

(Corrected as per speaking to minutes of order dated 08.10.2024.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3971 OF 2023

Dilip Mishrilal Jindal ... Applicant

Vs.

Superintendent of CGST and another ... Respondents

WITH

INTERVENTION APPLICATION NO.1126 OF 2024

IN

BAIL APPLICATION NO.3971 OF 2023

Arunkumar R. J. Singh and others ... Interveners

In the matter between:

Dilip Mishrilal Jindal ... Applicant

Vs.

Superintendent of CGST and another ... Respondents

Mr. Sanjeev Kadam a/w. Mr. Sachin Chandan, Mr. Sumitkumar Nimbalkar a/w. Mr. Nitish Kumar and Ms. Kalpana Chate i/b. M/s. Chate & Associates for Applicant.

Mr. Satyaprakash Sharma for Respondent No.1.

Mr. R. M. Pethe, APP (through VC) for Respondent No.2.

Mr. Nilesh Pandey (through VC) a/w. Mr. Shubham Yadav for Interveners.

CORAM : MANISH PITALE, J.

DATE : AUGUST 13, 2024

P.C. :

. Heard Mr. Kadam, learned counsel for the applicant, Mr. Sharma, learned counsel appearing for respondent No.1 i.e. the contesting respondent and Mr. Pandey, learned counsel seeking to intervene on behalf of the persons arraigned as co-accused in the present case.

2. The applicant was arrested on 18.08.2023 in connection with an investigation initiated for alleged offence committed under Section 132(1)(b) and (c) of the Central Goods and Services Tax Act, 2017

(CGST Act) read with Sections 132(5) and 137 thereof.

3. The allegation against the applicant is that, he is the mastermind and the brain behind the said offences as he was instrumental in creating alleged shell companies i.e. M/s. Dhruvika Chemicals Trading Pvt. Ltd., M/s. J. B. Dychem Pvt. Ltd., M/s. Rudra Traders and M/s. Nicolsa Trading Pvt. Ltd. It is alleged that being a director of a company called *Desmo Exports Limited*, the applicant appointed employees of the said company as directors of the aforementioned four companies. Thereafter, circular trading was indulged in, leading to input tax credit being availed without actual supply of goods.

4. The learned counsel for the applicant submits that the applicant has remained behind bars since 18.08.2023, which is a few days short of one full year of incarceration. It is submitted that the investigation carried out by respondent No.1 is now complete and complaint is filed before the Judicial Magistrate First Class, Vashi at CBD Belapur, Navi Mumbai in the form of Criminal Case No.1497 of 2023. Further investigation has been carried out and completed and now, show cause notices have also been issued against the applicant and other co-accused persons.

5. The applicant has remained in judicial custody far too long and the maximum sentence that can be imposed upon the applicant is imprisonment for a period of five years. Reliance is placed on the recent order of the Supreme Court in the case of *Ashutosh Garg Vs. Union of India* [order dated **26.07.2024** passed in **Special Leave Petition No.8740 of 2024**], wherein the petitioner, having undergone about nine months of imprisonment for identical offences, was enlarged on bail by the Supreme Court, taking note of the fact that the offence itself carries a maximum punishment of five years imprisonment and that there would be no point in keeping the petitioner therein languishing in jail. It is

submitted on behalf of the applicant that the aforesaid factor may be taken into consideration to allow the present application.

6. Apart from the aforesaid, it is submitted that even if the entire complaint and the documents filed therewith are to be taken into consideration, there is nothing to link the applicant with the offence in question. Reliance placed on statements given by co-accused persons is misplaced as there is no independent material to corroborate the allegations made against the applicant and on this ground also, this Court may consider enlarging the applicant on bail.

7. On the other hand, the learned counsel appearing for contesting respondent No.1 submits that there is sufficient material placed on record before the Magistrate along with the complaint, indicating that ingredients of the aforesaid offence are *prima facie* found against the applicant. It is alleged that the applicant used a novel *modus operandi* to commit the aforesaid offence as employees of the company, in which the applicant is a director, were merely shown as directors in the aforementioned four companies and circular trading was indulged in without actual supply of goods, thereby wrongfully gaining to the tune of about Rs.192 crores and committing the said offence under the provisions of the CGST Act.

8. It is further submitted that the applicant cannot be granted bail merely because he has remained behind bars since 18.08.2023, as the maximum punishment is imprisonment for five years. It is also submitted that the applicant is a flight-risk and that there is every possibility of evidence being tampered with and witnesses being adversely impacted if the applicant is enlarged on bail.

9. The learned counsel for the interveners submits that when interim bail was granted to the applicant, he had threatened a witness within the

campus of this Court, in respect of which, a report for non-cognizable offence was registered against the applicant, thereby showing his propensity of influencing witnesses upon being released. It is submitted that, therefore, this Court may not allow the present application.

10. This Court has heard the learned counsel for the parties. In the first place, the interveners, being co-accused persons, it is difficult to understand the nature of right claimed by them for being heard in the present case. In any case, the learned counsel appearing for the interveners has only reiterated the submissions, which were made by the learned counsel for the contesting respondent.

11. The complaint filed before the Judicial Magistrate First Class, Vashi at CBD, Belapur, Navi Mumbai is a document stating in detail as to the *modus operandi* adopted in the present case for committing the said offence under the CGST Act. Voluminous documents have been annexed to the complaint and this Court is informed that now further investigation / enquiry has also been completed and show-cause notices have been issued to the applicant and other accused persons.

12. The thrust of the allegations against the applicant is that, he is the mastermind and the brain behind the aforesaid *modus operandi* adopted in the present case to commit the offence. The statements of persons shown as directors of four aforementioned companies are on record, which indicate that they were merely employees of the company called *Desmo Exports Limited*, of which the applicant is a director. According to the statements of such directors of the four aforementioned companies involved in the present case, being mere employees of the applicant, they had simply signed on the documents placed before them and they had no idea as to the transactions that such documents signify. These are the statements given by persons, who are arraigned as co-accused persons in the complaint filed before the Magistrate. There are indeed

documents on record, which indicate the extent to which input tax credit was claimed without allegedly actually supplying the goods.

13. The material on record relied upon by the learned counsel for respondent No.1 includes certain statements, indicating that by showing such got up and fake documents pertaining to input tax credit, it was claimed that health of the company was vibrant and on that basis loans were taken from banks, which have been duped to the extent of crores of rupees. It is relevant to note that the present case is not concerned with the grievance of the bank about which the learned counsel for the interveners has informed this Court that a separate complaint has been lodged with Economic Offences Wing. Therefore, this Court is not inclined to consider the grievance of the said bank as a ground for opposing the prayer for bail made on behalf of the applicant.

14. The nature of the complaint and the actions attributed to the applicant are necessarily concerned with documentary material and the record shows that voluminous documents have already been placed on record of the Judicial Magistrate along with the complaint filed by the respondent No.1 i.e. the contesting respondent. The further enquiry / investigation sought to be carried out by the respondent No.1 is now complete and show cause notices have been issued pursuant thereto.

15. The applicant is in judicial custody and he has remained behind bars since 18.08.2023 i.e. about four or five days short of completing one year of incarceration. The maximum punishment, that can be imposed upon the applicant even if the allegations levelled against him are proved, is imprisonment for a period of upto five years.

16. This Court is of the opinion that when the material relevant to pursuing the present case necessarily pertains to documentary evidence, most of which appears to be already with the contesting respondent No.1

and particularly when further enquiry / investigation being carried out by respondent No.1 is admittedly now complete, no purpose would be served by continuing the incarceration of the applicant as an under-trial. Denying bail cannot be used as a punishment against the applicant against whom the charges are yet to be proved. As indicated on behalf of the applicant, in a case involving identical offences, the Supreme Court was pleased to release the accused on bail on the sole ground of the accused person having undergone incarceration for a period of nearly nine months. In that light, this Court is inclined to allow the present application. The apprehensions expressed on behalf of the respondent No.1 and interveners can be redressed by imposing appropriate conditions on the applicant.

17. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with F.No.V/AE/Bel/ Gr-C (New)/12-120/20-21/Pt.III registered for offences punishable under Section 132(1)(b) and (c) read with Sections 132(5) and 137 of the CGST Act on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall report to the office of the respondent No.1 on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the proceedings pursuant to the complaint filed by the respondent No.1;
- (C) The applicant shall surrender his passport, if any, within one week of being released on bail, with the Judicial Magistrate First Class, Vashi at CBD Belapur, Navi Mumbai;

- (D) The applicant shall remain within the jurisdiction of the Judicial Magistrate First Class, Vashi at CBD Belapur, Navi Mumbai and he shall leave the said jurisdiction only with prior permission of the said Magistrate, during the pendency of the proceedings;
- (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile numbers, landline numbers, email address and residential address to the respondent No.1;
- (F) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case.

18. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

19. The bail application is disposed of.

20. In view of the disposal of the bail application, nothing survives in intervention application and the same is disposed of accordingly.

(MANISH PITALE, J.)