IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.1351 OF 2022

Sujay Maitra …. ***Petitioner.***
Mr. Devashis Panda, Advocate,
Mr. L.K. Maharana, Advocate

-Versus-

State of Odisha …. ***Opposite Party.***
Mr. Sunil Mishra, ASC (OGST)

CORAM:
JUSTICE D. DASH

ORDER

Order No.	**20.05.2022**
04.	1. The matter is taken up through hybrid arrangement (virtual/physical) mode.

2. This is the second journey of the Petitioner who is in custody in connection with Case No.02 of 2021-22 dated 09.07.2021 of the CT & GST Enforcement Unit, Rourkela, corresponding to 2(C) CC Case No.32 of 2021 pending on the file of learned S.D.J.M., Panposh-Rourkela, registered for commission of offences punishable under section 132 (1)(b)(c) and (1) of the Odisha Goods and Services Tax Act, 2017 (for short, 'the OGST Act, 2017'), in filing this application under Section-439 of the Code of Criminal Procedure for his release on bail in the above mentioned case.

3. Learned Counsel for the Petitioner submits that on the allegations that the Petitioner had claimed, utilized and passed on bogus Input Tax Credit (ITC) without lawful physical movement/ receipt of the goods and on the strength of fake invoices issued in

the name of fake business entities which were also operated by this Petitioner, the complaint has been lodged and it is stated that the Petitioner with other accused persons had created and operated several fictitious firms by obtaining basic personal identity documents from the proprietors of the firms by misutilizing those documents as registered, of those firms under the GST Act and wrongfully availed ITC and with other co-accused persons.

He further submitted that the allegations are to the effect that the Petitioner adopting similar methodology created several fictitious Firms and wrongfully availed ITC. He submitted that the Petitioner is in no way having the involvement in the commission of offences as alleged that he with others being in connivance have not availed bogus ITC worth of about Rs. 14.40 crores and also have passed on bogus ITC to the tune of Rs.18.08 crores. It is also submitted that co-accused Gurdit Dang has in the meantime been released on bail. With all these above, when the prosecution is based on documentary evidence which by now have already been seized and are in custody of the Complainant/ Authority or with the Court to which the Petitioner has no access at all; he urges for reconsideration of the matter of grant of bail to the Petitioner as according to him, further detention of the Petitioner in custody would not serve any useful purpose since there remains no scope on his part to flee from justice, when the question of tampering with the evidence does not also arise.

4. Learned Additional Standing Counsel for the CT & GST opposes the move. He submitted that the prayer for grant of bail to the Petitioner having earlier been rejected, there is no change

in the circumstances for reconsideration of the said prayer again. According to him, as the Petitioner is having the involvement in commission of economic offences and on the face of the materials collected showing that the Petitioner had all the roles in defrauding the State exchequer to the tune of huge sum by passing on bogus ITC and receiving the ITC simply by reflecting transactions reflected in the papers without the physical movement of the goods and services of the process by creation of numerous fake documents such as invoices, bills etc no case is made out for bail. Under the circumstances, he submitted that merely viewing the period of detention of the Petitioner in custody since 16.07.2021, this move for release of the Petitioner on bail has to fail.

5. In the given case, the maximum punishment prescribed thereunder is imprisonment for a term of five years and with fine in case the amount of tax evaded or the ITC wrongly availed or utilized or amount of refund wrongly taken exceeds of Rs. 500 lakh. When the prosecution case in respect of so called clandestine business activities is based on the documentary evidence; all such required documents which the Complainant/ Authority propose to press into service against the Petitioner in establishing the charges in the trial are in their control and custody or with the Court in which, this Petitioner has no access and the investigation being complete, there remains no apprehension that the Petitioner in any way would pose any such hurdle to it. Co-accused being on bail; no such report is placed that he has violated the terms and conditions imposed on him for the purpose and it is stated that challenging that order of grant of

bail to the co-accused; no further move has also been made. The Petitioner having his residence in Rourkela Town of the District of Sundargarh.

6. In view of all the aforesaid and under the circumstances of the case on hand, when no other materials are placed to support that further detention of the Petitioner still stands as of necessity; this Court feels inclined to reconsider the prayer for grant of bail to the Petitioner.

Accordingly, it is directed that the Petitioner be released on bail on furnishing bail bound of Rs.50,00,000/- (Rupees Fifty Lakhs) with two sureties for the like amount to the satisfaction of the learned Court in seisin of the case with the following conditions that:-

(i) the Petitioner shall not in any manner make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the Court and shall not tamper with the evidence;

(ii) the Petitioner shall not indulge himself in similar activity;

(iii) the Petitioner shall surrender his Passport, if any, before the learned Court in seisin of the case and will not leave India without prior permission of the Court and in the event the Petitioner has not been issued with any Passport, he would submit an affidavit stating the said fact;

(iv) the Petitioner shall not leave the jurisdiction of the District of Sundargarh till conclusion of the trial;

(v) the Petitioner shall appear before the concerned Authority as would be so required for the purpose; and

(vi) the Petitioner shall appear in person before the Court in seisin of the case on each date of posting of the case till conclusion of the trial.

Violation of any of the above condition(s) shall entail cancellation of bail.

7. The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

(D. Dash),
Judge.

Narayan