

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.8217 of 2021

Gurdit Dang

....

Petitioner

Mr. Gouri Mohan Rath, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Sunil Mishra, ASC (CT & GST)

CORAM:

MR. JUSTICE D.DASH

ORDER

26.11.2021

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. This is the 2nd journey of the Petitioner who is in custody in connection with No. P.R.02 of 2021-22 dated 09.07.2021 of the CT & GST Enforcement Unit, Rourkela, corresponding to 2(C) CC Case No. 32 of 2021 on the file of learned S.D.J.M., Panposh, Rourkela running for commission of offences punishable under section 132 (1)(b)(c) and (1) of Odisha Goods and Services Tax Act, 2017 (for short called as 'OGST Act'), in filing this application under section 439 of the Cr.P.C. for his release on bail.
3. Prosecution allegations run to the effect that this Petitioner being in collusion with the accused Sujay Maitra had created and operated five fictitious business entities as also has

created and operated other three such agencies. It is said that they have issued fake invoices in the name of eight non-existent and fictitious business entities without physical movement of the goods and both being defacto operators have lodged claim of wrongful utilization of bogus ITC on the strength of fake invoices without physical receipt of the goods. Similarly such activities are said to have been carried out by this Petitioner with accused Basant Kumar Pattnaik. It is stated that this Petitioner and Basant by such clandestine business activities have been able to pass on huge Input Tax Credit (ITC) to the tune of more than Rs.72.00 crores and received ITC of around Rs.8.5 crores being passed on to M/s. Satguru Metal & Power Private Ltd. and M/s. Tirupati Traders.

4. Learned counsel for the Petitioner submitted that the Petitioner has made all genuine sale and purchase of goods using genuine GSTN and has paid the GST. He further submitted that the complaint petition reveals that the accused Basant being a resident of Rourkela is the mastermind in creating and operating eight numbers of fictitious business entities who used to obtain basic personal identity documents from the proprietors of the firms by misutilizing those documents had registered all those firms under the GST Act. It is submitted that the complaint allegation also runs on the score that accused Basant in collusion with this Petitioner had issued invoices and they have traded without physical movement of the goods and claimed bogus ITC on the strength of such fake

invoices without physical receipt and supply of goods. It is further submitted that lastly in a general manner, it is said that thereby huge ITC has been passed on and availed of. He also submitted that similar allegation against the Petitioner as to have wrongfully passed on and availed ITC in collusion with accused Basanta Kumar Patnaik been made. He submitted that the Petitioner is no way involved in commission of the alleged offences and defrauded the revenue of huge extent as stated which would be finally determined in the assessment proceedings and he has been arrested in the case on frivolous ground without determining the tax liability and by erroneous calculation, the ITC is alleged to have been availed. According to him, all these materials on record do not indicate as to the direct involvement of the Petitioner in the business affairs of all those Firms. It was next submitted that the entire prosecution case is based on documentary evidence which by now have already been seized and when the Petitioner has remained in custody for more than four months, practically, the scope on his part to tamper with any such evidence stands foreclosed. He submitted that the Petitioner being a permanent resident of Rourkela City, there arises no scope on his part to flee from justice. It was his submission that the complaint was lodged in the Court of law from the beginning and now in view of the lapse of time and collection of all such materials when the Authority have already seized all the relevant documents to which the Petitioner has no more the access, the question of

tampering the evidence and influencing the trial in that way do not arise. In view of all these above, he urged for reconsideration of the prayer for grant of bail as according to him, further detention of the Petitioner in custody in connection with the case would serve no useful purpose save and except standing to the sufferance of the Petitioner and the family members which according to him would amount to denial of fair assessment to the Petitioner. In support of the prayer of the Petitioner for reconsideration of grant of bail, he has invited the attention of the Court to the orders passed by this Court in case of Rama Chandra Mallick vs. State of Odisha & Others (BLAPL No. 10958 of 2019 disposed of on 17.3.2020) and Pramod Kumar Sahoo vs. State of Odisha & Others (BLAPL No. 4125 of 2020 disposed of on 23.12.2020) in granting bail to the Petitioners therein.

5. Learned Addl. Standing Counsel, CT & GST opposed the move. He submitted that the prayer for grant of bail to the Petitioner having earlier been rejected in BLAPL No. 6354 of 2021, there is no change in the circumstances for reconsideration of the said prayer. According to him, the Petitioner being involved in commission of economic offence and on the face of the materials collected that the Petitioner had all the role in defrauding the State Exchequer to the tune of huge sum by passing over bogus ITC and receiving the ITC simply by managing to have the transactions reflected in the papers without physical movement of the goods or services and

in the process has created numerous fake documents such as invoices, bills etc. besides having the hand in creating and operating the fake Firms and opening Bank accounts in the name of those entities which have no existence in reality in the commercial field; merely basing upon the factum of detention of the Petitioner in custody for more than four months, this subsequent move for release of the Petitioner on bail has to fail. He submitted that the materials would show that the Petitioner was involved in the matter with the intention to defraud the State Exchequer by way of creation and operation of such fictitious business entities including those existing and has proceeded in that mission. He submitted that with the collection of all such materials further investigation is in progress and the Petitioner being an influential person in the society may try to win over the public witnesses and attempt to erase the money trail of the alleged crime as also may attempt to influence the proprietors of the different firms created for the purpose. In support of the submission as to non-consideration of the prayer for grant of bail, he relied upon the decisions in case of “Nimmagadda Prasad vs. Central Bureau of Investigation; (2013) 7 SCC 466; Y.S. Jagan Reddy vs. Central Bureau of Investigation”; (2013) 7 SCC 439 and others.

6. Keeping in view the submission, I have perused the materials as placed and have further gone through the respective written notes of submission with the citations.

7. The Hon'ble Apex Court in case of "Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others"; (1980) 2 SCC 559 has observed which has also been reiterated in case of "Shri P.Chidambaram vs. Central Bureau of Investigation"; (Criminal Appeal No. 1603 of 2019 disposed of on 22.10.2019) that at the stage of consideration of the matter for granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided.

8. In case of Shri P.Chidambaram (supra), it has been held by the Hon'ble Apex Court that:-

"The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to

grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner”.

9. In “Kalyan Chandra Sarkar v. Rajesh Ranjan and another”; (2004) 7 SCC 528, the Hon’ble Apex Court has said as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC 338.)”

Referring to the factors to be taken into consideration for grant of bail, in Jayendra Saraswathi Swamigal v. State of Tamil Nadu (2005) 2 SCC 13, it has been said that:-

“16.The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.....”

The Hon’ble Apex Court after referring para (11) of Kalyan Chandra Sarkar, in State of U.P. through CBI v. Amarmani Tripathi (2005) 8 SCC 21, it has held that:-

“18. It is well settled that the matters to be considered in an application for bail are (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 the

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 [see *Prahlad Singh Bhati v. NCT, Delhi* (2001) 4 SCC 280 and *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....”.

10. In the given case, the complaint has been lodged against the Petitioner and others for commission of the aforesaid offences under section 132(1)(b)(c) and (1) of the OGST Act. The maximum punishment prescribed thereunder is the imprisonment for a term of five years and with fine in case the amount of tax evaded or the ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs.500.00 lakh. The investigation having commenced on the basis of complaint by two business firms claiming to be the victims of the GST fraud by the Petitioner and other having received the goods supplied by the Petitioner under the coverage of fictitious invoices issued in the name of non-existent business entities said to have been created and operated by the Petitioner, it

appears that extensive searches of said business premises and the house of the Petitioner and other connected premises have already been conducted and a large number of documents have also been seized pursuant to the said search as also informations collected. All these are in custody and control of the Complainant/Authority to which the Petitioner is having no more the access. Co-accused persons have been arrested and all the Bank accounts details have been ascertained.

The prosecution case is mainly based upon the documents in respect of the so-called clandestine business activities. The complaint having already been filed, by now more than four months have already passed. The Petitioner is a permanent resident of the city of Rourkela in the district of Sundergarh and as such hardly there remains the scope for him to flee away from justice. The proceeding for assessment of the GST payable for the transactions may be continuing where the party aggrieved may further carry Appeal and Revision as provided in law. Till such time at the stage of hearing of the application for grant of bail it may be difficult to prejudge the guilt of the Petitioner in ascertaining the exact quantum involved. The assessment in such matter is largely based on documents and relevant records which would take its own time.

In such circumstances of the case on hand, no other materials are placed to support that further detention of the Petitioner still stands as of necessity for the case. In the meantime, more than four months have passed since the

detention of the Petitioner in custody and thus those stages of the investigation here appear to be over when it can be said that the Petitioner being enlarged on bail may stand on the way of proper investigation in collecting all the materials triggering derailment of investigation process with the possibility of the Petitioner influencing the witnesses and absconding on which scores there also stands no material particulars.

11. In view of all these aforesaid, this court feels inclined to reconsider the prayer for grant of bail to the Petitioner.

Accordingly, it is directed that the Petitioner be released on bail on furnishing bail bond of Rs.50,00,000/- (Rupees Fifty lakhs) with two sureties for the like amount to the satisfaction of the learned court in seisin of the case with the following conditions that:-

(i) the Petitioner shall not in any manner make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the Court and shall not tamper with the evidence;

(ii) the Petitioner shall not be indulge himself in similar activity.

(iii) the Petitioner shall surrender his passport if any before the learned court in seisin of the case and will not leave India without prior permission of the Court and in the event the Petitioner has not been issued with any passport, he would submit an affidavit stating the said fact; and

(iv) the Petitioner shall appear before the concerned Authority as would be so required for the purpose.

Violation of any of the above condition(s) shall entail cancellation of bail.

12. The BLAPL is accordingly disposed of.
Issue urgent certified copy as per rules.

***(D. Dash),
Judge.***

Aksethy

