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

+ **CRL.M.C. 1573/2025 & CRL.M.A. 7109/2025**

DIRECTORATE GENERAL OF GST INTELLIGENCE (DGGI)

.....Petitioner

Through: Mr. Harpreet Singh, Sr. SC with Ms. Suhani Mathur, Mr. Jai Ahuja and Mr. Akshay Saxena, Advocates.

versus

YOGESH KUMAR GUPTA

.....Respondent

Through: Mr. Mohit Mathur, Senior Advocate with Mr. Manish Pratap Singh and Mr. Ajay Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.03.2025

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1. The present petition has been filed under Section 483(3) of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439(2) of the Code of Criminal Procedure, 1973²), by the Directorate General of GST Intelligence,³ seeking cancellation and setting aside of the regular bail granted to the Respondent by order dated 3rd March, 2025 passed by the CJM, New Delhi District.

2. Briefly stated, the facts of the present case, as outlined in the petition, are as flows:

2.1 The Respondent, Sh. Yogesh Kumar Gupta, is the mastermind of a fraudulent billing racket, operating through 16 firms/ companies, engaged in

¹ "BNSS"

² "Cr.P.C."

³ "DGGI"



the practice of issuing GST invoices without the actual supply of goods or services. This operation is executed in a planned and systematic manner, with an intent to defraud the government exchequer. The Respondent has also been playing an active role in passing of fraudulent ITC.

2.2 At the time of the Respondent's arrest, the total amount of fraudulent ITC generated and passed by him was INR 86.37 crores. However, further investigation and analysis of the evidence gathered determined that the actual quantum of fraudulent ITC passed by the Respondent was approximately INR 280 crores, with the possibility of this amount increasing further.

2.3 The Respondent was arrested on the basis of the evidence obtained from his mobile phone as well as his statement dated 27th January, 2025, in which he admitted to be involved in the availing and passing on of fake/bogus ITC. Furthermore, during a search of the office premises of Mr. Rakesh Kumar Aggarwal, who is also alleged to be involved in the fraudulent billing network, his statement was recorded, in which he confirmed that most of the fake/bogus invoices issued by the fraudulent companies were routed through the Respondent.

2.4 The Respondent was arrested on 28th January, 2025. Thereafter, he filed an application dated 10th February, 2025 seeking regular bail before the CJM. The Prosecution filed their reply to the said application, and arguments were heard on 15th February, 2025. The order was reserved and the matter was kept for pronouncement on 18th February, 2025. However, on the said date, the order was not pronounced and the matter was kept for pronouncement on 21st February, 2025, on which date again, the pronouncement was deferred to 24th February, 2025. On the said date, the



bail application of the Respondent was dismissed.

2.5 On 25th February, 2025, the Petitioner moved an application for extension of the Respondent's judicial custody, which was allowed by order dated 25th February, 2025.

2.6 On 27th February, 2025, the Respondent filed the second bail application, which was directed to be listed on 1st March, 2025. In the meantime, on 28th February, 2025, the Petitioner department recorded the statement of the Respondent in Judicial Custody.

2.7 The Petitioner filed a reply to the second bail application on 1st March, 2025 and arguments were also advanced on the said date. The Petitioner raised a preliminary objection regarding the maintainability of the second bail application, citing the absence of any change in circumstances since the dismissal of the first bail application. However, on 3rd March, 2025, the CJM, through the impugned order, granted bail to the Respondent.

3. Aggrieved by the decision, the Petitioner has approached this Court seeking the setting aside of the impugned order dated 3rd March, 2025. Mr. Harpreet Singh, Senior Standing Counsel for the DGGI, contends that the Respondent was granted bail in an arbitrary manner and in undue haste, without adequately considering the contentions and submissions made by the Petitioner before the CJM. He argues that while the Respondent has the right to file successive applications for bail, the second application did not present any new grounds that would warrant a different opinion by the CJM. Since there were no material changes in the circumstances since the dismissal of the first bail application, the grant of bail to the Respondent was unwarranted. Additionally, Mr. Singh highlights that the impugned order contains observations that directly contradict the reasoning in the first order



dated 24th February, 2025, which had denied bail to the Respondent.

4. Mr. Mohit Mathur, Senior Counsel for the Respondent, on the other hand, controverts the contentions urged by DGGI. He submits that the second bail application was indeed maintainable, as the proceedings concerning the first bail application were effectively concluded on 15th February, 2025, when the Magistrate reserved the order. Consequently, he argues that the change in circumstances should be assessed from the date the arguments were concluded on the first bail application, *i.e.*, 15th February 2025, and not from the date of pronouncement of the first bail order, *i.e.*, 24th February, 2025, as suggested by the Petitioner.

5. Mr. Mathur further submits that the bail granted to the Respondent should not be cancelled in a mechanical manner, as the Petitioner has failed to demonstrate a compelling reason to continue the Respondent's judicial custody, particularly since his statement has already been recorded twice. He argues that there is no perversity in the impugned order, and the allegations made by the Petitioner regarding the legality of the order are unfounded. The only argument the Petitioner has raised for seeking the cancellation of bail, that the first bail application was rejected on 24th February, 2025, and the second bail application was filed on 1st March, 2025, does not constitute a valid basis for challenging the bail order.

6. The Court has carefully considered the aforementioned contentions. From the facts outlined, it is evident that the first bail application of the Respondent was rejected on 24th February 2025, and immediately thereafter, on 25th February, 2025, the remand of the Respondent was extended for 14 days. The second bail application was filed just three days following the dismissal of the first application.



7. On this issue, the Court finds significant merit in the argument presented by Mr. Harpreet Singh. While the Respondent is entitled to file successive bail applications, the Court entertaining such applications has a duty to consider the reasons and grounds on which the earlier bail application was rejected. In such circumstances, the Court must record fresh grounds that justify a different approach from the one taken in the previous application. A subsequent bail application filed without a material change in circumstances must be discouraged, as it amounts to an abuse of the process of law. On this issue, the Supreme Court, in *Kalyan Chandra Sarkar v. Rajesh Ranjan*,⁴ observed as follows:

“19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decision given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications

⁴ (2005) 2 SCC 42.



even on a ground already rejected by courts earlier including the Apex Court of the country.”

[Emphasis Supplied]

8. In the instant case, the CJM, in the first bail application, observed that the investigation is at an initial stage *qua* the Applicant and the offence is grave and serious in nature. Based on these observations, the CJM dismissed the Respondent's bail application. However, in the subsequent bail application, which was allowed through the impugned order, the CJM observed as under:

“Record perused. During the course of the arguments in the present application on 01.03.2025, case diary of the 10 was perused by the undersigned. Case diary was written up to 24.02.2025 which reflects no substantial investigation qua applicant/ accused Yogesh Kumar Gupta was done after 30.01.2025 and no case diary was written after 24.02.2025. In the case diary, after 30.01.2025, it seems that 10 is only seeking permission of senior officers for provisional attachment of the suspected firms u/s 83 CGST Act 2017. I find no merit in the arguments that there is no change in circumstances as order on first bail application was passed on the basis of arguments and investigation done till 15.02.2025 as already stated, there is no substantial investigation qua applicant/ accused after 30.01.2025 and no investigation whatsoever after 24.02.2025. In my humble opinion, judicial custody of applicant/ accused is not required. Accordingly, applicant/accused Yogesh Kumar Gupta S/o Prem Babu Gupta is admitted to bail on furnishing bail bonds and surety bonds in the sum of Rs. 1,00,000/- subject to following conditions:-

- 1. Applicant/ accused shall not leave the country without permission of the Court.*
- 2. Applicant/ accused shall provide permanent address to the court and shall join investigation as and when called by IO.*
- 3. Applicant/ accused shall appear before the Court as and when matter is taken up for hearing.*
- 4. Applicant/ accused shall not commit any offence whatsoever. In case of commission of any offence, state shall be at liberty to file application for cancellation of bail.*
- 5. Applicant/ accused shall surrender his passport within 15 days from this order.*

The concerned Ahlmad is directed to bring to the notice of the Court, if the applicant/accused fails to furnish the bail bonds within 30 days from today, for conducting a review in terms of the judgment passed by the



Hon'ble Supreme Court of India in the case of "in Re Policy Strategy for grant of Bail" SMWP (Criminal) No. 04/2021 dated 31.01.2023, wherein the guidelines are laid down in this regard.

Copy of this order be given dasti to all concerned. Copy of order be sent to the accused through concerned Jail Superintendent."

9. In the impugned order, the CJM primarily relied on the fact that no substantial investigation had been carried out *qua* the Respondent after 30th January 2025, and that no case diary had been written after 24th February, 2025. The CJM observed that it appeared the Investigating Officer⁵ was merely seeking permission from senior officers for the provisional attachment of the suspected firms under Section 83 of the CGST Act. Pertinently, this same fact—that no investigation had been conducted against the Respondent after 30th January, 2025, and that the IO was only requesting senior officers' permission for provisional attachment—was also prevalent when the arguments in the first bail application were concluded on 15th February, 2025. Therefore, even if the relevant date for assessing the change in circumstances is considered to be 15th February 2025, rather than the date the first bail order was passed, the Court finds no new circumstances that would warrant a decision differing entirely from the one in the first application.

10. While it is undisputed that no further investigation was conducted after the issuance of the first bail order, it was not the case before the CJM that the investigation had been completed, which would have warranted the Respondent's release on bail. The Court finds that there was no material change in circumstances, as held by the CJM in the impugned order. Therefore, in the opinion of the Court, the CJM's conclusion regarding a

⁵ "IO"



material change in circumstances is unfounded. To this extent, the observations made in the impugned order are deemed incorrect and are hereby set aside.

11. Having concluded that the observations in the impugned order are unsustainable, the Court proceeds to examine as to whether the Respondent is now required to be re-arrested and committed to custody. On this issue, Mr. Harpreet Singh has apprised the Court that the investigation is now complete, and the Petitioner department is on the verge of filing a prosecution complaint. As previously mentioned, the Petitioner department, on 28th February 2025, with permission from the CJM, Patiala House Courts, recorded the Respondent's statement while he was in judicial custody. Therefore, as such, there is no requirement to direct the detention of the Respondent. Additionally, as pointed out by Mr. Mohit Mathur, the Respondent has fully cooperated in the investigation and, after being released from custody, has informed the authorities that he is available for further statements as and when needed.

12. Consequently, the Court is of the opinion that significant time has elapsed since the issuance of the impugned order. Therefore, in light of the developments noted above, it is not warranted to curtail the Respondent's liberty by ordering his re-arrest. Accordingly, it is clarified that the Respondent shall continue to be on bail under the same terms and conditions noted in the impugned order dated 3rd March, 2025. However, the observations made by the CJM regarding a material change in circumstances, are hereby set aside.



13. With the above directions, the petition is disposed of along with pending application(s).

SANJEEV NARULA, J

MARCH 27, 2025

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