

Court No. - 86

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21518 of 2024

Applicant :- Lalit Kumar Chaudhary

Opposite Party :- Union Of India And Another

Counsel for Applicant :- Rishabh Kumar, Sr. Advocate

Counsel for Opposite Party :- Parv Agarwal

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. The present bail application has been moved on behalf of the applicant **Lalit Kumar Chaudhary** with the prayer to release him on bail in Case No. 1164 of 2024, under Sections 132(1)(c) and 132(1)(i) of C.G.S.T. Act, 2017, Department D.G.G.I., Meerut Zonal Unit., Meerut.
3. Heard Shri Gajendra Pratap, learned Senior Counsel assisted by Shri Rishabh Kumar, learned counsel for the applicant, Shri Parv Agarwal, learned Advocate appearing for the CGST department and perused the record.
4. The prosecution story, in nutshell, is that during scrutiny of data it was gathered by intelligence that M/s Okito Tradeco LLP is engaged in the availment of ITC from the suspicious suppliers who have either self mismatch or very high mismatch in its inward supply from GSTR-2A and GSTR-3B to the said firm. Accordingly searches at the office and residence of the partners of M/s Okito Tradeco LLP as well as its five suspicious inward suppliers, namely, M/s Pure Bitumen, M/s Global Enterprises, M/s Sky Suppliers, M/s G.S. Traders and M/s Encore Inc. were conducted on 30.4.2024. During course of search, the aforesaid

five inwards suppliers were not found in existence at their registered place of business. Further, some of the inward suppliers were found to have obtained GST registration on the basis of forged electricity bills. Effort was made to contact the Proprietors of the said firms on their respective contact numbers as available on AIO Portal, but they could not be contacted. Thus, the said firms were found non-existent at their respective registered premises. Further, during the search at the place of business of Ms Okito Tradeco LLP some incriminating documents were also resumed under panchanama dated 30.4.2024 and during forensic examination of the devices surrendered by the partners of M/s Okito Tradeco LLP, chats were recovered from the agents indicating exchange of cash and issuance of invoices on commission basis. On being shown the excel sheets disclosing cash related activities to the applicant, retrieved from his WhatsApp chats with the agents of non-existing firm the applicant admitted that the said sheets had been prepared by him in respect of the transactions with Shri Jolly Iqbal. He further admitted that the first column indicated the date of RTGS to the firm, the second column was name of the firm from which the invoice has been received, third column indicated the RTGS amount sent from his firm in the account provided by Shri Jolly Iqbal, fourth column indicated the commission charged by Shri Jolly Iqbal for issuance of invoices, fifth column indicated the amount to be received by him after deducting the commission from RTGS, sixth column indicated the amount received by him in cash, seventh column indicated the balance amount to be received by him and the last eighth column contained the date and name of the person who has received the cash. He also stated to have received only invoices without any supply of the goods from the said supplier firms.

Virtually, to show the supply as genuine, the culprits used to send RTGS to the bank account of the said firm and thereafter the amount was received by them in cash after deducting the commission of the agent. WhatsApp chats were also retrieved from the mobile phone of Lalit Kishore Mishra, Accountant of M/s Okito Tradeco LLP indicating the instruction from the applicant, partner of M/s Okito Tradeco LLP regarding handing over the cash to some other person. The said Lalit Kumar Mishra in his statement dated 30.4.2024 admitted the factum of receiving instructions regarding collection and payment of cash from the designated persons as informed by the suppliers of the invoices. Prabhash Shiv Shanker Jha, another Director of M/s Okito Tradeco LLP also informed that the purchase and GST related matters were handled by the applicant. On the basis of investigation conducted, M/s Okito Tradeco LLP was found to have availed the ITC amounting to Rs. 7.87 crores which further increased to Rs. 8,47,08,391/- from the non-existent suppliers on the strength of invoices issued without any supply of goods. The applicant was arrested and remanded to judicial custody.

5. It is submitted by the learned Senior Counsel appearing for the applicant that the applicant is innocent and he has been falsely implicated in this case by the concerned department. It is further submitted that the applicant is a partner in M/s Okito Tradeco LLP and the said partnership firm is engaged in the business of production / manufacturing road construction materials e.g. bitumen etc. The applicant's firm has been an active taxpayer since its establishment and is giving impetus to the public exchequer. No notice for recovery of GST has been issued against the applicant. Provisions of Sections 41, 41-A of CrPC and Section 69 of the C.G.S.T. Act have not been complied with in the instant matter.

Applicant has not caused revenue loss to the exchequer nor evaded payment of tax. Further, he urged the prosecution in the case in hand is bad for want of previous sanction of Commissioner.

6. It also submitted that no statement recorded during investigation by the departmental officers is relevant unless it is tested in the cross-examination before the Court. It is further submitted that the signature of the applicant was obtained on some papers by force by the departmental officers. It is next submitted that at the time of judicial remand the department never prayed for custodial interrogation from the present accused applicant and now when all the incriminating articles / evidence are under control and custody of the department itself, no custodial interrogation from the applicant is required. It is further urged that applicant has been languishing in jail since 1.5.2024 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate with the trial. It is also submitted that the trial in the matter still has not commenced. Since the matter pertains to an offence wherein maximum period of imprisonment as provided by law is five years, no fruitful purpose would be served in case the applicant is put under the custody for any further period. In support of his submissions, learned counsel for the applicant has placed reliance upon the following decisions of this Court :

(i) Criminal Misc. Bail Application No. 2329 of 2024 (Qamar Ahmed Kazmi vs. State of U.P.), decided on 1.3.2024.

(ii) Criminal Misc. Bail Application No. 21848 of 2022 (Paras Jain @ Rohan Jain vs. Union of India), decided on 29.7.2022.

(iii) Criminal Misc. Bail Application No. 43453 of 2023 (Vishal Gupta vs. Union of India and another), decided on 11.10.2023.

(iv) Criminal Misc. Bail Application No. 13703 of 2023 (Vivek Mishra vs. Union of India), decided on 26.5.2023.

(v) Criminal Misc. Bail Application No. 21536 of 2022 (Shri Roopak Vashishth vs. Union of India through Principal Secretary Finance New Delhi and another), decided on 29.7.2022.

(vi) Criminal Misc. Bail Application No. 32951 of 2023 (Sanjay Dhingra vs. Union of India and another), decided on 3.8.2023.

(vii) Criminal Misc. Bail Application No. 47569 of 2023 (Vijay Kumar vs. Union of India and another), decided on 7.11.2023.

(viii) Criminal Misc. Bail Application No.2391 of 2024 (Deepanshu Srivastava vs. Union of India through Deptt. of Revenue Directorate Gst Intelligence, Lko Zonal Unit)), decided on 19.3.2024.

(ix) Criminal Misc. Bail Application No. 31155 of 2023 (Rajnish Jain vs. Directorate General of Gst Intelligence Zonal Unit), decided on 10.7.2023.

(x) Criminal Misc. Bail Application No. 26376 of 2023 (Ravinder Nath Sharma @ Ravubder Sharma vs. Union of India), decided on 10.7.2023.

7. On the other hand, learned counsel appearing for the C.G.S.T. department has submitted that from the investigation conducted so far it has been gathered that M/s Okito Tradeco LLP is engaged in the availment and utilization of ITC from the suspicious suppliers. Searches at the office and residence of the partners of M/s Okito Tradeco LLP as well as at its five suspicious inward suppliers were conducted on 30.4.2024 and all the five inward suppliers were found non-existent and some of the said inward suppliers were found to have obtained GST registration on the basis of forged bills. It is also submitted that on the basis of evidence collected during investigation it is found that M/s Okito Tradeco LLP has availed fraudulent ITC by way of receiving bills without any concomitant supply of goods from the aforesaid five non-existent supplier firms amounting to Rs. 8,47,08,391/-. It is also clear from the evidence on record i.e. visit notes, forged electricity bills, WhatsApp chats and confession of the applicant in his statements

dated 30.4.2024 and 1.5.2024 that the applicant was looking after all the purchase related activities from the five non-existent firms. He was aware of all the frauds and moreover WhatsApp chats and excel sheets retrieved from mobile phone of the applicant revealed that he was looking after all the operations related to cash handling. The activities of the applicant led to fraudulent availment of fake ITC to the tune of Rs. 8.47 Crores in M/s Okito Tradeco LLP from non-existent / non-operational firms without having physical receipt / supply of any underlying goods or services.

8. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

9. The attention of the Court is also drawn to a relevant pronouncement made by Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation, (2022) 10 SCC 51** wherein dealing specifically with the economic offences, it has been held by the Hon'ble Apex Court that (paragraph 90 of the said judgment):

"90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in P. Chidambaram v. Directorate of Enforcement [P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] , after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field."

10. Also in **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court held as under

(paragraph 23 of the said judgment) :

"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] 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 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."

11. In **Sanjay Chandra v. CBI, (2012) 1 SCC 40**, the Hon'ble Apex Court noticed that it was a case of fraud wherein by cheating and dishonestly inducing delivery of property by using as genuine a forged document was involved but the punishment for the offence was imprisonment for a term which may extend to seven

years. The Hon'ble Apex Court held that it is, no doubt, true that the nature of the charge may be relevant but at the same time the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. It was further held that :

"40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."

12. In view of the above discussions and considering the entire facts and circumstances of the case and keeping in view the fact that in the instant matter trial has not started even yet and the complicity of the accused applicant is yet to be determined in trial and everything relevant to the matter is under control of the department itself and there is probably nothing on record to demonstrate that the applicant, if enlarged on bail, would in any way adversely affect the trial; further no final verdict of any Court / Authority for any criminal liability to the credit of the applicant has been brought to the notice of this Court and noticing that the alleged offence is punishable with the maximum period of imprisonment of five years, the applicant is in jail since 1.5.2024, without commenting upon the merits of the case, I am of the opinion that the applicant has made out a case for bail.

13. Accordingly, the bail application of the accused-applicant is **allowed**.

14. Let the applicant - **Lalit Kumar Chaudhary** in Case No. 1164 of 2024, under Sections 132(1)(c) and 132(1)(i) of C.G.S.T. Act, 2017, Department D.G.G.I., Meerut Zonal Unit., Meerut be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i). The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(ii). The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(iii). The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iv). The applicant shall not indulge in any criminal and anti-social activity.

(v). The applicant shall surrender his passport, if any, to the concerned Trial Court forthwith and shall not leave the country without previous permission of the Court.

15. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 2.8.2024

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