Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.2541 OF 2022**

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| **Sagar Dilip More** | **]** | **Applicant** |
| **Vs.** | | |
| **The State of Maharashtra** | **]** | **Respondent** |

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Mr. Yogesh More, for Applicant.

Mr. H.S. Venegavkar, P.P a/w Mr. A.A. Palkar, for Respondent – State.

Mr. Sunil Ankolikar, A.P.I, Sadar Bazar Police Station, Solapur.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.**

**DATE : 15th JANUARY, 2024.**

**P.C.**

1. This is an application under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C") moved by the applicant – Sagar Dilip More seeking his release on bail in Crime No.327 of 2020 registered with Tilak Nagar Police Station, Mumbai of the offences punishable under Sections 420, 468, 471 of the Indian Penal Code (for short "I.P.C") r/w Section 132 (1) (e) (f) (l) (i) (ii) ((iv)) of the Central Goods and Service Tax, Act, 2017 (for short "G.S.T Act").

2. The first informant was Assistant State Commissioner in G.S.T whose main work is to ascertain whether GST has been properly paid. It was noticed by the first informant that the applicant had opened an account in the Bank of Maharashtra, Mazgaon Branch on the basis of his PAN and Aadhar Card. It revealed that on the basis of fake documents and papers, an amount of Rs.74,76,480/- has been claimed by the concerned persons towards return of the amount of GST paid. Accordingly, offences were registered as above against the applicant.

3. It also revealed that GST account was opened in the said Bank in the name as M/s. Predict Enterprises (GSTIN 27 AJVPM2380FIZQ). Subsequently, the aforesaid amount was withdrawn through different cheques on the basis of fake bank accounts. The said company was found in the name of the applicant and the said account was opened by him on the basis of his Aadhar and PAN Card.

4. I heard Mr. More, learned Counsel for the applicant.

5. Mr. More has pointed out various lacunae in the prosecution's case of which the first and foremost is non compliance of Section 132 (6) of the Central Goods and Services Act, 2017, which reads thus;

> "A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner".

6. Admittedly, there is no previous sanction of the Commissioner and, therefore, there is no question of the applicant being prosecuted for breach of Section 132 (1) (e) (f) (l) (ii) (iv) of the G.S.T Act. Though Assistant GST Commissioner – Balaji Narhare is the original complainant, he has not been shown as a witness.

7. A very glaring anomaly is brought to my notice indicating that one Irfan had obtained PAN and Aadhar Card of the applicant with a promise to offer him an employment. However, the same had been misused by him by forging his signature which is evident from the documents which are at pages 48 and 53. A perusal of the original PAN and Aadhar Card as well as documents tendered by the prosecution *prima facie* reveals that the signature of the

applicant had been forged. Surprisingly, a witness viz: Smita Ujjwal Gharat who retired from Bank of Maharashtra in December, 2020 opened an account of the applicant without verifying the aforesaid glaring discrepancies. As a matter of fact, she ought to have been one of the co-accused in this case instead of a witness. The record reveal that no GST returns are filed with the charge-sheet.

8. The trial has already commenced and the evidence of P.W.1 – Dhondiram Hariba Bembade has been recorded by the Metropolitan Magistrate 34th Court, Vikroli, Mumbai. This witness, during his cross-examination, gave vital admissions indicating that the investigation was conducted by Balaji Narhare. He does not know anything more than that. He admits that he had neither seen the returns nor verified E-verification *qua* the returns. He categorically admits that there is a difference in the signature of the applicant over his original PAN card and copy of the same which was given to the Bank. He also admits that the signature of the applicant differs in so far as the rent agreement is concerned as well as signature on the PAN card. He even does not know the accounts in which the amount from the account of the applicant came to be transferred. As such, *prima facie,* incarceration of the

applicant appears to be without any concrete material against him. It is submitted that the applicant has been in custody for more than two years.

9. Learned A.P.P, submits that in view of the aforesaid material on record, necessary orders may be passed.

10. As such, following order is expedient;

: **O R D E R** :

(i) The application is allowed.

(ii) The applicant – Sagar More is released on bail on furnishing a P.R. bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the trial Court in Crime No.327 of 2020 registered with Tilak Nagar Police Station.

(iii) The applicant shall scrupulously attend each date before the trial Court wherein the evidence has already been commenced.

(iv) If he commits two consecutive breaches, liberty to the prosecution to apply for cancellation of his bail.

11. The applications stands disposed of in the above terms.

**[PRITHVIRAJ K. CHAVAN, J.]**