesheet against accused persons under Sections 420, 467, 468, 471, 120-B IPC, in respective case crime numbers, which are being summarized in the following chart:

Sl. No	Applicant’s Name	Case Crime No.	Date of Chagesheet
1.	Rajiv Jindal	248/2023	29.08.2023
2.	Rajiv Jindal	255/2023	29.08.2023
3.	Rajiv Jindal	203/2023	29.08.2023
4.	Manan Singhal	248/2023	19.09.2023
5.	Manan Singhal	203/2023	19.09.2023
6.	Mahesh	203/2023	03.10.2023
7.	Mahesh	255/2023	03.10.2023
8.	Mahesh	248/2023	03.10.2023
9.	Nand Kishore	203/2023	20.10.2023
10.	Nand Kishore	248/2023	20.10.2023
11.	Nand Kishore	255/2023	20.10.2023
12.	Manan Singhal	255/2023	19.09.2023
13.	Sumit Garg @ Chacha	255/2023	19.09.2023
14.	Sumit Garg @ Chacha	248/2023	19.09.2023
15.	Sumit Garg @ Chacha	203/2023	19.09.2023
16.	Dolsy Murjhani	203/2023	10.10.2023

17.	Dolsy Murjhani	248/2023	10.10.2023
18.	Dolsy Murjhani	255/2023	10.10.2023
19.	Jatin Murjani	203/2023	10.10.2023
20.	Jatin Murjani	248/2023	10.10.2023
21.	Jatin Murjani	255/2023	10.10.2023
22.	Gaurav Singh @ Gaurav Singhal	255/2023	06.09.2023
23.	Amit @ Moti @ Motu	248/2023	03.10.2023
24.	Akash Saini	255/2023	29.08.2023
25.	Akash Saini	203/2023	29.08.2023
26.	Akash Saini	248/2023	29.08.2023
27.	Ajay @ Mintu	248/2023	03.10.2023
28.	Ajay @ Mintu	203/2023	03.10.2023
29.	Ajay @ Mintu	255/2023	03.10.2023
30.	Vishal	203/2023	29.08.2023
31.	Vishal	248/2023	29.08.2023
32.	Vishal	255/2023	29.08.2023
33.	Praveen Kumar	255/2023	27.10.2023
34.	Praveen Kumar	248/2023	27.10.2023
35.	Praveen Kumar	203/2023	27.10.2023
36.	Piyush Kumar Gupta	203/2023	04.03.2024
37.	Ashwani	255/2023	29.08.2023
38.	Ashwani	203/2023	29.08.2023
39.	Ashwani	248/2023	29.08.2023
40.	Atul Gupta	255/2023	19.09.2023
41.	Pritam Garg @ Chacha	248/2023	10.10.2023
42.	Pritam Garg @ Chacha	255/2023	10.10.2023
43.	Pritam Garg @ Chacha	203/2023	10.10.2023
44.	Gaurav Singh @ Gaurav Singhal	203/2023	06.09.2023
45.	Gaurav Singh @ Gaurav Singhal	248/2023	06.09.2023
46.	Atul Gupta	248/2023	19.09.2023
47.	Amit @ Moti @ Motu	255/2023	03.10.2023
48.	Amit @ Moti @ Motu	203/2023	03.10.2023
49.	Rakesh Dialani	203/2023	04.03.2024
50.	Rakesh Dialani	255/2023	04.03.2024
51.	Rakesh Dialani	248/2023	04.03.2024
52.	Atul Gupta	203/2023	19.09.2023
53.	Dilip Sharma	203/2023	04.03.2024
54.	Piyush Kumar Gupta	255/2023	04.03.2024
55.	Piyush Kumar Gupta	248/2023	04.03.2024

111. While assisting the Court, Mr. Rishi Kumar, learned Additional Chief Standing Counsel submits that the present case begins with lodging of FIR by Saurabh Dwivedi, wherein allegations for fake GST registration applied in his name with PAN No. AUSPD7067N by anonymous person and got two GST firms registered, thus, the entire case begins with fake GST registration using PAN Card and Aadhaar Card of the informant. During the investigation it was found that larger nexus works for having benefit of input tax credit. The offence has been committed in an organized and synchronized manner, wherein fake and bogus invoices have been created to cover the money trail and goods supply as well as money transactions are there with forged firms. Establishing the entire chain, the accused persons have been found connected with each other and in one or the other way they have been benefited by fake GST registration shown by using Pan Card and Aadhaar Card of the informant.

112. The backbone of goods and services regime is input tax and credit. Under the GST regime, ITC follows supply chain not only intrastate but also interstate supply.

113. It has been established through investigation that crime has been committed by the accused persons by making fraudulent firm by using PAN Card and Aadhaar Card, Mobile Number for creating fake firms and through fake invoices, they breached supply chain of ITC and got benefit through fake gains which have been created by them. Thus, in so many words, the said case is started with registration of fake firms using Pan Card and Aadhaar Card of the informant for consequential benefits of claiming ITC. Thus, it cannot be said that the proceedings have to be initiated against the applicants under the the special Act i.e. Goods and Services Tax Act, where the proper procedure has been laid down and FIR could not have been registered.

114. The next finding in the case of recovery and use of fake PAN Cards has to be understood by analysing the purpose of issuing a PAN Card. The PAN card is issued to keep a track of financial activity of a person and a PAN is integral for all forms of payments. A PAN Card number is located to a needful and contains information such as Aadhaar number, date of birth and address. Similar is the use of Aadhaar Card which is now linked with the account of individual in favour of whom it has been issued. The PAN Card contains details of Aadhaar also. The PAN Card can be used for availing utility connections like electricity, telephone, LPG and internet. Under GST, a registered taxable person is required to issue an invoice containing all relevant information, such as the GSTIN, tax divergence and so on. If a taxpayer issues an invoice that is missing critical information, the invoice may be considered a fake GST invoice. Thus, by forging fake GST number using PAN Card of the informant fake GST invoices have been created for financial benefit, thus, the very basis of the present case is forgery done by the accused persons, on the basis of which financial gains in terms of ITC have been availed by them.

115. The learned Additional Chief Standing Counsel, in order to show how use of PAN Card in such a manner, is detrimental not only to the interest of the person whose PAN Card has been used but is also detrimental in national interest. He has relied upon a judgement of Bombay High Court in the case of **UTI Infrastructure Technology and Services Limited v. Extra Tech World and Ors.**⁷², wherein the Court has observed thus:

“It cannot be in dispute that the PAN system is of paramount importance on a national scale due to its multifaceted impact on governance, taxation, and financial integrity, and it can be said to be the cornerstone of a robust financial economic system. PAN related services are pivotal in fostering fiscal discipline and ensuring a transparent and accountable economic framework, as apart from

⁷² By Bombay High Court in Interim Application (L) No. 564 of 2024 in Commercial Intellectual Property Rights Suit (L) No. 537 of 2024

being a unique identifier for individuals and entities, it also aim at streamlining the tax recovery and payment process. Government of India has made it mandatory for PAN card holders to link the same to Aadhar Card, which is an acceptable proof of identification in India, and therefore, any potential misuse of the licence/authorisation to issue PAN cards, would be highly detrimental not only to the interest.”

116. Thus, the offence in the present case is affecting the interest of public at large.

117. I have considered the submissions advanced by learned counsel for the parties and perused the record.

118. Learned counsel for the applicant-Gaurav Singhal has stated that in Case No. 22362 of 2023 lodged under the GST Act with the allegation that the applicant operates a racket for evading the Input Tax Credit by creating fake firms, he has already been granted bail, this Court is of the opinion that the present case is of a forgery and not related to GST, therefore, no benefit of bail granted in the aforesaid case can be given in the present case.

119. To understand the point of jurisdiction as argued by learned counsel for the State, it would be appropriate to quote Section 77 of Cr.P.C., which is as follows:

“77. Ordinary place of inquiry and trial.

Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.”

120. It is also necessary to understand the meaning of inquiry. The inquiry has been defined under Section 2(g) of Cr.P.C. to mean every inquiry, other than trial, conducted by a Magistrate or a Court. It would also be appropriate to understand the meaning of ‘investigation’ which has been defined under Section 2(h) Cr.P.C. as all the proceedings for collection of evidence conducted by a police officer.

121. 'Trial' has not been defined under the Code of Criminal Procedure, 1973. Lexicologically, 'trial' means a judicial examination of a case in accordance with law. Hence, for an inquiry or trial, it is the court which is the focal point, whereas for an investigation, it is the police officer. Thus, in the present case, the arguments as placed by learned counsel for the applicants, on the point of jurisdiction, have no legs to stand.

122. Section 27 of the Indian Evidence Act, 1872 deals with the relevancy of information received from a person accused of any offence while in the custody of the police officer. The Section provides an exception to the general rule that confessions made to the police officers are inadmissible in evidence. From the aforesaid, the scope of Section 27 of the Act, 1872 is that it applies to any information given by the person accused of an offence, which leads to the discovery of a fact. The Section states that "so much information" given by the accused that distinctly relates to the fact discovered may be proved. The exception to rule of admissibility is that normally confessions made to a police officer or while in police custody are inadmissible under Sections 25 and 26 of the Indian Evidence Act, however, Section 27 allows for an exception where information received from the accused leads to discovery of a fact. The Section makes only that part of the statement relevant, which directly leads to the discovery of facts. It does not make the entire statement of the accused inadmissible.

123. The condition for applicability of the aforesaid Section is that the person giving the information must be an accused in police custody. The information provided must lead directly to the discovery of the material fact and only that portion of information which directly leads to the discovery is admissible. For example, if an accused, while in custody, reveals the location of a weapon used in the crime and upon

searching that location, the weapon is indeed found, the part of statement where accused described the location of weapon is admissible in courts as evidence.

124. The rationale behind Section 27 of the Act, 1872 is to strike a balance between protection of the accused from coercive confession and the necessity of law enforcement to discover fact related to a crime. The courts have interpreted Section 27 in various judgements, often emphasizing that it should be applied only to the extent necessity to prove discovery of a fact. The Hon'ble Apex Court has also laid down guidelines to ensure that the information obtained is not the result of any compulsion or coercion.

125. In the case of **Pulukuri Kotayya and others v. King Emperor**⁷³, which is a landmark judgement, the Apex Court has explained the scope of Section 27 of the Act. In the said case it has been held that the phrase "distinctly related to the fact thereby discovered" is crucial, meaning only that part of statement that led directly to the discovery is admissible, and not the entire statement. In the case of **State of Uttar Pradesh v. Deoman Upadhyaya**⁷⁴, the Apex Court has reiterated the aforesaid. Thus, Section 27 is a significant provision under the Indian Evidence Act providing an exception to the inadmissibility of custodial confessions. It allows admissibility of the specific information that leads directly to the discovery of a fact, balancing the needs of criminal investigation with the rights of the accused.

126. In the present case, after registration of the FIR when forgery had been done by using the Aadhaar Card and PAN Card of the informant, fake GST firms were registered, Investigating Officer proceeded on the information as provided by a secret informer and arrested two accused

73 P.C. App. No. 37 of 1946, 19th Dec. 1946 (Indian Appeal Vol. LXXIV Page 65)

74 1960 SCC OnLine SC 8 : AIR 1960 SC 1125

who disclosed about the office where work of the firm was being done. On the aforesaid information of the arrested accused persons, the Investigating Officer reached the office premises, wherein he found other persons working for the firm of the arrested accused persons. Laptops, mobiles, SIM Cards, fake invoices were recovered, thus, discovering such fact which connected them with the main accused who had got registered the fake firms and the consequential forgery or theft of GST was found. Thus, that part of the discovery of fact is admissible as per Section 27 of the Act. Therefore, argument as placed by learned counsel for the applicants regarding the fact that confessional statements can be taken as a piece of evidence, has no legs to stand.

127. The principal of "bail is the rule, jail is the exception" is a fundamental concept in criminal law, where the criminal justice system recognizes the importance of personal liberty and the presumption of innocence until proven guilty. This principal emphasizes that an accused should ordinarily be granted bail unless there are compelling reasons to detain him in custody. But there are exceptions to the aforesaid principal. While, the general rule favours granting bail, there are several exceptions where courts may deny bail due to specific circumstances. These exceptions are based on factors that indicate a potential risk to society, the judicial process, or the investigation. Some points that should be kept in mind while granting bail are; the nature and gravity of the offence, likelihood of flight risk, risk of tampering with the evidence of witnesses, repeated offenders or habitual criminals, danger to society or the victim, possibility of committing another offence while on bail, interference with justice, specific statutory provisions like the Narcotic Drugs and Psychotropic Substances Act, 1985, Unlawful Activities (Prevention) Act (UAPA)

and the Prevention of Money Laundering Act, 2002 (PMLA), lastly economic offence and white collar crimes.

128. The present case relates to economic offences, such as large scale fraud, money laundering and corruption, are often viewed seriously because they affect the economic fabric of the society. The Courts may deny bail in such cases especially if the accused holds a position of influence or power. In the present case, money trail of crores, which affects the society at large scale, is involved which started from registration of fake firms by using Aadhaar and PAN Cards of the informant who had not applied for such registration.

129. The Apex Court in the case of **Manish Sisodia v. Central Bureau of Investigation, 2023 SCC OnLine SC 1393**, has discussed about the constitutional mandate which is higher law and accordingly it is the basic right of person charged of offence and not convicted be ensured and given a speedy trial, thus, where the trial is not proceeding for the reasons not attributed to the accused, the Court unless there are good reasons may well be guided by exercising power to grant bail. This would be true, the trial would take years.

130. In the present case from the report of the concerned District Judge/ Chief Judicial Magistrate, it is clear that the accused have avoided coming to the court and discharge application of one of the accused has been rejected. One or the other grounds are being taken by the accused persons in getting the matter adjourned so that the charge is not framed, therefore, they are trying to cause deliberate delay so that the charges may not be framed, hence, interfering in judicial process, thus, giving ample reason of not enlarging them on bail.

131. From the report also it is clear that the discharge application of one of the accused has been rejected and it shows that the charges are proved and once on the basis of material collected chargesheet has been

submitted, discharge is rejected, the case of bail is not made out in economic offence where money trail of crores has been found which is a result of registration of fake firms. Offence under the IPC is made out and such accused cannot be dealt with easy hands. In the case of **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439**, the Supreme Court has held thus:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

132. The Apex Court in the case of **Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466** has formulated some important factors to be taken into consideration while considering bail applications. Relevant paragraph of the said judgement are quoted herein below:

“24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

133. Hon'ble Apex Court in the case of **Directorate of Enforcement v. M. Gopal Reddy and another, 2022 SCC OnLine SC 1862** has held that in the economic offences which are having great impact on the society, the court must be slow in exercising discretion under Section 438 of Cr.P.C.

134. Insofar as the argument of learned counsel for the applicants that the cases where the accused are females, they are entitled to be released on bail giving benefit of Section 437 Cr.P.C., the court is of the opinion that the benefit can be given to women who do not have agency and not who themselves are powerful or connected with such powerful persons and the offence is such which is affecting the public at large.

135. In the case of **Tahir Hussain v. The Assistant Director Enforcement Directorate**⁷⁵, the Court has observed that the accused Tahir Hussain was involved in the acts of cheating/ falsification/ forgery of documents which resulted in fraudulent removal of money from the accounts of the three companies (M/s SEAPL, ECPL and EG SPL). On the directions and instructions of Tahir Hussain, huge amount of money was withdrawn from the accounts of the said three companies by way of transfer of funds to entry operators and bogus companies. Tahir Hussain was ultimate beneficiary of the laundered money which he used for fulfilment of ulterior motives. Fake and bogus invoices were created to cover the money trail.

136. The same situation is there in the facts of this case where the crime has started with registration of fake GST firms by using Aadhaar and PAN Card of the informant which amounts to forgery, therefore, offence under the relevant sections is made out and these offences have been properly investigated by the Investigating Officer after lodging of

⁷⁵ Order dated 24.11.2022, CrI. Rev. P. 775/2022 and CrI. M.A. No. 23452/2022

FIRs. The evidences have been collected from the GST Department also.

137. In the case of **Perumal Raja @ Perumal v. State, Rep. By Inspector of Police**⁷⁶, the Court has gone to the extent of clarifying phrase “discovery of a fact” by saying that the same includes the object found, the place from which it was produced and the knowledge of the accused as to its existence, therefore, factum of discovery combines both the physical object as well as mental consciousness of the informant accused in relation thereto. The same has been stated in Paragraph Nos. 22 & 23 of the said judgement, which are thus:

“**22.** However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In *Mohmed Inayatullah v. State of Maharashtra*⁷⁷, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word ‘distinctly’ is used to limit and define the scope of the information and means ‘directly’, ‘indubitably’, ‘strictly’ or ‘unmistakably’. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The

⁷⁶ 2024 LiveLaw (SC) 8

⁷⁷ (1976) 1 SCC 828

second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.”

138. While considering an appeal against the bail cancellation order, the Apex Court in the case of **Gurcharan Singh v. State (Delhi Administration)**⁷⁸, has held that there cannot be an inexorable formula in the matter of granting bail. Paragraph-29 of the said judgement is thus:

“29. We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

139. The Apex Court in the case of **Prahlad Singh Bhati v. NCT, Delhi and another**⁷⁹, has held that while granting bail, the court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interest of the public or State and similar other considerations. Relevant paragraph no. 8 of the said judgement is reproduced hereunder:

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the

78 (1978) 1 SCC 118

79 (2001) 4 SCC 280

larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (*sic* itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

140. Law on consideration of the Court to grant or refusal of bail has been settled by the Apex Court in a catena of decisions. In the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan**⁸⁰, the Supreme Court has held that the court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Paragraph-11 of the said judgement is being quoted below:

“**11.** The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*⁸¹ and *Puran v. Rambilas*⁸².)”.

141. In the case of **State of U.P. Through CBI v. Amarmani Tripathi**⁸³, the Supreme Court has formulated eight points for consideration of bail application. It would be apposite to quote the relevant paragraph no. 18 of the said judgement:

80 (2004) 7 SCC 528 : 2004 SCC (Cri) 1977

81 (2002) 3 SCC 598 : 2002 SCC (Cri) 688

82 (2001) 6 SCC 338 : 2001 SCC (Cri) 1124

83 (2005) 8 SCC 21

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. ...”

142. The Apex Court has, in the case of **P. Chidambaram v. Directorate of Enforcement**⁸⁴, held that precedent of another case alone will not be the basis for either grant or refusal of bail though it may have bearing on principle and the consideration will have to be on case-to-case basis on facts involved therein and securing the presence of the accused to stand trial. Paragraph-23 of the said judgement reads thus:

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does

84 (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646

the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

143. Recently the Apex Court in the case of **Satendra Kumar Antil v. Central Bureau of Investigation and another**⁸⁵, has outlined the considerations by the Court in the matter of grant or refusal of bail.

144. As assisted by learned counsel for the State that backbone of Goods Services Tax regime and Input Tax Credit, is that under the GST Regime ITC follows supply chain not only in intra-state but also inter-state supply. Thus, on the ground of jurisdiction as argued by learned counsel for the applicant this Court is of the view that though registration of fake firms were at Punjab and Maharashtra, the complainant is resident of New Delhi and the FIR has been lodged at Gautam Buddh Nagar, the genuineness of complaint questioning the territorial jurisdiction cannot be raised on the basis of occurrence as the same cannot be said to be at one place where the GST firm was registered but its connections with other fake firms are also required to be seen.

145. Having gone through the submissions of learned counsel for the parties, nature of accusation of offence, role of the applicants, I do not find it a fit case for granting bail.

146. The bail applications are rejected.

Order Date :-31.08.2024

Jitendra/-

85 (2022) 10 SCC 51