Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 305 OF 2025

Kiran Lakhamsi Bhanushali .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Veer Kankaria a/w Mr. Gaurav Shukla, Advocates for Applicant i/b C.J.Legal.
- Ms. Komal Kandharkar, SPP a/w Mr. Amol Andhale, Mr. Vishal Andhale for Respondent – State.

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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 10, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 07 of 2024 for offences punishable under Sections 403, 409, 420, 465, 467, 468, 471, 477-A and 109 of Indian Penal Code, 1860 read with Sections 7, 12, 13(1)(a) and 13(2) of Prevention of Corruption Act, 1988.

2. There are a total of 6 Accused out of which Accused Nos. 1, 3 4 and 5 have been enlarged on bail. Accused No. 1 has been granted bail by the Division Bench of this Court on the ground of non-compliance of Section 50 of the Code of Criminal Procedure, 1973. Accused Nos. 4 and 5 have been granted bail by this Court on

09.01.2025 and 14.02.2025. Accused No. 3 has been granted bail by Sessions Court on 24.02.2025. Applicant is arraigned as Accused No. 2 in the present case. Applicant is arrested on 18.06.2024. Investigation is completed. Chargesheet is filed on 14.08.2024.

3. It is prosecution case that a report was lodged by one Sanjay Raosabheb Tekade alleging that Accused No. 1 a Goods and Services Tax (for short '**GST**') Officer alongwith all co-accused during his tenure from the year 2020 to 2021 failed to adhere to the Standard Operating Procedure and despite being authorized to process GST Refund of Rs. 10,00,000/- sanctioned bills of 16 bogus entities and unlawfully approved GST Refund amounting to Rs. 1,75,93,12,622/- to the said 16 companies. It is prosecution case that Applicant aided and benefited from the illegal GST Refund sanctioned by Accused No. 1 in favour of the 16 bogus entities.

4. Mr. Kankarai, learned Advocate for the Applicant would at the outset submit that Applicant is not named as Accused in the FIR. He would submit that in the chargesheet role of Applicant is alleged to be that of a real estate agent / broker who facilitated rental spaces, registered Rent Agreements and assisted in registration of companies with the Registrar of Companies (for short '**ROC**') which allegedly received the GST Refund. However no direct or indirect involvement of Applicant is *prima facie* established in the chargesheet of Applicant being the beneficiary and/or recipients of the humongous GST refund amount from the 16 companies which received the refund.

4.1. He would submit that Applicant neither holds a GST number nor is listed as Director in any of the alleged companies / entities stated in the chargesheet. He would submit that Applicant had no knowledge of the alleged GST Refund fraud and worked as a real estate agent / broker for his clients to provide them rental spaces on leave and license basis. He would submit that there is no role attributed to the Applicant as no financial trail or any incriminating document related to the 16 entities has been recovered from the or at the instance of Applicant. Hence Applicant is neither a beneficiary nor in any way involved in the alleged GST refund fraud. Hence prosecution case of Applicant facilitating the said fraud falls to the ground.

4.2. He would submit that facilitating office rental spaces, registration of Rent Agreements and Registration of Company with ROC does not constitute the offence of corruption or forgery under the charges levelled in the chargesheet and none of the charges can be made applicable to the Applicant. He would submit that Applicant's indictment is clearly based on documentary and electronic evidence but nothing substantial to corroborate the allegations against Applicant are placed on record.

4.3. He would submit that prosecution has heavily relied on witness statements which fail to establish role of Applicant in the alleged fraud. He would submit that the witness statements are not been corroborated by any incriminating evidence which makes the case of prosecution highly questionable against Applicant considering his nexus with the other co-accused. He would submit that prosecution has *prima facie* failed to establish direct or indirect involvement of Applicant in the alleged GST refund fraud case.

4.4. He would submit that Applicant is the sole breadwinner of his family, he has deep roots in the Society and comprises of family with parents, wife and children to support. He would submit that Applicant was arrested on 18.06.2024. He is incarcerated since the last 8 months and he has no criminal antecedents. He would submit that investigation being completed, chargesheet being filed, trial is at the stage of framing charges and commencement and conclusion of trial in the near future is doubtful. Hence he would urge the Court to allow the present Application.

4.5. He would refer to and rely upon the following decisions of the Supreme Court, emphasizing that liberty of an individual is of paramount importance and utmost precaution and ought to be preserved before curtailing such right, reaffirming the principle of bail is a rule and jail is an exception. He would state that no further investigation from the Applicant is required to be made as he has extended all co-operation:-

i. ***Sanjay Chandra Vs. Central Bureau of Investigation***[1]

ii. ***Satendra Kumar Antil Vs. Central Bureau of Investigation & Another***[2]

iii. ***P. Chidambaram Vs. Directorate of Enforcement***[3]

iv. ***Arvind Kejriwal Vs. Central Bureau of Investigation***[4] and

v. ***Suraj Vijay Agarwal Vs. State of Maharashtra*** [5]

4.6. He would submit that Applicant seeks bail on the ground of parity since Accused Nos. 1, 3, 4 and 5 having a substantial and direct role in the crime as stated in the chargesheet are already enlarged on bail and the alleged role of Applicant is significantly less than that of the principal Accused and other co-accused persons with serious criminal antecedents who have been released. Hence he would urge the Court to allow the present Application on principle of parity.

4.7. He would submit that Applicant is ready to abide by any bail conditions if this Court releases him on bail. He would submit that Applicant is having a permanent residence and deep roots in Society. Hence, there is no probability of him absconding from the due process of law and that he shall commit himself to trial.

1 (2012) 1 SCC 40
2 (2021) SCC OnLine SC 922
3 (2020) 13 SCC 791
4 2024 SCC OnLine SC 2550
5 SLP (Crl.) No. 8432 of 2023 decided on 21.08.2023

5. Ms. Kandharkar, learned SPP for Respondent - State has vehemently objected to the grant of bail to Applicant relying on various witness statements to establish Applicant's role and complicity *prima facie* involvement in the alleged GST refund fraud.

5.1. She has relied upon 4 witness statements which are as follows:-

i. Witness statement appended at page No. 16 of one Ashish Chandrakant Jethwa recorded on 11.03.2024 has stated that he rented his premises on Leave and License through the Applicant acting as an agent but Applicant under the pretext of registering the Agreement obtained various documents from him. It is stated that Applicant regularly visited the premises until January 2022 and that 7 out of alleged 16 bogus entities / companies which received the GST refund were shown registered on the said premises. Hence Applicant's *prima facie* involvement stands established as Applicant had knowledge of the above fact.

ii. Next, witness statement appended at page No. 19 of one C.A. Ms. Karishma Shah wherein it is stated that she registered one of the alleged 16 companies M/s. Tradeset Exports wherein Applicant posed himself to be an Accountant and provided necessary documents for the same.

iii. Witness statement appended at page No. 21 of one Zabi-ur-Rehman Kamruddin Salmani wherein it is stated that Applicant was present with other absconding accused – Faizan and actively participated in the discussions for release of funds in other accounts and further threatened to beat him up.

iv. Witness statement appended at page No. 23 of one Ajay Kumar Nishad wherein he has stated that he was fraudulently listed as a proprietor of Eric Fashion and his documents were handed over by him to the Applicant on the instruction of absconding accused - Faizan. Hence *prima facie* role of Applicant in facilitating the alleged GST refund fraud is established.

5.2. She has next drawn my attention to the witness statement appended page No. 36 of one Momin Rehmat Mohammad Khan particularly to the answer given to Question No. 6 therein Applicant's role in obtaining his signature on multiple forms for opening the bank account of some of the alleged bogus entities is *prima facie* established if the said statement is read. Next in answer to Question No. 11 it is seen that Applicant facilitated the application process of GST number for some of the alleged bogus entities. Answer to Question No. 16 shows that Applicant and absconding accused –

Faizan operated the bogus bank accounts of some of the alleged entities. Answer to Question No. 22 shows that Applicant was in possession of the passbook and cheque book of the said companies. Hence she would submit that aforementioned statements *prima facie* establish Applicant's active and primary involvement in orchestrating the alleged GST refund fraud.

5.3. Next, she would submit that video footage appended to the chargesheet shows Applicant's presence at Karnataka Bank on 29.11.2021 when part money of GST refund was transferred from the account of M/s. S.K. Fashion. She has also relied on the chart appended at page No. 28 which indicates receipt of money in Applicant's wife's account. She would contend that Applicant is not entitled to bail on the ground of parity as other accused were granted bail on distinct grounds including medical reasons. Further she would submit that Court must assess the role of Applicant independently in comparison to the other accused.

5.4. She has next stated that the alleged offence committed by Applicant was in connivance with other co-accused and is of a highly serious nature, involving large-scale conspiracy. She would submit that if bail is granted there is a possibility of Applicant re-offending himself, tampering with evidence and influencing witnesses. She would submit that although chargesheet has been filed investigation against two absconding accused is in progress and considering Applicant's close association with one of the absconding accused – Faizan, his release on bail may hinder investigation. Hence she would urge the Court to reject the Application.

6. I have heard Mr. Kankaria, learned Advocate for the Applicant and Ms. Kandharkar, learned SPP for Respondent – State and with their able assistance perused the chargesheet and record of the case.

7. I have perused the record and it is *prima facie* derivated from prosecution case that Applicant's role is limited. He is a real estate agent who facilitated rental office spaces, registered Rent Agreements and assisted in ROC registrations of some of the companies who received some amounts from the bank accounts of one of the alleged 16 entities namely M/s. S.K. Fashion and probably as alleged aided in opening of the bank accounts of some of the recipient companies. That apart no direct evidence is *prima facie* placed on record linking the Applicant to the alleged GST refund fraud which would show that he was a direct beneficiary. Considering the prosecution's case reliance on the statement of Zabi-ur-Rehman Kamruddin Salmani which alleges Applicant's presence at Karnataka Bank, there is another statement relied upon by prosecution of Mr. Satish Gaikwad – the Bank Manager which contradicts this assertion as the Applicant is not named therein, which *prima facie* makes the prosecution case highly questionable. Even otherwise only at trial the reason of his presence and complicity can be established. However the question of credibility and reliability of the witness statements can only be tested at the stage of trial.

8. It is *prima facie* seen that witness statements relied upon by the prosecution is prior to arrest of Applicant. However it is seen that prosecution failed to conduct the Test Identification Parade all this while for the purpose of identifying the Applicant. *Prima facie* no direct nexus of Applicant is established with any of the 16 entities who processed for refund. No funds have been traced to have been transferred from M/s. S.K. Fashion Exports to Applicant's bank account *prima facie* which can be seen from the record placed before me. Regarding transactions in Applicant's wife's account once again, *prima facie* nothing conclusive has been placed on record at this stage for me to form any opinion, however the said transactions can be proved at the stage of trial.

9. In the case of ***Emperor Vs H.L. Hutchinson***[6] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls

6 AIR 1931 ALL 356

all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

10. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

11. Considering the Applicant's limited role, *prima facie* absence of illicit gains and no *prima facie* linkage makes it a clear case for grant of bail. Furthermore investigation is completed and it is crucial to consider that principal Accused No.1 as also other co-accused Nos. 3, 4 and 5 have been enlarged on bail, which establishes a clear case of parity. Given that the trial is at the stage of framing charges the conclusion of trial in the near foreseeable future is doubtful. The aforesaid mitigating facts and Applicant's incarceration persuade me to consider Applicant's case.

12. In view of the above *prima facie* observations and facts delineated herein above Applicant before me is entitled for bail. Bail Application is allowed on the following terms and conditions:-

i. Applicant is directed to be released on bail in CR No. 07 of 2024 registered with Anti-Corruption Bureau, on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

ii. Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

iii. After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

iv. Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

v. Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

vi. Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

vii. Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

viii. Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court;

ix. In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

13. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

AJAY TRAMBAK UGALMUGALE

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