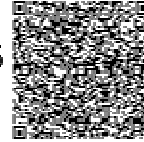


2025:PHHC:073945



**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

260+262

1. CRM-M-15013-2025 (O&M)

Pawan Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

2. CRM-M-16971-2025 (O&M)

Rohit Kumar Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

Decided on : 28.05.2025

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R. S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate,
Mr. Ribhav Singla, Advocate and
Mr. Karan Pathak, Advocate
for the petitioner in **CRM-M-15013-2025**.

Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioner in **CRM-M-16971-2025**.

Mr. Aman Dhir, Deputy Advocate General, Punjab.

MANISHA BATRA, J. (Oral)

1. Both these petitions arise out of the same complaint and seek identical reliefs. With the consent of the respective parties, they have been heard analogously and are being disposed of by this common order.

2. Prayer in these petitions, filed under Section 483 of Bharatiya

2025:PHHC:073945



Nagarik Suraksha Sanhita, 2023, is for grant of regular bail to the petitioners in case arising out of Complaint case bearing No. COMA/2207/2025, titled as ***State Tax Officer vs. Rohit Kumar Gupta and another***, filed by the State Tax Officer, State Intelligence and Preventive Unit, Ludhiana under Section 132(1)(b) and 132(1)(C) of the Central Goods & Service Tax Act, 2017 (*for short 'CGST Act'*).

3. As per the allegations in the complaint, on receipt of an information to the effect that one firm namely M/s Monga Brothers Unit-II, situated at Budhewal Road, Ludhiana, was running a racket of issuing fake invoices in the name of other firms and had made inward supplies to the tune of Rs. 70 crores (approx.) in the financial year 2023-24 and Rs. 93 crores (approx.) in the financial year 2024-25 and had claimed Input Tax Credit (*for short 'ITC'*) to the tune of Rs. 29.50 crores, investigation was initiated. Inspection, search and seizure proceedings under the provisions of Punjab Goods and Services Tax Act, 2017 (*for short 'PGST Act'*) were initiated and search was conducted on 22.11.2024 in order to ascertain the genuineness of the abovenamed firm and its businesses. It was revealed that a web of fictitious businesses was used to conduct fraudulent transactions to create, avail and forward ingenuine ITC by issuing invoices without supply of goods, thereby evading payment of taxes and causing loss to government's revenue. It was also revealed that M/s Monga Brothers Unit-II was a partnership firm of the petitioners and they had utilized ingenuine ITC to the tune of Rs. 29.50 crores. On physical verification of 25 firms, from whom the said tax payer had made inward supplies, was conducted and those firms were found to be non-

2025:PHHC:073945



existent/closed/non-traceable/locked at their registered business addresses as per reports received from the Officers/officials concerned. It was also found that the documents of the proprietors of the firm like Aadhar Card and PAN Card were also fraudulently used to get GST registration. The proprietors did not even know the existence of the firms in their names.

4. As per the further allegations, on verification of online record of the GSTR 2A of the firms, it was revealed that the petitioners were making inward supplies from ingenuine firms, which were either cancelled or suspended. There was no manufacturer in the whole of supply chain. Neither any tax was paid at any stage of supply chain. On analyzing the data from various portals and departmental agencies including GSTN, BO web portal, e-way bill system and ET TSA, it was ascertained that the petitioners were involved in the evasion of tax by indulging in unscrupulous activity of receiving invoices without movement of actual goods and fraudulently availing ITC without any tax being paid at the preceding stages leading to evasion of tax to the tune of Rs. 29.50 crores. On analyzing the e-ways bill details, it was revealed that e-way bills were generated for the vehicles, which were non-goods transport vehicles during financial years 2023-24 and 2024-25 and these non-goods transport vehicles even included two wheelers, cars, ambulance etc. The petitioners were arrested on 13.12.2024. Complaint/chargesheet for commission of offences punishable under Section 132(1) of PGST Act read with relevant sections of CGST Act has been filed against the petitioners after completion of usual formalities. The petitioners had moved applications for grant of bail, which have been dismissed by the Court of learned Additional

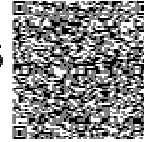
2025:PHHC:073945



Chief Judicial Magistrate, Ludhiana on 10.01.2025 and then by the Court of learned Additional Sessions Judge, Ludhiana on 01.03.2025.

5. It is argued by learned Senior counsel appearing for petitioner Pawan Kumar as well as by learned counsel appearing for petitioner Rohit Kumar Gupta that they have been falsely implicated in this case without taking into account the documents on record, status of the supplier firms as available on GST portal and balance sheet of the firms. Their firm is a genuine manufacturer. They have not received any amount in their accounts as kick back for availing inadmissible ITC. The transactions conducted during routine sale and purchase are duly recorded in books of accounts. They are in custody since 13.12.2024. Conclusion of trial would take considerable time. The subject offences are triable by Magistrate. They do not have any criminal antecedents. They have permanent places of business. The case rests upon the documentary and electronic evidence and there are no chances of their tampering with the same. The maximum punishment to be awarded to them in case of conviction is 05 years. They are ready to abide by the terms and conditions to be imposed upon them by this Court for grant of bail. It is, therefore, urged that the petitions deserve to be allowed and the petitioners deserve to be released on bail. In support of their arguments, learned counsel for the petitioners have relied upon the authorities cited as ***Ratnambar Kaushik vs. Union of India, 2022 INSC 1254, Ashutosh Garg vs. Union of India, 2024 (105) GST 572, Vipin Garg alias Bindu vs. State of Haryana, 2023(69) GSTL 3, Yash Goyal vs. Union of India, Criminal Appeal No. 2784 of 2024, decided on 28.06.2024, Deepak Sharma vs. State of Punjab, 2024***

2025:PHHC:073945



NCPHHC 104729, Parteek Das Gupta vs. State of Haryana, 2024 NCPHHC 46670, Amit Bansal vs. State of Haryana, 2024 NCPHHC 19173, Tejpal Singh vs. Director General of G.S.T. Intelligence, 2024(83) GSTL 247, Sunil Mahlawat vs. Central Goods and Services Tax, 2023(68) GSTL 31, Shamim Akhtar vs. Directorate General of GST Intelligence, 2023 NCPHHC 66070 and Vineet Jain vs. Union of India, Criminal Appeal No. 2269 of 2025, decided on 28.04.2025.

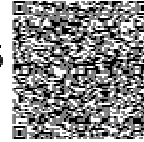
6. Separate replies have been filed by the respondent-State resisting the claims made by the petitioners. It is vehemently argued by learned Deputy Advocate General, Punjab that the petitioners, in connivance with each other, have evaded tax liability of huge amount of money by creating false invoices and adjusting the amount of those invoices without any transportation of the goods or sale of goods thereby passing on fake ITC and by creating fake firms and evading payment of tax, thereby causing loss to the government exchequer. There are chances of their fleeing or tampering with the record, if extended benefit of bail. It is, thus, argued that under the given circumstances, the petitioners are not entitled to get indulgence of bail by this Court and the petitions are liable to be dismissed.

7. The rival submissions made by both the parties have been heard and carefully considered, besides going through the material placed on record.

8. Before proceeding to decide the prayer made by the petitioners for grant of bail, it would be apt to have a look at the relevant statutory provision contained in Section 132 of CGST Act, which read as under :

132. Punishment for certain offences.—

2025:PHHC:073945



(1) Whoever commits 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 such invoice or bill referred to in clause (b); shall be punishable—

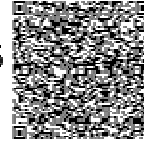
(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine.

(ii) 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 two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence 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 one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

9. A bare perusal of the above mentioned provision leaves no room to doubt that the offences alleged carry minimum punishment of 06 months and a maximum punishment of 05 years of imprisonment. Further, Section 138

2025:PHHC:073945



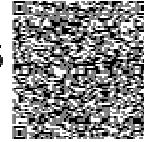
of the CGST Act is relevant, as per which, the offences under Section 132 of the Act are compoundable.

10. The law regarding grant of bail has been discussed in several pronouncements of Hon'ble Supreme Court. It will be apposite to refer to some of them. Reference can firstly be made to ***Dataram Singh vs. State of U.P. and another, (2018)3 SCC 22***, wherein Hon'ble Supreme Court had reiterated the law of bail as follows:

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that **the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.** Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in ***Nikesh Tarachand Shah v. Union of India [(2018) 11 SCC 1]*** going back to the days of the Magna Carta. In that decision, reference was made to ***Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2***

2025:PHHC:073945



SCC 565] in which it is observed that it was held way back in *Nagendra v. King-Emperor [AIR 1924 Cal 476]* that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. Hutchinson [AIR 1931 All 356]* wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.”

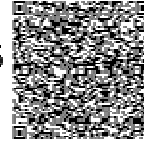
11. It will also be proper to refer to *Sanjay Chandra vs. CBI, (2012) 1 SCC 40*, wherein Sessions Court and the High Court had refused the requests of the persons accused of committing offences of cheating and forgery and use of forged documents, for grant of bail on the grounds that offences alleged against them were serious involving deep rooted planning, causing huge loss to the State exchequer and that there was possibility of the accused persons tampering with the evidence. The Hon’ble Supreme Court observed as under :

“The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a 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. 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.

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46. We are conscious of the fact that the accused are

2025:PHHC:073945



charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

12. Similar observations were made by Hon’ble Supreme Court in ***P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791*** and ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 AIR (Supreme Court) 3386.***

13. In view of the above discussion, it emerges that the position of law regarding grant of bail is that the basic jurisprudence relating to bail in economic offences remains the same in as much as the grant of bail is the rule and its refusal is the exception, so as to ensure that an accused has the opportunity to get fair trial. However, at the same time, it is not advisable to categorize all the economic offences into one group and deny bail on that basis. While considering the question of grant of bail, the gravity of offences is an aspect, which is required to be taken into consideration. The gravity has to be gathered from the facts and circumstances having arisen in each case. One of such circumstances is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. While considering the prayer for grant of bail in any offence, including economic offences, it is not a rule

2025:PHHC:073945



that bail should be denied in every case where the allegation is one of grave economic offences since there is not such bar created in the relevant enactment passed by the Legislature nor does the jurisprudence provide so. The broad parameters to be considered while deciding prayer of an accused for grant of bail can be enumerated as under :

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of accused absconding or fleeing if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

14. Reference may now be made to the citations relied upon by the petitioners in support of their prayer for grant of bail. In ***Ratnambar Kaushik***'s case (supra), the High Court had dismissed an application filed by the accused for grant of regular bail in the proceedings for the offences alleged against him under Sections 132(1) read with Section 132(5) of the CGST Act. While observing that the alleged evasion of tax by the accused was to the extent as provided under Section 132(1)(i) and the punishment provided was imprisonment which might extend to 05 years and fine, the fact that the accused had already undergone incarceration for 04 months and completion of

2025:PHHC:073945



trial was likely to take time and further that the evidence to be tendered was of documentary nature, the Hon'ble Supreme Court had passed an order for release of the accused on bail. In **Ashutosh Garg's** case (supra), the High Court of Judicature for Rajasthan at Jaipur had dismissed the prayer made by the petitioner, who was accused of creating and operating 294 fake firms and evaded tax liability of Rs.1032 crores. The Hon'ble Supreme Court allowed the Special Leave Petition filed by the accused by taking into consideration the fact that he was in custody for a period of 09 months and that the offence carried maximum punishment for 05 years of imprisonment. It was observed that it was not appropriate to keep him in custody any further.

15. Further, in **Vipin Garg alias Bindu's** case (supra), there was allegation of misuse of ITC leading to loss of State exchequer. Chargesheet had been submitted. It was observed by Hon'ble Supreme Court that though heavy loss to the exchequer was alleged to be caused by the accused and no recovery had been effected but further detention of the accused during trial was not necessary and he was extended benefit of bail. In **Yash Goyal's** case (supra), the petitioner was in custody for a period of 06 months for commission of offence punishable under Section 132 of the CGST Act. While considering that the maximum sentence which would be awarded was 05 years and that the trial was likely to take time, Hon'ble Supreme Court directed the appellant to be released on bail. Reliance can also be placed upon a recent pronouncement of Hon'ble Supreme Court in **Vineet Jain's** case (supra), wherein a person accused of committing offence under Section 132(1) of the CGST Act was denied grant of bail. The Hon'ble Supreme Court allowed the

2025:PHHC:073945



appeal filed by the accused by taking into consideration the fact that he was in custody for a period of 07 months, charge sheet had been filed and that the offence carried maximum punishment for 05 years of imprisonment. While granting bail to the accused, the Hon'ble Supreme Court had made following observations:

“We are surprised to note that in a case like this, the appellant has been denied the benefit of bail at all levels, including the High Court and ultimately, he was forced to approach this Court. These are the cases where in normal course, before the Trial Courts, the accused should get bail unless there are some extra ordinary circumstances.”

16. Similar observations were made by the co-ordinate Benches of this Court in *Deepak Sharma's* case (supra), *Parteek Das Gupta's* case (supra), *Amit Bansal's* case (supra), *Tejpal Singh's* case (supra) and *Sunil Mahlawat's* case (supra).

17. Now advertent to the present case. As per the allegations, the petitioners are involved in the racket of fake invoicing, thereby causing loss to the govt. exchequer through fraudulent GST input tax credit claims. However, the claims are yet to be determined by the competent authority of the respondent by making proper assessment/adjudication. As such, it is only after assessment/adjudication that the liability of the petitioners with regard to exact amount of evasion of tax is to be determined under the relevant provisions of CGST Act. A complaint has already been filed against the petitioners. They are in custody since 13.12.2024. Nothing has been shown to this Court which may justify the further detention of the petitioners in prison.

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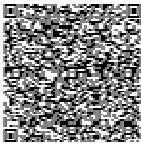


18. On consideration of the above discussed facts and circumstances and also considering that the alleged offences are punishable with maximum punishment up to 05 years and also keeping in view that in such circumstances, the further detention of the petitioners may not at all be justified since in case of this nature, the evidence to be rendered by the respondent would essentially be documentary and electronic, which will be through official witnesses, due to which, there cannot be any apprehension of tampering, intimidating or influencing the witnesses and further as it appears justified to strike a fine balance between the need for further detention of the petitioner when no custodial interrogation has been claimed at all by the department, this Court considers that the petitioners are entitled to be released on bail but subject to certain conditions.

19. As a result of above discussion, the petitions moved by both the petitioners are hereby allowed and they are ordered to be released on regular bail on their furnishing personal bonds with two sureties in the like amount each to the satisfaction of the Court concerned/Duty Magistrate. The concession of bail granted to the petitioners shall be further subject to following conditions:

- (a) They shall deposit their passports, if any, before the learned trial Court;
- (b) They shall cooperate in trial without seeking any unnecessary adjournments;
- (c) They shall not tamper with the prosecution evidence by intimidating or pressurizing the witnesses during trial;
- (d) They shall not dispose of any of their property or of the firms/companies in which they have substantial interest and

2025:PHHC:073945



- which are also under investigation;
- (e) They shall not indulge in any criminal activity or in commission of any crime after being released on bail.
- (f) They shall provide the details of their Aadhar Card as well as their contact numbers to the trial Court.

- 20. Breach of any of the above conditions shall be a ground for cancellation of bail granted to the petitioners.
- 21. It is made clear that the observations made herein above are only for the purpose of deciding the present petitions and the same shall not be construed as an expression of opinion by this Court on the merits of the case.
- 22. This order shall come into force from the time it is uploaded on this Court’s official webpage.
- 23. Let a photocopy of this order be placed on the file of the connected case.

28.05.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>