



Crl.OP.No.21598 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2022

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.21598 of 2022

Naresh Kumar, Prajapat

... Petitioner

Vs.

The Superintendent of GST and Central Excise,
Hqrs. Preventive Unit,
GST Chennai North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to grant the petitioner on bail in connection with the R.R.No.18 of
2022 on the file of the Superintendent of GST and Central Excise.

For Petitioner : Mr.M.Mohamed Riyaz for
Mr.C.Raghavan

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor.



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CrI.OP.No.21598 of 2022

ORDER

The petitioner, who was arrested and remanded to judicial custody on 05.08.2022 for the offences punishable under Sections 132(1)(1)(i) of CGST Act, 2017 in R.R.No.18 of 2022 on the file of the respondent police, seeks bail.

2. The case of the respondent is that the petitioner by indulging in fraudulent practice of billing without any movement of goods in the names of the firms M/S Durga Traders and M/S Naresh Metals had claimed ITC and cheated the Government to the tune of Rs.7.28 crores.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the petitioner is the owner of the M/S Naresh Metals. The petitioner had nothing to do with the said M/S Durga Traders. As far as the averment against the petitioner in respect of M/S Naresh Metals to the fraudulent claim of Rs.41,60,332/- is a bailable offence whereas, in order to bring the case of the petitioner under non bailable offence, the respondent has wrongly added the transaction relating to M/S Durga Traders



Crl.OP.No.21598 of 2022

with the petitioner's company M/S Naresh Metals. Thereafter, they have arrested the petitioner on 05.08.2022 and he is in custody for more than 39 days. Hence, he prays to enlarge the petitioner on bail.

4. The respondent has filed a detailed counter.

5. Mr.N.P.Kumar, learned Special Public Prosecutor would submit that the petitioner is the Proprietor of M/S Naresh Metals and he has floated a fictitious firm in the name of M/S Durga Traders and by using his employee name had fraudulently availed ITC and caused loss to the Government exchequer of over Rs.7.28 crores so far. Further, when verification was done, the accused also manhandled the officials and made serious attempts to disrupt investigation conducted as per law. He would further submit that the petitioner was summoned and during enquiry, he had admitted to have floated M/S Durga Traders (GSTIN 33GUBPD9870G1ZJ) in the name of his employee and had defrauded the Government to the tune of Rs.7.28 cores and that further investigation is going on. The petitioner has also given a false address. Thereby, he opposed to grant bail to the petitioner.



Crl.OP.No.21598 of 2022

WEB COPY

6. In reply, Mr.M.Mohamed Riyaz, learned counsel for the petitioner would submit that the summons were served on the petitioner at the given address and the petitioner undertakes to furnish proper proof relating to his residence and without prejudice the petitioner is now ready and willing to deposit a sum of Rs.75 Lakhs to the credit of M/S Durga Trades (GSTIN 33GUBPD9870G1ZJ). He would submit that the period of incarceration suffered by the petitioner may be taken into consideration.

7. Heard both the learned counsel and perused the materials available on record.

8. Taking into consideration of the facts and circumstances of the case and the period of incarceration suffered by the petitioner and also the undertaking given by the petitioner that he is prepared to deposit an amount of Rs.75 Lakhs to the credit of M/S Durga Traders, this Court is inclined to grant bail to the petitioner.



CrI.OP.No.21598 of 2022

9. Accordingly, the petitioner shall deposit a sum of Rs.75,00,000/-

(Rupees Seventy Five Lakhs only) to the **credit of GST Account of M/S Durga Traders (GSTIN: 33GUBPD9870G1ZJ)**, and on such deposit and production of proof, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only)** with two sureties in which, one surety should be a blood surety, each for a like sum to the satisfaction of the **learned Additional Chief Metropolitan Magistrate (E.O.1) Court, Egmore** and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

[b] Merely, because the petitioner deposits the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

[c] the petitioner shall furnish his proper identified proof of residence at the time of furnishing sureties.



Crl.OP.No.21598 of 2022

[d] the petitioner shall report before the **respondent Police daily at 10.30 a.m., and 5.30 pm., until further orders;**

[e] the petitioner shall not abscond either during investigation or trial;

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[g] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];**

[h] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

13.09.2022

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Crl.OP.No.21598 of 2022

WEB COPY

To

1. The learned Additional Chief Metropolitan Magistrate (E.O.1) Court, Egmore
2. The Superintendent of GST and Central Excise, Hqrs. Preventive Unit, GST Chennai North Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.
3. The Central Prison, Puzhal.
4. The Public Prosecutor, High Court of Madras.



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Crl.OP.No.21598 of 2022

A.D.JAGADISH CHANDIRA, J.

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Crl.O.P.No.21598 of 2022

13.09.2022