

HIGH COURT OF ORISSA, CUTTACK

BLAPL No.958 of 2021

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

Rajeev Mishra

...

Petitioner

Versus

State of Odisha and another

... Opposite Parties

For Petitioner

:M/s. G.M. Rath, S. Jena, K. Ansari and
A.S. Mohanty

For Opposite Parties

:Mr. M.K. Mohanty,
Additional Standing Counsel for State
Mr. Sunil Mishra,
Additional Standing Counsel for
CT & GST

PRESENT :

HON'BLE SHRI JUSTICE S. K. PANIGRAHI

Date of Hearing - 17.05.2021 Date of Judgment - 08.06.2021

S. K. Panigrahi, J.

1. The petitioner, presently in custody, has filed the instant bail application under Section 439 of the Code of Criminal Procedure, 1973 corresponding to 2(c) CC Case No.03 of 2020 pending in the Court of the learned Judicial Magistrate First Class (Rural), Cuttack. The petitioner herein is the accused in connection with alleged commission of offences punishable under Section 69 read with Sections 132(1)(b), 132 (1)(c) and 132(1)(i) of the Odisha Goods and Services Tax Act, 2017. Prior to the instant application, the petitioner had previously approached the court below vide Bail

Application No.1093 of 2020 arising out of 2(c)CC Case No.03 of 2020 which was rejected on 25.01.2021.

- 2.** Bereft of meticulous details, the facts of the matter canvassed are that a large number of fraudulent business transactions were made using several fictitious firms, including, M/s. Nayak Enterprises, M/s. Sahoo Enterprises, M/s. Mohanty Sales Agencies, M/s. Maa Bhawani Enterprises, M/s. Binash Enterprises, M/s. Sangeet Hotels and others. These several functionally vacuous entities were found to have been fraudulently registered under the OGST Act, 2017 by the present petitioner in collusion with other persons. Several persons have been beguiled into lending their name and documents for the purpose of registration of these 12 manikin firms on the false pretext of providing them gainful employment, arranging loans from commercial banks or providing them with monthly stipend. These identity documents have been misappropriated for the purpose of obtaining registration certificate under the GST Act in order to masquerading fake business transactions with an intention to defraud the state exchequer.
- 3.** Such a *modus operandi* of creation of these dummy and sham firms, has been highlighted on numerous occasions in the past. The petitioner and other accused were predominantly engaged in pedalling of bogus input tax credit secured on the strength of fake and fabricated invoices without supply of any physical goods to

other such 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, amongst others, caused huge loss to the State exchequer to the tune of about Rs. 42.36 crores.

- 4.** It is alleged that to evade payment of tax, the petitioner in collusion with others arranged fake purchase invoices from non-existent business entities created and controlled by them. While effecting sales of the goods purchased out of account without payment of tax they have taken adjustment of the tax mentioned in the fake purchase invoices. Similarly, it is also alleged that they have also sold goods in the name of the fake firms and passed on bogus ITC running into crores of rupees to recipients both within and outside the State by raising fake sale invoices. The bogus ITC availed and passed on by the petitioner in collusion with others in the name of 12 fictitious entities aggregates to an amount of Rs. 42.36 crores and therefore they were all involved in willingly defrauding the State exchequer. On the basis of the aforesaid information, a case was registered under section 69 r/w Sec. 132(1)(b), 132 (1)(c) and 132(1)(i) of the OGST Act, 2017 and investigation was commenced.
- 5.** 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. On being subjected to interrogation and, it appears that the petitioner, initially denied any sort of involvement in any of the fictitious firms. The petitioner also categorically denied having any kind of financial, business or personal relationship with the other accused. However, upon subsequently being confronted with documents recovered from the whatsapp and email of the other accused, the petitioner has admitted that he had sent/received the documents and was, in fact, closely involved with another accused, one Sri Smruti Ranjan Mohanty in some scrap related business. Upon being asked as to how the petitioner had come into the possession of confidential GST related information of the fictitious firms, he has failed to provide any explanation for the same. It has further been brought to this Court's notice that the statement by co-accused, Smruti Ranjan Mohanty reflects that the petitioner was in charge of the accounts for a few of the fake entities involved and used to send pdf copies of e-way bills, GST payment challans, user IDs and passwords for the GST related information of the aforementioned fake business entities in close connivance with the other accused. However, upon being presented with this section of the statement by co-accused, one Smruti Ranjan Mohanty, the petitioner denied having any role in the abovementioned business entities. This, therefore, seems to

be a *prima facie* case which has more to it than meeting the eye and might need a deeper probe.

6. Pertinently, the search and inspection conducted by the State authorities have revealed that no business was actually being conducted at the declared place of business, the purchases and sales shown in the name of the fictitious firms were mostly paper transactions without any actual movement of goods. In some cases, the goods were purchased from fictitious sources without payment of tax and the same has been fraudulently regularized by raising invoices in the name of the dummy firms. In many cases, tonnes of good have been shown to have been dispatched to different States as well as within the State through scooters, motor cycles, tractors and cars which are practically not feasible. In conclusion, the investigation report states that the petitioner in collusion with others has created 12 bogus firms and duped the state exchequer to the tune of Rs.42.36 crores by availing and passing on fictitious ITC. The accused is thereby alleged to have committed offences under Sections 69 r/w Sec. 132(1)(b), 132 (1)(c) and 132(1)(i) of the OGST Act, 2017, which are non bailable and cognizable.

7. Learned counsel for the petitioner submits that the petitioner has been falsely implicated only on the basis of the statement of co-accused Smruti Ranjan Mohanty. The petitioner used to share some details pertaining to GST credentials, bills, etc. over whatsapp and

email on the instruction of one co-accused Ankit Agarwal and the same is not enough to determine that the petitioner was an accomplice. It is submitted that as the maximum imputation against the petitioner is that he has transmitted user ID, password and other GST related information in case of three bogus entities only to Smruti Ranjan Mohanty at the instruction of Ankit Agarwal, and thus co-accused Ankit Agarwal is the main mastermind whereas the petitioner himself is a mere employee.

- 8.** *Per contra*, learned counsel for the State submits that the petitioner actively colluded with the other accused to defraud the state exchequer to the tune of Rs. 42.36 crores. It is contended that the alleged offences are part of an organized tax fraud which necessitates a proper investigation as material evidences against the accused persons including the petitioner have been forthcoming. There also exists the potential risk that the petitioner may manipulate or attempt to destroy the evidences, alert other persons involved in this conspiracy in an attempt to derail the investigation, cause further damage to the revenue, alienate their properties so as to render recovery of dues from them impossible or attempt to flee. Considering that the same is an economic offence and affects the very fabric of the society, the petitioner should not be enlarged on bail so as to ensure a proper investigation.

9. Heard learned counsel for the parties. The accusations against the petitioner relate to the commission of economic offences which are considered grave and therefore must be viewed seriously. Offences of this nature affect the economy of the country as a whole and usually involve a deep-rooted conspiracy to cause huge loss of public funds wherein the individual would rather achieve personal gains through illicit means than act in the best interest of the society. Although this Court is cognizant of the fact that in some similar matters the accused persons have been admitted to bail, however, every case turns on the facts and circumstances of the case itself. In the instant case, the aspect of conspiracy seems to be forthcoming inasmuch as the co-accused persons have named each other an aspect which is of sanguine consequence.

10. The law relating to bail in cases of economic offences is more or less settled in view of the decisions of the Hon'ble Supreme Court of India. At this juncture, it is relevant to take note of the view expressed by the Hon'ble Supreme Court in the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation***¹ wherein it has been held that -

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of

¹ (2013) 7 SCC 466

Gujarat v. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:

5... The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the 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, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*”

Furthermore, in the case of **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation**², the Hon’ble Supreme Court opined that;

“35. *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the 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, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.*”

11. It is also observed that while investigation has begun, the same is still going on as more evidence is being unearthed. There have been instances where the petitioner has rendered inconsistent statements and therefore, securing his presence so that he does not try to sabotage the investigation or flee could be deemed necessary. In **Adri Dharan Das v. State of W.B.**³, the Hon’ble Supreme Court opined that;

² (2013) 7 SCC 439

³ (2005) 4 SCC 303

“19. Ordinarily arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance... .For these or other reasons, arrest may become an inevitable part of the process of investigation. ... The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. ...”

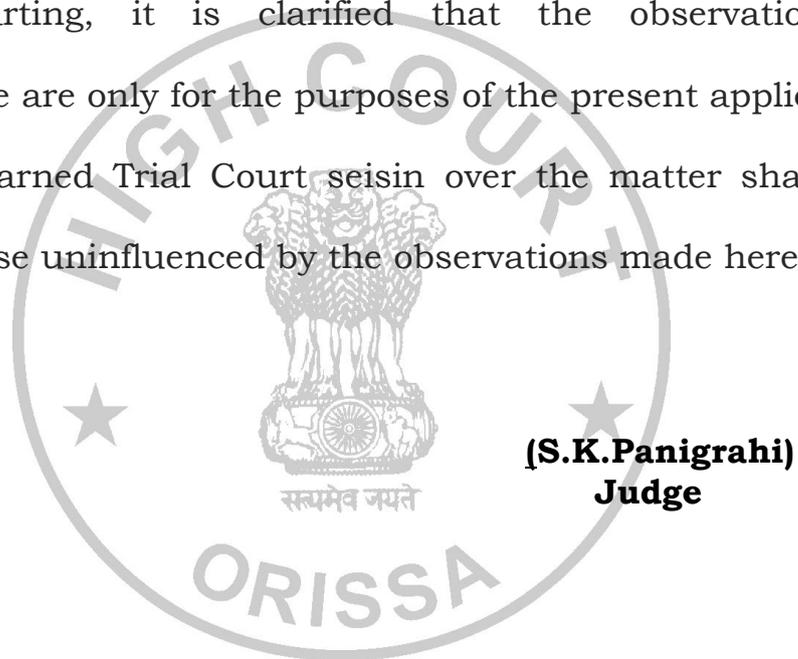
12. Thus, as the law stands, in such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of the public and State. The exchange of incriminating documents relating to the non-existent firms between Smruti Ranjan Mohanty and the petitioner, the contrasting statement rendered by the petitioner and the deposition given by Smruti Ranjan Mohanty *prima facie* leads this Court to form an opinion that the petitioner is hand in gloves with the other accused in creation and operation of the non-existent business entities for availing and passing of bogus ITC thereby defrauding the state exchequer.

13. Considering the nature and gravity of the accusation, the nature of supporting evidence, availability of *prima facie* case against the petitioner, coupled with the fact that a huge amount of public

money has been misappropriated and also the fact that further investigation of the case is under progress and taking into account the apprehension of the petitioner in tampering with the evidence, in the larger interest of society, I am not inclined to release the petitioner on bail.

14. Accordingly, the bail application sans merit and hence stands rejected.

15. Before parting, it is clarified that the observations made hereinabove are only for the purposes of the present application and that the learned Trial Court seisin over the matter shall proceed with the case uninfluenced by the observations made hereinabove.



Orissa High Court, Cuttack
The 8th day of June, 2021/AKK/LNB/AKP