

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)



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

<u>Order</u>

<u>11/01/2023</u>

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.

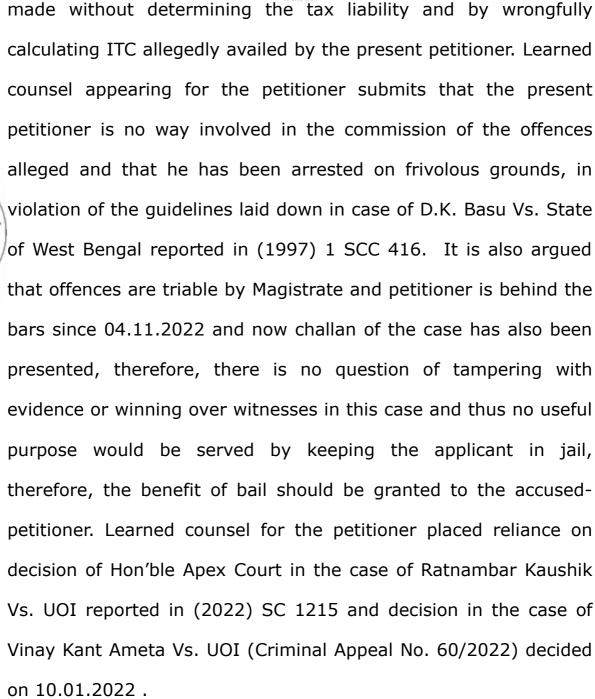
The prosecution case against the petitioner is that he created fake firms for availment and passing of fake/ ineligiblie Input Tax Credit (ITC) to facilitate existing beneficiary firms. It is alleged that in total, ITC of Rs. 19.65 crores has been availed on the basis of goodsless invoices which is ineligible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



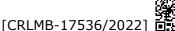


[CRLMB-17536/2022]



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 14792/2022) dated (S.B. Crl. Misc. Bail Application No. 16.12.2022 and submitted that in the case of Vinay Kant Ameta (supra) and Yashik Jindal (supra), the Hon'ble Apex Court and coordinate 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.

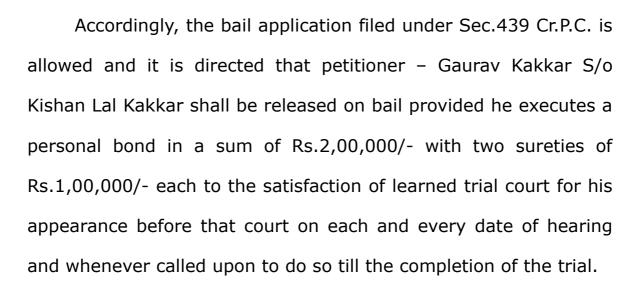
Heard learned counsel for the parties and perused the material available on record.

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.



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/-

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