

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8831 of 2021

Rohit Berlia

....

Petitioner

Mr.L. Mishra, Advocate

-Versus-

**The Intelligence Officer, Director
General of Goods & Service Tax
Intelligence, Bhubaneswar**

....

Opposite Party

Mr. Ch. Satyajit Mishra, Addl. Standing Counsel

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF HEARING : 30.11.2021 DATE OF ORDER : 11.01.2022

1. This is an application under Section 439 Cr.P.C. filed by the petitioner for bail in connection with 2 (C) CC No.328 of 2021 arising out of DGGI/BbZU/INV/110/GST/2018 registered under Section 132(1)(c) of CGST Act, 2017 punishable under Section 132 (1)(i) thereof pending in the court of learned S.D.J.M.(Special), Bhubaneswar on the stated grounds.

2. The business firm in the name and style of M/s. Arshee Venture being engaged in trading of sponge iron, iron scrap and billets since 2016 is registered under the GST law. It is alleged that the place of business of the said firm was searched and inspected by the officers of the CGST Intelligence Wing on 30.10.2018 and seized certain documents. As per the allegation of the CGST authorities, the petitioner and his wife admitted irregular transactions having taken place by issuing sale bills without actual supply of the goods and in the process, tax credit was claimed without actual receipt of goods and tax liability was admitted and paid without physically supplying any goods and claimed tax credit

and admitted tax liability on fictitious purchases and sale transactions.

3. It is contended by the petitioner that all the dues to have been credited/paid back to the Government and there was no appropriation of benefit arising out of cash credit and as far as the allegation is concerned, no case is made out under Section 132(1)(c) of the CGST Act. It is claimed that a prosecution would lie provided the offence specified is committed or caused to be committed and the benefits arising therefrom is retained or appropriated and in the instant case, there has been no such retention or appropriation of the proceeds of the offence and that apart, the entire amount of tax credit availed has either been reversed/returned or used for payment of tax. It is also claimed that there is no material on record to suggest that the registration of the so-called business concerns to be fake or non-existent. Lastly, it is contended that in any case, the offence alleged is punishable with imprisonment extending up to five years only and considering the above facts, the petitioner should be released on bail.

4. On the other hand, objection affidavit has been filed from the side of the opposite party and it is contended that the petitioner found to be involved in availing ineligible ITC of Rs.7.3 crore without receipt of any goods/services and furthermore, he was involved in issuing fake invoices to several firms to facilitate availment and utilization of ITC and above are the findings which are based on records and physical verification so carried out during the inspection by the CGST authorities. It is alleged that the investigation relates to multiple parties as availers of fake ITC passed on to other States as well and in the event, the petitioner is released on bail, he may tamper with the evidence. It is further alleged that since the petitioner is involved in defrauding the Government for a huge amount of Rs.7.3 crore and having regard

to the nature and magnitude of the crime, he should not be enlarged on bail especially when many more things are yet to be unearthed.

5. Learned counsel for the petitioner submits that the accused is alleged of having made irregular transactions by issuing sale bills without actual supply of the goods and in the process, tax credit was claimed without actual receipt of goods and tax liability was admitted and paid without supplying goods and claiming of tax credit as well as admitting liability on fictitious purchases and sale transactions have been admitted at the time of inspection and search. It is contended that only allegation is that purchase bills were taken into account without receipt of the goods and tax credit was claimed in violation of Section 16(2) of CGST Act, 2017. It is claimed that there are no instances of retaining or appropriating the proceeds of the offence, inasmuch as, the entire amount of tax credit wrongly and allegedly availed has either been reversed/returned or used for payment of tax. An argument is advanced to the effect that tax is not required to be paid where there is no supply but the petitioner has paid tax on such transactions as well and in absence of any evidence to substantiate retaining the benefits arising out of the offence of claiming tax credit on the fictitious purchase bills (without receipt of the goods), the charge is not sustainable in law. In support of reversal, the petitioner contends that there is proof to show that ITC for amount of Rs.1,39,37,862/- for the month of July, 2017 is revealed from the GSTR-3B return and furthermore, Rs.8,50,000/- has been paid through DRC-03 dated 24.07.2017 against the avilment of fake ITC and for such reversal of ITC dated 03.01.2019, the ledger of the petitioner maintained on GSTN portal figured zero and therefore, it is an undisputed fact that the ITC was reversed and in so far as the allegation of appropriation of any benefit arising out

of the tax credit claimed on the strength of fictitious purchase bills issued by the alleged non-existing business entities is concerned, it is incorrect and not substantiated. Referring to the judgment of the Supreme Court in *P. Chidambaram Vs. Directorate of Enforcement* reported in 2019 SCC OnLine SC 1549 and other decisions cited, it is lastly contended by the learned counsel for the petitioner that the accused, who is in custody since August, 2021, should be enlarged on bail with any conditions.

6. Learned Senior Standing Counsel for the opposite party vehemently opposed release of the petitioner on bail by contending that the alleged offence is well made out considering the materials on record which clearly substantiated him of having availed ineligible ITC of Rs.7.3 crore without receipt of any goods/ services and that apart, he is also found to be involved in supply of fake invoices to several firms again without supply of goods or any services in order to facilitate them availment and utilization of ITC which are based on the admissions made, statement of the proprietor of M/s. Arshee Ventures and the quantification has been done on the basis of the GST returns filed and ITC ledgers submitted. It is reiterated that the investigation on multiple related parties, who are the availers of fake ITC apparently passed on to different parts of the State and outside and therefore, there is a risk involved, if the petitioner in the event of being released may tamper with evidence and abscond even and moreover, there are no adequate assets in the hands of the proprietor of the firm which can provisionally be attached so as to meet the Government revenue at stake.

7. It is pleaded that since CGST fraud involves huge amount whereby the petitioner subjected the Central Government exchequer to a substantial loss, plea of bail should not be liberally considered. It is claimed that offence being socio-economic in

nature and affects society at large, no leniency should be shown in favour of the petitioner. The details of the materials collected during investigation in availing fake ITC and preparing invoices supplied to other firms are brought to the attention of this Court by learned Senior Standing Counsel. The investigation, as is claimed and materials collected, suggested the firm to have availed ITC on the strength of invoices issued by 13 non-existing business entities without proof of any physical receipt and dispatch of goods and considering the same, the opposite party objected to the release of the petitioner which contradicted on the grounds inter alia that there is no retention or appropriation of the benefits after having availed fake ITC moreover when evidence is available to show reversal of ITC.

8. It is suggested that the petitioner to be the authorized agent of M/s. Arshee Ventures which is run and managed by its proprietor, who is none other than his wife against whom SGST proceeding was initiated which is claimed to have been quashed by an order dated 23.03.2021 in W.P.(C) No.157 of 2020 but is objected by the learned Senior Standing Counsel for the opposite party contending that the DGGSTI has in fact been allowed to proceed with the investigation till it is concluded. It has been alleged that though a direction was to cooperate in so far as the proceeding before the CGST authority concerned by order dated 18.02.2020 in W.P.(C) No.157 of 2020, neither the proprietor nor the petitioner being the authorized agent of the firm extended cooperation rather avoided the investigation and did not attend on number of occasions despite being summoned and therefore, considering such conduct, the petitioner should not be released on bail as there is every likelihood of his abscondance from the local limits of the court.

9. It is the settled law that while considering the bail plea of an accused, detailed examination of evidence and consequential decision should always be avoided and the materials on record are only to be gone through to find out about existence of a prima facie case and if it is in the affirmative, then the next consideration would be, whether, under the facts and circumstances of the case, bail should be granted. In *P.Chidambaram* case (supra), the Supreme Court discussed the well settled principles which are to be borne in mind, while considering an application for bail regard being had to the following factors, such as, (i) the nature of accusation and severity of punishment in case of conviction and nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with evidence; (iii) possibility of securing the presence of accused at the time of trial or the likelihood of his abscondance etc. besides larger interest of the State and similar other considerations and as such, there is no hard and fast rule for grant or refusal of bail which always depends on the facts and circumstances of each particular case and in that regard, discretion has to be exercised judiciously and not in an arbitrary manner. In fact, in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan and another* reported in (2004) 7SCC 528, the Supreme Court held and observed that though an exercise of detailed examination of evidence and elaborate documentation on the merits of the case is not to be undertaken, there is a need to indicate in such orders reasons for concluding why bail was being granted particularly where the accused is charged of having committed serious offence. From the side of the opposite party, learned Senior Standing Counsel appearing for them relied upon good number of citations to convince that the Supreme Court laid down a different standard to be made applicable to economic offences which constitute a class apart and therefore, a need to revisit the approach in the matters of bail, as it ruin the economy of the State.

10. Grant of bail or otherwise is always a discretionary exercise which is to be guided by judicial application of mind. No hard and fast rule exists for considering a plea of bail which depends on number of factors as has been enunciated by the Supreme Court time and again. In so far as economic offences are concerned, no doubt, a different approach is required but then, the basic principles of bail shall have to be invoked. It is well known that there is no straight jacket or inexorable formula for considering the matters of bail.

11. In the instant case, the petitioner was arrested on 05.08.2021 for an offence punishable under Section 132(1)(c) CGST Act, 2017 having availed fake ITC by the firm M/s. Arshee Ventures during the period from July, 2017 to March, 2019. As is made to understand, the business premises of the firm was searched and inspected in the year 2018 by CGST Intelligence Wing and the petitioner's statement was recorded and was further examined on couple of times once in the year 2019 and soon before his arrest in the month of August, 2021 and in the meantime, final PR was submitted on 5th October, 2021. The petitioner is claimed to be the authorized agent of M/s. Arshee Ventures with his wife as its proprietor. The allegation is to the effect that the firm in question availed ineligible ITC and also made it available for other business entities by providing fake invoices and thus, passed on within and outside the State. The details of the documentation regarding the illicit transactions have been revealed during investigation. The conclusion which has been drawn by the investigating agency is entirely based on documents which are shown to have been seized during and in course of investigation. No doubt, the materials on record prima facie suggest the involvement of the alleged firm in engaging itself in activities whereby bogus ITC was claimed on the strength of fake invoices without physical receipt and supply of

goods. That apart, the investigation revealed availment of ineligible ITC of huge amount without receipt of any goods/ services. The fake business entities appear to have been identified. In other words, all the relevant materials which are required to subject the petitioner to prosecution can be said to have been collected during investigation. The petitioner happens to be a local inhabitant of Sambalpur. The firm is being run in the name of wife of the petitioner. Being a permanent resident of Sambalpur, the Court is of the view that there is a remote possibility of petitioner absconding or fleeing from justice. The extent of illegality in availing ITC in juxtaposition to the plea of the petitioner is in any case to be examined during and at the end of trial. The enquiry lasted for nearly two years ever since the business premises of the firm was searched and inspected by the Intelligence Wing of CGST. Since all the material evidence appears to have been gathered during investigation and considering the fact that final PR has, in the meantime, been submitted in the month of October, 2021 and taking into account the fact that the trial is unlikely to be accomplished in the near future and as the accused not being an outsider but a local of Sambalpur town, the Court is of the considered view that the petitioner, who has remained in judicial custody for nearly five months, should be enlarged on bail with stringent conditions which are as follows.

12. Accordingly, it is ordered.

13. In the result, application under Section 439 Cr.P.C. stands allowed. As a necessary corollary, the petitioner is directed to be released on bail on furnishing a bail bond of Rs.50,00,000/- (rupees fifty lac) with two solvent sureties for the like amount to the satisfaction of the learned court below in seisin over the matter with conditions, such as, he shall not induce, threat or terrorize any of the material witnesses, while on bail; shall not exert any kind of

influence or pressure vis-à-vis the prosecution witnesses to be examined during the trial and thus, not to tamper with the collected evidence, in any manner whatsoever; shall not involve or indulge in any such similar kinds of nefarious activities, while on bail; shall surrender his passport, if he has any, before the learned court below and shall not leave the jurisdiction of the court without its prior permission.

14. In case, any of the above conditions is/are violated, it shall forthwith entail cancellation of bail granted to the petitioner.

15. The BLAPL is accordingly disposed of.

16. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25 March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(R.K. Pattanaik)
Judge

TUDU