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

\+ BAIL APPLN. 3902/2024

SHASHI KANT GUPTA .....Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. V.K. Sharma and Ms. Archisha Satyarthi, Advocates.

versus

STATE THROUGH INCHARGE ECONOMIC OFFENCE WING .....Respondent

Through: Mr. Tarang Srivastava, APP for the State with Insp. Dharmendra Kumar, EOW, Mandir Marg, Delhi.
Mr. Mani Bhadra Jain, Advocate for complainant.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **17.12.2024**

By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 0142/2021 dated 22.09.2021 registered under sections 419/420/467/468/471/120-B of the Indian Penal Code, 1860 ('IPC') at P.S.: Economic Offences Wing, New Delhi.

2. Notice on this petition was issued *vide* order dated 24.10.2024; pursuant to which Status Report dated 19.11.2024 has been filed on behalf of the State.

3. Nominal Roll dated 18.11.2024 has also been received from the Jail Superintendent.

4. Pursuant to intimation sent, the complainant has joined the proceedings *via* video-conferencing and is also represented by counsel.

5. The court has heard Mr. Kirti Uppal, learned senior counsel appearing on behalf of the petitioner; Mr. Tarang Srivastava, learned APP appearing for the State; as well as Mr. Mani Bhadra Jain, learned counsel appearing for the complainant at length.

6. Mr. Uppal draws attention to paras 16.17 and 16.18 of the chargesheet dated 19.07.2024 filed in the matter, to highlight the principal allegation against the petitioner. Paras 16.17 and 16.18 read as follows:

> "*16.17. From the investigation conducted so far it is concluded that accused <u>Shashi Kant Gupta and his son Akshay Gupta entered into a criminal conspiracy and dishonestly/fraudulently induced the GST officials to issue GST registration certificate/number for various non-existent/bogus firms including Madhu Enterprises by using various forged documents viz. electricity bills, rent agreements, partnership deeds etc. and made transactions of more than Rs. 10 crores with their own firms and thereby caused wrongful gain to themselves and corresponding wrongful loss to the government exchequer</u>. Concerned GST officials have been asked in this regard to ascertain the quantum of wrongful loss to the exchequer caused by the accused persons. <u>Accused persons also impersonated as Rajiv Jain, the complainant, before the GST authorities and used his photograph and PAN card details to obtain the GST registration certificate/number in the name of Madhu Enterprises</u>. The accused persons also got <u>opened the bank accounts of various bogus firms/persons on the basis of forged documents</u> which were registered in the name of other persons but the same were actually used by accused persons for making transactions.*

> "*16.18. The aforesaid acts of commissions and omissions on the part of accused Shashi Kant Gupta constitute commission of offences punishable u/s 120B IPC R/W 419/420/468/467/471 IPC and substantive offences thereof.*"
>
> (emphasis supplied)

7. In light of the afore-noted allegations against the petitioner, learned senior counsel submits, that on perusal of the chargesheet it will be seen that the allegations are based only on the statements of alleged former employees of the petitioner, but apart from such statements, the prosecution has not found any material or evidence to implicate the petitioner in the alleged offences.

8. It is submitted that *vide* order dated 14.11.2022 passed by a Co-ordinate Bench of this court in BAIL APPLN. No. 3366/2022, the petitioner was granted interim protection in an anticipatory bail petition; and pursuant to that, the petitioner furnished to the Investigating Officer ('I.O.') a whole host of documents that were in his possession to show his *bona-fides* and cooperated with the investigation.

9. That being said, Mr. Uppal submits however, that on the I.O.'s incorrect assertion that the petitioner was not cooperating in the investigation, *vide* judgment dated 20.10.2023, the petitioner's anticipatory bail plea was dismissed, whereupon the petitioner was arrested and has been in judicial custody since 24.01.2024.

10. Learned senior counsel argues, that in the chargesheet filed against the petitioner, the I.O. has admitted that upon being remanded to police custody, *nothing incriminating could be recovered against the petitioner during investigation*. In this behalf, Mr. Uppal draws

attention to para 16.15. of the chargesheet, the relevant portion of which reads as under :

> "… … *Thereafter, both the accused persons approached Hon'ble High Court of Delhi for anticipatory bail, however, the bail application of both accused was dismissed by Hon'ble High Court of Delhi vide order dated 20.10.2023. Thereafter, both the accused Shashi Kant Gupta and Akshay Gupta were served notice u/s 41A CRPC to join the investigation but they failed to join. Accused Shashi Kant Gupta was finally arrested in this case on 21.04.2024 from his residence at Greater Noida, UP. He was also remanded to police custody to recover the incriminating documents/articles and sale/purchase records of his firms/companies **but nothing incriminating could be recovered during investigation.** Co-accused Akshay Gupta is still at large and proclamation u/s 82 CRPC has been issued against him by the Hon'ble Court for appearance on 22.07.2024. Supplementary chargesheet will be filed against accused Akshay Gupta as and when he is arrested.*"

(emphasis supplied)

11. Mr. Uppal submits, that even today, no evidence or material that has come-forth against the petitioner in the course of investigation; that the prosecution case is *solely* based on the statements made by *alleged* former employees of the petitioner; and that therefore the prosecution case against the petitioner is bound to fail at the trial.

12. Learned senior counsel submits, that in any event, regardless of what evidence the prosecution may or may not have against his son, the petitioner cannot be liable for any acts or omissions of his son.

13. It is submitted that 23 prosecution witnesses have been cited in the chargesheet filed against the petitioner; that charges in the matter are yet to be framed; and evidently trial will take long time to complete.

14. In light of the above submissions and circumstances, Mr. Uppal prays that the petitioner be enlarged on regular bail pending trial.

15. On the other hand, learned APP has opposed the grant of regular bail to the petitioner. On the last date of hearing, Mr. Srivastava had submitted that the State would rely upon the documents and material collected in the course of investigation; and for that purpose, he had requested that the trial court record be requisitioned. However, trial court record has not been received so far.

16. Be that as it may, learned APP has read before the court the statements of certain witnesses recorded under section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') to make good his submissions, based on the trial court record.

17. Mr. Srivastava submits, that the petitioner is guilty of having defrauded and cheated the GST authorities of revenue, by conducting fake commercial transactions through fake business entities that he set-up in the names of his former employees; and the GST liability of one of the fake entities so created *viz.* M/s Madhu Enterprises is itself about Rs. 6.5 crores.

18. The prosecution contends that the petitioner is in fact liable for a larger amount of GST evasion, through the other fake business entities that he created and operated, which facts are yet to be unearthed. Learned APP submits, that it is pertinent to note that the petitioner has committed GST fraud using the I.D.s of a Chartered Accountant, who is the complainant in the matter.

19. Mr. Jain, who is the complainant in the case submits, that he is a respected Chartered Accountant, and when he downloaded his TDS

statement in Form 26-AS from the Income Tax portal, he happened to discover that a GST number had been fraudulently generated in the name of one M/s. Madhu Enterprises using his PAN number. It is submitted that the petitioner has fraudulently obtained GST numbers, on which he has conducted transactions worth about Rs. 14.80 crores within a short period of time from July to November 2019, which is a serious offence.

20. Upon a conspectus of the facts and circumstances of the case, and considering the submissions made at the Bar, what weighs with the court at this stage are following considerations :

20.1. While there is no gainsaying the fact, that *if proved* against the petitioner, evasion of GST by creating fake business entities and routing transactions through them is a serious offence. At this stage however, it cannot be ignored that *other than the statements* of the petitioner's alleged former employees, there appears to be no concrete evidence or material available with the prosecution connecting the petitioner with the alleged offences;

20.2. Even if the offences are to be proved against the petitioner based solely on the statements of his alleged former employees, that would be a matter of trial;

20.3. What the record shows however, is that in the meantime the petitioner has been in judicial custody for almost 08 months as an under-trial prisoner; and chargesheet has been filed on 19.07.2024, thereby concluding the investigation insofar as the petitioner is concerned. Charges are yet to be framed and trial is yet to begin; and 23 prosecution witnesses have been cited in the chargesheet;

20.4. Furthermore, as pointed-out by the State, the petitioner's son and co-accused - Akshay Gupta - is absconding and has been declared proclaimed offender.

20.5. It is evident therefore, that trial in the matter will take significant time.

20.6. In this backdrop, the court is reminded of the observations of the Supreme Court in ***Sanjay Chandra vs. Central Bureau of Investigation***,[1] which read as under :

> "*39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.*
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> "*40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a*

[1] (2012) 1 SCC 40

large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. ***<u>The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.</u>***

"*41. This Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.*"

(emphasis supplied)

21. Applying the principles enunciated by the Supreme Court in the afore-noted judgement, this court is persuaded to grant to the petitioner - **Shashi Kant Gupta s/o Surendra Kumar Gupta -** *regular bail* pending trial, subject to the following conditions :

21.1. The petitioner shall furnish a personal bond in the sum of Rs.5,00,000/- (Rs. Five Lacs Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;

21.2. The petitioner shall furnish to the I.O. a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

21.3. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing;

21.4. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;

21.5. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and

21.6. The petitioner shall neither open nor close any bank account, nor will he start or close any business entities, without giving to the I.O. prior written intimation of at least 15 working days; and would also furnish to the I.O. full details of any such actions, if called-for by the I.O.

22. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.

23. Needless to add, nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.

24. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.

25. The petition stands disposed-of.

26. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 17, 2024
V.Rawat