



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No. 17536/2022

Gaurav Kakkar S/o Shri Kishan Lal Kakkar, Resident C 54,
Ground Floor, Near Metro Piller, Uttam Nagar, Delhi (At Present
Confined In Central Jail Jaipur)

-----Petitioner

Versus

Directorate General Of Gst Intelligence, Jaipur Zonal Unit

-----Respondent

For Petitioner(s)	:	Mr. R.K. Agarwal, Sr. Advocate assisted by Mr. Yash Vardhan Nandwana
For Respondent(s)	:	Mr. Kinshuk Jain, Sr. Standing counsel for CGST assisted by Mr. Sourabh Jain Mr. Jai Upadhyaya

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

11/01/2023

The petitioner has been arrested in connection with File No. DGGI/INV/INT/1073/2022-GR.J.O/O DD-DGGI-RU-UDAIPUR for offence under Section 132(1)(c) (f)(k) and (l) of Central Goods and Service Tax Act, 2017.

The prosecution case against the petitioner is that he created fake firms for availment and passing of fake/ ineligible Input Tax Credit (ITC) to facilitate existing beneficiary firms. It is alleged that in total, ITC of Rs. 19.65 crores has been availed on the basis of goodsless invoices which is ineligible as per Section 16(2)(b) of the CGST Act, 2017.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and the arrest has been



made without determining the tax liability and by wrongfully calculating ITC allegedly availed by the present petitioner. Learned counsel appearing for the petitioner submits that the present petitioner is no way involved in the commission of the offences alleged and that he has been arrested on frivolous grounds, in violation of the guidelines laid down in case of D.K. Basu Vs. State of West Bengal reported in (1997) 1 SCC 416. It is also argued that offences are triable by Magistrate and petitioner is behind the bars since 04.11.2022 and now challan of the case has also been presented, therefore, there is no question of tampering with evidence or winning over witnesses in this case and thus no useful purpose would be served by keeping the applicant in jail, therefore, the benefit of bail should be granted to the accused-petitioner. Learned counsel for the petitioner placed reliance on decision of Hon'ble Apex Court in the case of Ratnambar Kaushik Vs. UOI reported in (2022) SC 1215 and decision in the case of Vinay Kant Ameta Vs. UOI (Criminal Appeal No. 60/2022) decided on 10.01.2022 .

Per contra, learned counsel for the CGST vehemently opposed the bail application and raised an objection that the petitioner has directly filed bail application before the court of Additional Sessions Judge under Section 439 Cr.P.C. without filing bail application before the trial court under Section 437 Cr.P.C. He place reliance on decision of Hon'ble Allahabad High Court in the case of Noor Mohammad Vs. State of UP & ors reported in 1992 SCC Online All 877. He further argued that certain firms were created which were operating only on paper and were passing on inadmissible ITC by issuing invoices without supplying the goods mentioned therein. It is further contended that the evidence



collected so far clearly indicates that the accused is the mastermind in creating fake firms who subsequently defrauded the Government exchequer to the tune of Rs. 19.65 crores, therefore, the bail application may be rejected. Learned counsel for the respondent placed reliance on decision of Hon'ble Apex Court in the case of Lalit Goyal Vs. UOI & Anr. (Special Leave to Appeal (Crl.) No. 3509/2022 decided on 26.08.2022. Learned counsel for the respondent also placed reliance on order passed by co-ordinate Bench of this court in the case of Yashik Jindal Vs. UOI (S.B. Crl. Misc. Bail Application No. 14792/2022) dated 16.12.2022 and submitted that in the case of Vinay Kant Ameta (supra) and Yashik Jindal (supra), the Hon'ble Apex Court and co-ordinate Bench of this Court directed the petitioner therein, to deposit Rs.200 crores and Rs. 2 crores respectively, as a condition for grant of bail.

Heard learned counsel for the parties and perused the material available on record.

It is an admitted fact that petitioner was arrested on 04.11.2022 and since then, he is in judicial custody. The challan of the case has already been presented and no investigation is pending. Section 132(1)(i) of the Act provides for punishment that "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". Taking into consideration the investigation and evidence so collected, the trial will take considerable time and it may happen, if denied bail, the judicial custody be prolonged beyond the statutory period of punishment which is for five years. However, in



the case of Vinay Kant Ameta (supra), the Hon'ble Apex Court directed the accused to deposit Rs. 200 crores as a condition for grant of bail, therefore, having regard to the totality of the facts and circumstances of the present case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C with a condition to deposit Rs. 3 crores by the petitioner before the respondent Department under protest.

Accordingly, the bail application filed under Sec.439 Cr.P.C. is allowed and it is directed that petitioner – Gaurav Kakkar S/o Kishan Lal Kakkar shall be released on bail provided he executes a personal bond in a sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

The trial court is directed to take the receipt of deposition of Rs. 3 crores on record from the petitioner before attesting the bail bonds.

(MANOJ KUMAR GARG),J

Bjsh/-