



2024 : DHC : 380



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 11th December, 2023.***
Judgment Delivered on: 19th January, 2024.

+ CRL.M.C. 2791/2023 & CRL.M.A. 10475/2023 (stay)

DIRECTORATE GENERAL OF GST INTELLIGENCE

..... Petitioner

Through: Mr.Satish Aggarwala, Senior Standing Counsel and Mr.Anurag Ojha, Senior Standing Counsel with Mr.Gagan Vaswani, Advocate.

versus

CHAMAN GOEL

.....Respondent

Through: Mr.Mohit Mathur, Senior Advocate with Mr.Naginder Benipal, Ms.Bharti Nayar Benipal, Mr.Naveen Chaudhary, Mr.Harsh, Ms.Harithi Kambiri and Mr.Ankit Siwach, Advocates.

+ CRL.M.C. 2792/2023 & CRL.M.A. 10477/2023 (stay)

DIRECTORATE GENERAL OF GST INTELLIGENCE

..... Petitioner

Through: Mr.Satish Aggarwala, Senior Standing Counsel and Mr.Anurag Ojha, Senior Standing Counsel with Mr.Gagan Vaswani, Advocate.

versus

CHIRAG GOEL

..... Respondent

Through: Mr.Maninder Singh, Senior Advocate with Mr.Naginder Benipal, Ms.Aekta Vats, Ms.Simran Chawdhary,



2024 : DHC : 380



Ms.Bharti Nayar Benipal, Mr.Naveen Chaudhary, Ms.Harithi Kambiri and Mr.Ankit Siwach, Advocates.

+ CRL.M.C. 6431/2023 & CRL.M.A. 24091/2023 (stay), CRL.M.A. 28507/2023 (appropriate orders)

CHAMAN GOEL

..... Petitioner

Through: Mr.Mohit Mathur, Senior Advocate with Mr.Naginder Benipal, Ms.Bharti Nayar Benipal, Mr.Naveen Chaudhary, Mr.Harsh, Ms.Harithi Kambiri and Mr.Ankit Siwach, Advocates.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE

..... Respondent

Through: Mr.Satish Aggarwala, Senior Standing Counsel and Mr.Anurag Ojha, Senior Standing Counsel with Mr.Gagan Vaswani, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. CRL.M.C.2791/2023 and CRL.M.C.2792/2023 have been filed on behalf of the Directorate General of GST Intelligence (DGGI) seeking setting aside of the common order dated 21st December, 2022, passed by the learned Additional Sessions Judge (ASJ), Patiala House Courts, New Delhi, granting anticipatory bail to the accused Chaman Goel and Chirag Goel.



2. CRL.M.C.6431/2023 has been filed on behalf of the accused Chaman Goel seeking setting aside of the order dated 29th August, 2023, passed by the learned Additional Sessions Judge (ASJ), Patiala House Courts, New Delhi, whereby the anticipatory bail granted to Chaman Goel has been cancelled on the ground of violation of condition of anticipatory bail.

3. Brief facts, as agitated by the DGGI, are as follows:

3.1 The officers of DRI, Gandhidham and DGGI, acting on intelligence, intercepted 21 containers carrying smoking mixtures from Mundra Port, Gujarat on 3rd October, 2022. The samples taken therefrom were sent to the Central Revenues Control Laboratory (CRCL), Kandla, wherein it was revealed that the aforesaid smoking mixture was a spurious product and not fit for human consumption.

3.2 Investigation was started and summons were issued to the exporter company, M/s Harsha International. However, the proprietor of M/s Harsha International, Jitender Kumar, did not comply with the aforesaid summons.

3.3 During search of the registered premises of the exporter M/s Harsha International, it was revealed that no business activity relating to export was being carried out and a *kirana* store was being operated by the father of Jitender Kumar from the registered place of business.

3.4 During the course of investigation, it was found that M/s Radiant Traders, the manufacturers of smoking mixtures, had supplied their smoking mixture to M/s Harsha International, who exported the same. Upon search, it was found that no business activity was being conducted from the registered premises of M/s Radiant Traders and no goods or plant or machinery was found at their premises.



2024 : DHC : 380



3.5 Subsequently, statement of the proprietor of M/s Radiant Traders, Manish Goyal, was recorded under Section 70 of the Central Goods and Services Tax Act, 2017 (CGST Act), wherein he admitted that he was acting at the behest of Chirag Goel.

3.6 The accused Manish Goyal was arrested on 25th November, 2022 under the allegations of having committed offences under Section 132(1)(b) and (c) of the CGST Act.

3.7 The residential premises of the accused Chaman Goel, situated at Kamla Nagar, Delhi were searched on 7th December, 2022 and unaccounted cash to the tune of Rs. 99,95,000/- was found therein, in respect of which no explanation was given by the father of Chaman Goel, who was present there. Furthermore, from the CCTV footage of the premises, it was revealed that Chaman Goel had absconded from the house.

3.8 The accused Manish Goyal preferred a bail application before the learned Additional Sessions Judge (ASJ), Patiala House Courts, New Delhi, which was allowed *vide* order dated 21st December, 2022 and Manish Goyal was released on regular bail.

3.9 Chirag Goel and Chaman Goel were summoned by the DGCI, however, they did not join investigation and instead moved an application for grant of anticipatory bail, which was allowed by a common order dated 21st December, 2022 and both Chirag Goel and Chaman Goel were granted anticipatory bail subject to certain conditions.

3.10 One of the conditions imposed therein was that the accused persons shall not leave the country without the permission of the court. Despite the aforesaid condition, Chaman Goel attempted to leave the country.



Consequently, an application for cancellation of anticipatory bail was filed on behalf of the DGGI which was allowed by the learned ASJ *vide* order dated 29th August, 2023 and the anticipatory bail was cancelled.

3.11 This Court had granted interim protection to Chaman Goel *vide* order dated 6th September, 2023 passed in CRL.M.C. 6431/2023 filed by Chaman Goel.

4. Senior Standing Counsels appearing on behalf of the DGGI have made the following submissions:

- I. In view of the recent order dated 17th July, 2023, passed by the Supreme Court in SLP (Crl.) No. 4212-4213 of 2019 titled ***State of Gujarat v. Choodamani Parmeshwaran Iyer***, provisions of Section 438 of the Code of Criminal Procedure, 1973 (CrPC) for grant of anticipatory bail are not applicable to cases involving offences under the CGST Act.
- II. The accused persons are involved in a serious economic offence relating to evasion of Goods and Services Tax (GST) to the tune of Rs.218 crores.
- III. The smoking mixtures seized at Mundra port were tested by CRCL, Kandla, wherein it has been established that the smoking mixture is a spurious product and not fit for human consumption.
- IV. Analysis of the bank accounts of M/s Harsha International reveals that M/s Harsha International had obtained GST refund of Rs.198 crores, out of which, Rs.195 crores was transferred to M/s Radiant Traders, which was effectively controlled by Chirag Goel.



- V. Chirag Goel and Chaman Goel are both the masterminds behind the entire fraud. Both of them are habitual offenders who have been involved in other cases involving receipt of fraudulent Input Tax Credit on the basis of fake invoices without actual supply of goods.
- VI. Anticipatory bail granted to Chaman Goel has been rightly cancelled by the learned Sessions Court as he was trying to escape the country and flee from justice.
5. *Per contra*, Senior Counsels appearing on behalf of Chirag Goel and Chaman Goel have made the following submissions:
- I. The order passed in ***Choodamani Parmeshwaran Iyer*** (supra) is distinguishable from the present case as in ***Choodamani Parmeshwaran Iyer*** (supra), the accused persons were only summoned under Section 69 of the CGST Act and there was no apprehension of arrest. However, in the present case, one of the co-accused persons, Manish Goyal, had already been arrested and therefore there was a genuine apprehension of arrest. Further, the order in ***Choodamani Parmeshwaran Iyer*** (supra) was delivered after the grant of anticipatory bail to the accused herein and cannot have retrospective operation.
- II. The impugned judgment clearly records and correctly so, that the CRCL Report was inconclusive due to lack of testing facility and it has not been proved that the seized products were not made from cigarettes.
- III. The GST payable on purchase of cigarettes was duly paid by the accused persons and it is not the case of the DGGI that fake bills



- were made for the purchase of the cigarettes. Insofar as the contention of the DGGI alleging that the cigarettes were sold loose in the market, no *iota* of evidence has been collected and produced by the DGGI to prove the same, despite lapse of more than a year.
- IV. Merely on the basis that one of the consignments was found to be spurious, it cannot be assumed that all previous consignments were spurious as well.
- V. Despite more than a year having been passed, the DGGI has not been able to attribute the cash seized at the house of Chaman Goel to the GST offence and the entire case of the DGGI is based on conjectures and surmises.
- VI. Chirag Goel and Chaman Goel have joined investigation and have been participating in the same.
- VII. Chaman Goel had attempted to travel to Dubai since his mother was unwell and he was under the belief that he had permission to travel abroad as he had been permitted by the Sessions Court in another case.
6. I have heard the counsels for the parties and perused the material on record.
7. At the outset, I shall deal with the submission advanced on behalf of the DGGI that anticipatory bail could not have been granted to Chirag Goel and Chaman Goel in view of the judgment of the Supreme Court in ***Choodamani Parmeshwaran Iyer*** (supra).
8. In ***Choodamani Parmeshwaran Iyer*** (supra), the Supreme Court has observed that if any person is summoned under Section 69 of the CGST Act



for the purpose of recording his statement, provisions of Section 438 of the CrPC cannot be invoked. In the said case, the accused persons were not appearing before the authorities despite repeated summons being issued to them and had filed an application seeking anticipatory bail. It was in those circumstances that the Supreme Court made the aforesaid observations.

9. In the present case, it has rightly been contended on behalf of Chirag Goel and Chaman Goel that one of the co-accused persons, Manish Goyal was arrested by the DGGI and therefore, there was a genuine apprehension of arrest.

10. Further, the order in *Choodamani Parmeshwaran Iyer* (supra) was delivered on 17th July, 2023, which is subsequent to the order dated 21st December, 2022 passed by the learned ASJ granting anticipatory bail to Chirag Goel and Chaman Goel. I find merit in the submission of the senior counsels appearing for Chirag Goel and Chaman Goel that *Choodamani Parmeshwaran Iyer* (supra) cannot have retrospective operation.

11. In any event, while considering the present petitions, this Court can exercise jurisdiction vested in it under Article 226 of the Constitution of India, which confers the power to grant pre arrest protection. Therefore, I do not find merit in the submission of the DGGI that Chirag Goel and Chaman Goel could not have been granted anticipatory bail in light of *Choodamani Parmeshwaran Iyer* (supra).

12. Hence, I proceed to consider the present case on merits.

13. In the present case, the accused persons have been charged of the offences under Section 132 of the CGST Act, which is set out below:



“132. Punishment for certain offences.— (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

...

shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

Explanation.—For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.”

14. On the basis of the material on record, it appears in the present case that Input Tax Credit has been availed by M/s Radiant Traders on procurement of cigarettes which have been shown to be used as raw material to manufacture ‘smoking mixture’. It is hard to believe that tobacco from



high value inputs i.e., cigarettes is used to manufacture a low value output i.e., 'smoking mixture'. It appears that this was done only to fraudulently obtain Input Tax Credit.

15. Subsequently, the Input Tax Credit was transferred from M/s Radiant Traders to M/s Harsha International by showing sale of smoking mixture. M/s Harsha International claims to have exported the aforesaid mixture and accordingly claimed GST refund in respect of the Input Tax Credit. It emerges that GST Refund of Rs.198 crores was received by M/s Harsha International, of which Rs.195 crores was subsequently transferred to M/s Radiant Traders, from where amounts were transferred to various companies/firms, including M/s Shree Mahaveer International, M/s Blue Water Expotrade India Private Limited and M/s Pinnacle Exports Expotrade, which were controlled and managed by Chirag Goel and Chaman Goel.

16. As noted above, there was no plant or machinery at the premises of the supplier, M/s Radiant Traders which claims to be the manufacturer of the smoking mixture that was exported. On search of the exporter M/s Harsha International, its principal place of business was found only to be a small *kirana*/ Pan Shop, which was being run by the father of the proprietor of M/s Harsha International. No business activity was being carried there with regard to export of smoking mixtures.

17. The proprietor of M/s Radiant Traders, Manish Goyal, in his statement has admitted that no manufacturing activity ever took place at his premises. He also stated that he had supplied various documents to Chirag Goel, who had set up M/s Radiant Traders in his name. Further, the suppliers of



2024 : DHC : 380



cigarettes to M/s Radiant Traders also named Chirag Goel as the proprietor of M/s Radiant Traders.

18. The proprietor of M/s Pinnacle Expotrade Pvt. Ltd., Abhay Kumar Yadav, who was the driver of Chirag Goel has stated that Chirag Goel had opened the firm on the basis of the documents provided by him.

19. On a *prima facie* view, it appears that Chirag Goel is the mastermind behind the entire racket involving GST Input Tax Fraud to the tune of Rs.200 crores. Chirag Goel had set up various companies in the names of his employees which were the beneficiaries of the GST refunds received by M/s Harsha International. The witnesses included drivers and servants of Chirag Goel who have stated that Chirag Goel was the main beneficiary of the aforesaid fraud.

20. As regards Chaman Goel, a sum of Rs. 3.50 crores was transferred by M/s Radiant Traders to M/s Blue Water Expotrade, of which Chaman Goel is the director. Further, unaccounted cash amounting to Rs. 99,95,000/- was found at his residential premises, in respect of which no explanation has been given by him.

21. The Sessions Court, while granting anticipatory bail to Chaman Goel on 21st December, 2022 imposed a condition that he would not leave the country without the permission of the court. Subsequently, Chaman Goel filed an application to travel abroad, which was rejected *vide* order dated 26th May, 2023 passed by the learned Additional Chief Metropolitan Magistrate (ACMM), Patiala House Courts, New Delhi. He even filed a revision against the said dismissal which was subsequently withdrawn by him on 3rd August, 2023. Yet, Chaman Goel attempted to leave the country on 9th August, 2023



when he was stopped at the airport on account of there being a Look Out Circular against him in respect of some other matter. In my view, this is a serious violation of the bail condition and an attempt to flee from justice.

22. In fact, in terms of the conditions of bail, Chaman Goel was also required to deposit his Passport with the Investigating Officer (IO) which he failed to do, thereby violating the bail conditions.

23. It was submitted on behalf of Chaman Goel that both the parents of Chaman Goel are cancer patients and the mother of Chaman Goel was undergoing treatment in Dubai and she had requested Chaman Goel to meet her there. This is at complete variance with the stand taken by Chaman Goel while filing the application for travelling abroad wherein it has been stated that Chaman Goel wanted to travel abroad for the purposes of 'work related opportunities for his family business'. This has been noted in the order dated 26th May, 2023, passed by the learned ACMM, whereby permission to travel abroad was rejected. Clearly, the ground of the mother of Chaman Goel undergoing treatment in Dubai is in the nature of an afterthought.

24. It is the case of the DGGI that both Chirag Goel and Chaman Goel are habitual offenders in respect of similar offences involving GST Input Tax Fraud and Chirag Goel was arrested by CGST East, in October, 2021 for fraudulently passing input tax credit.

25. The impugned order relies upon an order of even date passed by the same judge, whereby regular bail was granted to the co-accused Manish Goel. In my opinion, the said order could not have been made the basis for granting anticipatory bail to Chirag Goel and Chaman Goel as the aforesaid order was in the context of regular bail. In Manish Goyal's case, he had spent



incarceration of approximately one month. Further, as observed by me in the judgment of even date delivered in the case of Manish Goyal (CRL.M.C.881/2023), Manish Goyal was acting on the directions of Chirag Goel and was not responsible for or aware of the day to day functioning of M/s Radiant Traders.

26. An application for anticipatory bail cannot be kept on the same footing as an application for regular bail, especially in matters of economic offences. In this regard, reference may be made to the following extracts from the judgment of the Supreme Court in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24:

“69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

...

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of



Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510], it was held that in economic offences, the accused is not entitled to anticipatory bail.

...

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

27. At this stage, I deem it appropriate to refer to the observations made in the impugned order granting anticipatory bail, which are set out below:

“Therefore, in sum and substance, the case of the Department seems to be that there is a chain of documents without any actual supply of products while simultaneously there is no claim that the initial tax payment was not made and the entire claim of ITC in the chain is without any input tax deposit. Rather the Department is suggesting that, even though, there is payment of tax at one stage, all ITCs claimed in the chain are without any supply of goods. In the alternative and in my view, to explain the inherent contradiction in the said argument, the counsel for the Department has coined the parallel theory that if there was actual purchase of cigarettes by M/s Radian Traders, the same were perhaps sold in the market without invoicing and spurious smoking mixture was used as a cover to explain its disappearance, as also, used for the purposes of claiming input tax credit for the export of the smoking mixture. This is proposed to be established by firstly, the lab test report dated 02.11.2022 and secondly, the statement of the applicant/accused.

At this stage, therefore, it is pertinent to refer to the query made by the IO on 19.10.2022 to the customs lab viz-a-viz the samples



drawn from the shipment intercepted by the Department and the same reads as follows:

6	Query	<i>1. Whether the goods conforms the Standards of Smoking Mixtures as declared. 2. Percentage of Nicotine in the goods. 3. Percentage of contents in the samples and whether the goods categorized as Tobacco waste?</i>
---	-------	--

(Emphasis supplied)

The chemist after analyzing the sample gave the following opinion on 02.11.2022 on the reverse of the page containing the query:

Report – *The sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine (Tobacco and Tobacco product) having following constants-*

Loss on drying (% by mass) = 58.6

Ash Content on dry basis (% by mas) = 22.8

Acid Insoluble Ash on dry basis (% by mass) = 7.8

Above tested parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture – Specification.

Query No. 02 & 03 could not be ascertained for want of testing facility.

Sealed remnant sample returned herewith.

(Emphasis supplied)

Sadly, based on this inconclusive opinion of the chemist, the chemical examiner has given his opinion regarding the product not meeting the standard for Tobacco and Tobacco products smoking mixture. But the Department seems to have gone further ahead and assumed the position that Tobacco from cigarettes was never used and either there was no actual purchase of cigarettes or in the alternative the cigarettes were sold in the gray market.



To support the conclusion so arrived at, the Department has claimed in para 8 and 34 and I quote again:

The Input Tax Credit was shown to be received by the applicant on the basis of procurement of Cigarettes, which they have shown to be used as raw material for manufacture of their finished product i.e. Smoking Mixture, which is neither economically viable nor technically feasible and the test report also confirmed that the goods declared as Smoking mixture was spurious goods and not fit for human consumption. It appears that the goods (i.e. inward supplied of Cigarettes) have not been utilized for furtherance of business (i.e....

Therefore, even in the absence of any opinion by the lab in the report dated 02.11.2022 pertaining to query no. 2 and 3 raised by the IO with the lab, as already quoted hereinabove, the Department has assumed the position that Tobacco from the Cigarettes was never used in the smoking mixture and then justified the conclusion arrived at by it, by begging the question of economic viability. There is no imperical data made available by the Department viz-a-viz the possible weight of Tobacco drawn from the cigarettes purchased with reference to the quantity and the possible ratio of Tobacco in the product-smoking mixture and its weight in ratio to the weight of the cigarettes claimed as input for preparing mixture.”

28. The impugned order granting anticipatory bail proceeds on the basis that an inconclusive opinion was given by the testing laboratory in respect of the samples of the ‘smoking mixture’ seized from the Kandla Port. However, the impugned order fails to take into account that in response to query 1, the lab test report categorically stated that the sample that was seized was not ‘smoking tobacco’ as declared by M/s Harsha International. In my considered view, when the report was conclusive that the seized products were not ‘smoking tobacco’, the remaining two queries were irrelevant for purposes of grant of bail. Therefore, the impugned order was wholly erroneous in



proceeding on the basis that the lab test report was inconclusive.

29. In the present case, the accused persons are involved in fraudulently obtaining Input Tax Credit worth Rs.200 crores by projecting transactions only on paper and without the actual purchase or sale of goods. As a result, they have duped the government exchequer and the taxpayers of a huge amount of money.

30. Considering the aforesaid facts and circumstances, including the fact that Chirag Goel and Chaman Goel are the beneficiaries in an economic fraud involving a large corpus and were evading summons until the grant of anticipatory bail, the accused Chirag Goel and Chaman Goel were not entitled to be admitted on anticipatory bail. The impugned order has been passed without appreciating the material on record and cannot be sustained and hence is set aside. As noted above, Chaman Goel has also sought to flee the country in complete disregard of the bail condition.

31. Accordingly, the anticipatory bail granted to Chirag Goel and Chaman Goel stands cancelled. CRL.M.C.2791/2023 & CRL.M.C.2792/2023 filed by the DGGI are allowed and CRL.M.C.6431/2023 filed by Chaman Goel is dismissed.

32. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

33. All pending applications stand disposed of.

AMIT BANSAL, J.

JANUARY 19, 2024/sr