

**AFR**

**HIGH COURT OF ORISSA: CUTTACK**

**BLAPL No.4266 OF 2020**

(In the matter of an application under Section 439, Criminal  
Procedure Code, 1973)

**Bikas @ Vikas Sarawgi** ... **Petitioner**

Versus

**State of Odisha** ... **Opposite Party**

**For Petitioner** : M/s. Prasanta Kumar Nanda,  
D.Sahoo& A.S. Paul, Advocates

**For Opp. Party** : Mr. Sunil Kumar Mishra,  
Additional Standing Counsel

**PRESENT**

**THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI**

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**Date of Hearing: 16.10.2020**

**Date of judgment: 23.12.2020**

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1. The present petitioner, who is in custody, has filed the instant bail application under Section 439 of the Cr.P.C corresponding to 2(C)CC Case No.35 of 2020 for commission of offences punishable under Section 132(1)(b)(c) and (i) of OGST Act, 2017. Prior to instant application, the petitioner also approached the ASJ-cum-Special Judge (CBI-I), Bhubaneswar vide Bail Application No. 631 of 2020 arising out of 2(C) CC Case No. 35 of 2020 which was rejected on 11.06.2020.

- 2.** As per the underlying complaint and the prosecution report, a large number of fraudulent business transactions were made using several fictitious firms including M/s Siddhi Binayak Steel, M/s Varmora Steel & Cement, M/s Pradhan Iron & Steel, M/s Blenders Iron & Steel, M/s Dhanalaxmi Iron, M/s Ganapati Enterprises, M/s Utsav Enterprises, M/s Shree Shyam Enterprises, M/s Sahoo Steel Traders, M/s Saha Enterprises, M/s Sonam Enterprises and M/s Sahoo Traders. The above persons, individually by Sri Vikas Sarawgi, the petitioner herein and in collusion with Sri Ankit Agrawal and Sri Pramod Kumar Sahoo, are stated to have created several dummy and non-existent entities to avail bogus Input Tax Credit (ITC), for the purpose of defrauding the revenue.
- 3.** The typology and modus operandi of such fraudulent activities involved in the creation of these dummy and non-existent firms, appears to have been a matter of grave concern for the authorities. They were predominantly engaged in passing bogus input tax credit, secured on the strength of fake and fabricated invoices without supply of any physical goods to such other existing and non-existing firms, thereby enabling the recipients to avail and utilize the same while discharging tax liabilities. These fake and fraudulent transactions have, among others,

caused huge loss to the State exchequer at least to the tune of Rs.96.39 crores.

4. After intensive analysis of data from GSTN/e-way bill portal and inputs from various sources, the Joint Commissioner of State Tax, CT & GST Enforcement Range, Sambalpur detected the fraud committed by the Accused. As seen from the records, during the search, several incriminating documents, containing business transactions of such business entities, were unearthed and seized with due acknowledgement. The Petitioner was subsequently summoned by the Authorities. The Petitioner was subjected to interrogation and, prima facie, it appears that the petitioner, in his capacity as the proprietor of the above mentioned eleven firms, has shown to have purchased goods from many bogus firms and has availed ITC on the strength of fake invoices, without actual transfer of goods; used to place purchase orders to the suppliers through Brokers/Dalal whose identities are yet to be ascertained; during the period 2018-19, 2019-20 has availed ITC worth about Rs.46.10 crores on purchase of good and transferred/passed on ITC worth Rs.50.29 crores on sale of goods to the recipients. The manner in which the accused, in collusion with other accused, have been operating would suggest that there are certain inherent flaws in the GST system, which is prone to such abuse. Furthermore, the

fraudsters are taking advantage of the inadequacy of electronic trails of all transactions by employing ingenious methods.

- 5.** Pertinently, the search and inspection conducted by the State authorities have revealed that no business was actually being conducted by the declared place of business; multiple entities have been shown to be functioning from same premises; there are no transport documents or lorry receipts to show the actual supply of goods; there were no ware houses to stock the purported goods; and no equipment to measure or weigh the same were available in the premises.
- 6.** Conclusively, the prosecution report states that Sri Vikas Sarawgi in individual capacity and in collusion with others has created eleven fictitious firms, conducted fictitious purchase of good worth Rs. 195.53 crores, fictitious sales of goods worth Rs. 280.53 crores, availed bogus ITC worth Rs. 46.10 crores and passed on bogus ITC worth 50.29 crores to the recipients totaling to Rs. 96.39 crores in the name of the said non-existent fictitious firms in the name of fake invoices without physical receipts and supply of goods. The accused is thereby alleged to have committed offences under Section 132(1)(i) of the OGST Act, 2017, which are a non-bailable and cognizable.
- 7.** Mr. Prasanta Kumar Nanda, 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. He has also contended that the official has not ascertained who has created the company and at whose instance the fabricated documents have been created and thereby, the question of involvement of the petitioner in the alleged crime is highly shrouded under mystery. Further, the FIR story does not disclose that the petitioner has manipulated or has purchased the materials from any source and therefore the ingredients of the offences are not established and the question of input tax also does not arise. Therefore, the present application should be allowed.

- 8.** Per contra, Mr. Sunil Kumar Mishra, learned Additional Standing Counsel appearing for the State submitted that the proceeding has been rightly initiated against the present petitioner and after complying with the all formalities relating to arrest, he has been arrested. The petitioner is engaged in choreographing a complex variant of GST fraud. He made detailed submissions regarding the economic perspective of the fraud, the nature and modus operandi of the crime, the relevant provisions of GST regime and its abuse by employing such fraud and forgery. It was further submitted that under the OGST Act, the acts of commission and omission, as enumerated thereunder, provides for both criminal prosecution U/s 132 of

the Act as well as civil proceedings in terms of Sec.73 and Sec. 74 of the Act.

9. This Court while dealing with the contention of the counsels for the parties has taken note of the fact that in such matters, the evidence is largely based on documentary evidence. Once the charge-sheet has been filed unless antecedents to the contrary can be demonstrated, the presence of the accused may not be required to take the prosecution to its logical conclusion. The object of the law in question is to act as a deterrent in blocking loopholes in an otherwise nascent law which concerns itself with the collection of revenue for the State. Section 132(1)(i) of the Act provides that in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized 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. Similarly, Section 132(ii) of the Act provides a punishment with imprisonment for a term which may extend to three years and with fine when the amount in question is greater than Rs.2 crores but does not exceed Rs. 5 crores. Likewise, the punishment prescribed under Section 132 (1)(iii) for amount between one crore to two crores, the maximum imprisonment can be for a maximum period of one year. In cases where the amount is less than one crore of rupees, the same has

been made compoundable. It may also be noted that the present proceedings are still at a teething stage and may, if the parties choose, be subject to the rigors of law as prescribed under the Statute i.e. assessment, appeal and revision etc. Till such time the guilt of the accused person would not have crystallized and it would difficult to pre-judge at the stage of hearing an application for bail what the ultimate punishment imposed would be. In such circumstances, keeping an accused in custody, might not ultimately achieve the ends of justice.

- 10.** Before proceeding to weigh the relative contentions of the counsel for the parties, it would be necessary to extract the position regarding bail in such offences as provided by the Delhi High Court in the case of **H. B. Chaturvedi vs C.B.I**<sup>1</sup>:

**Para 9.** *In Anil Mahajan v. Commissioner of Customs & Anr.*<sup>2</sup>, this court after considering the judgments, inter alia, in **Gurcharan Singh & Others v. State (Delhi Administration)**<sup>3</sup>, and **Gudikanti Narasimhulu and Others v. Public Prosecutor**<sup>4</sup>, summarized the legal position as follows:

*There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety*

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<sup>1</sup>BAIL APPLN. 572/2010 & CRL.M.(BAIL) 459/2010.

<sup>2</sup>84 (2000) DLT 854

<sup>3</sup>AIR 1978 SC 179.

<sup>4</sup>Air 1978 SC 729.

*of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.*

*For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. **It cannot be said that bail should invariably be refused in cases involving serious economic offences.***

11. Similarly, the Supreme Court in the case of **Sanjay Chandra vs CBI**<sup>5</sup>, iterated the importance position of bail in criminal jurisprudence:

**Para 26.***The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an*

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<sup>5</sup>AIR2012SC830.

*indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.*

*This Court, in the case of **State of Kerala Vs. Raneef**<sup>6</sup>, has stated:-*

*15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course, this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail.”*

- 12.** Several High Courts have also opined that while granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial,

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<sup>6</sup>(2011) 1 SCC 784

reasonable apprehension of the witnesses being tampered with, the larger interests of the public and the State and other similar considerations and have granted bail to the persons accused under section 132 of the CGST Act. In the case of **Akshay Dinesh Patel vs Commissioner of CGST**<sup>7</sup>, held that the applicant is allowed to be released on regular bail on certain terms. It is always open for the respondent department to take departmental action for recovery of penalty against the applicant, the applicant will cooperate with the respondent department during the course of further investigation, the applicant is ready and willing to deposit Rs. 25 lakhs and further that only on violation of the above-mentioned terms, the applicant should be denied bail.

- 13.** Additionally, several High Courts have iterated that strict action should be initiated against the persons who are habitual tax evaders, or the person who is not ready to co-operate in course of investigations, habitual defaulters in filing returns or a person likely to abscond or a person who would tamper with the evidence and influence the witness.<sup>8</sup> In the case of **Abhay Sanatbhai Bhatt vs Commissioner of CGST**<sup>9</sup>, the Gujarat High Court allowed the bail application of the petitioner on the

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<sup>7</sup>2020 (4) TMI 334 (Gujarat High Court)

<sup>8</sup>M/S. Jayachandran Alloys (P) Ltd vs The Commissioner Of GST, Writ Petition No.5501 of 2019 (Madras High Court)

<sup>9</sup>2019 (23) G.S.T.L. 471 (Guj.).

grounds that the petitioner should co-operate with the Investigating Agency during the investigation. In the instant case the petitioner was in judicial custody and he was held for the offence u/s.132(1)(b) of CGST Act and had wrongly availed the Input Tax Credit. The applicant was ordered to release on bail on executing a personal bond of Rs. 10,000/- with one surety of like amount. The court took into consideration the law laid down by Hon'ble apex Court in case of **Sanjay Chandra V. Central Bureau of Investigation**<sup>10</sup> and released the applicant on bail on executing a personal bond of Rs. 10,000/- with one surety of like amount.

**14.**In view of the above discussion, it is directed that the petitioner be released on bail on furnishing a bail bond of Rs.5,00,000/- (Rupees five lakhs) with one surety for the like amount to the satisfaction of the learned trial court with the following conditions: —

(i) The petitioner shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial;

(ii) The petitioner shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses so as to dissuade him from disclosing truth before the Court;

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<sup>10</sup>(2012) 1 SCC 40.

(iii) The involvement of the petitioner in any other similar nature of offence under the GST Act would entail cancellation of bail;

(iv) In case of his involvement in any other criminal activities or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.

(v) The petitioner shall submit his passports, if any, before the learned trial court and shall not leave India without prior permission of this Court.

It is also clarified that the discussions hereinabove, are only limited to the purpose of the instant application and that the assessment of the tax liability of the petitioner and his firm shall be carried out strictly in accordance with the applicable provisions of law, uninfluenced by the observations as aforesaid. It is further stipulated that in such matters the adjudicating authority shall do well to expeditiously complete the assessment process.

The bail application is accordingly disposed of.

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**S. K. Panigrahi, J.**

