

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

S.B. Criminal Miscellaneous Bail Application No. 7605/2019

Mohit Vijay S/o Jeevan Lal Vijay, Aged About 24 Years, R/o Plot No. 41, Raghunath Vihar, Sirsi Road, Jaipur Raj. (At Present Confined In Central Jail Jaipur Raj.)

----Petitioner

Versus

Union Of India, Through P.p.

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 7642/2019

Kapil Vijay@kapil Vijayavargiya S/o Shri Ram Kalyan Vijay, Aged About 29 Years, R/o A-4, Shree Ganesh Vihar, Meenawala, Sirsi Road, Jaipur Raj. (At Present Confined In Central Jail Jaipur Raj.)

----Petitioner

Versus

Union Of India, Through P.p.

----Respondent

For Petitioner(s)	:	Mr. Sameer Jain
For Respondent(s)	:	Mr. Siddarth Ranka

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment / Order

02/06/2020

1. These bail applications have been filed under Section 439 CrPC in connection with Criminal Complaint filed at Chief Metropolitan Magistrate (Economic Offences), Jaipur (Raj.) for offence under Section 132(1)(b)(c)(f)(j) and (I) of the Central Goods and Service Tax Act, 2017.
2. Heard learned counsel for the parties.

3. Learned counsel for the petitioner submits that the co-accused petitioners were arrested on 1st March, 2019 and a complaint has been filed in the Court of Chief Metropolitan Magistrate (Economic Offences), Jaipur for offence under Sections 132(1)(b)(c)(f)(j) and (i) of the Central Goods and Services Tax Act, 2017. After having conducted investigation as against the accused petitioners, the documents have already been seized and have been placed before the concerned Court. Learned counsel has invited attention of this Court to the list of documents and description, which are in all 87 in number. Learned counsel submits that the allegation against the petitioners is of having issued invoices giving benefit to companies who availed benefit of ITC (Input Tax Credit). A list of the said companies have been mentioned in the complaint which are 36 in number. However, no action has been taken as against the concerned persons of the said companies. Learned counsel submits that no further investigation is required to be conducted as against the accused petitioners and they are in judicial custody since long. Learned counsel submits that under the CGST Act, the case is compoundable and maximum punishment which can be awarded is only five years. The petitioners have already remained in jail for the last 450 days. Learned counsel also submits that in the reply filed by the respondents, it has been stated that they are conducting an investigation against more than 1300 beneficiaries, which is likely to take long time.

4. Learned counsel further submits that in view of the COVID-19 Pandemic, the petitioners be released on bail with certain conditions.

5. Learned counsel relies on the judgment in the case of *Sanjay Chandra Vs. Central Bureau of Investigation* reported in

2012 (1) SCC 40 as well as the order passed by the Coordinate Bench at Principal Seat at Jodhpur in the case of Gaurav Maheshwari Vs. State(S.B.Criminal Misc.IInd Bail Application No.1825/2020) decided on 11.5.2020 and Gaurav Maheshwari Vs. State(S.B.Criminal Misc.Bail Application No.1422/2020) decided on 13.5.2020 submits that the petitioner may be given the similar benefit and similar conditions may be laid down, which the petitioners will abide.

6. *Per contra*, learned counsel appearing for the Revenue strongly opposes the bail application and submits that the petitioners have committed a huge economic offence and huge amount of CGST has been evaded resulting a huge loss of revenue since fraudulent and forged invoices were issued in relation to 34 companies, petitioners created ghost companies which were fraudulent and created only for the purpose of issuing such invoices resulted in giving benefit to as many as 1878 customers in different 21 states. Learned counsel submits that out of the said customers, 321 customers are those who are residing outside Rajasthan.

7. Learned counsel submit that the Revenue Department has recovered Rs. 30 crore from such customers, who wrongly availed of the benefit of ITC. Learned counsel submits that as regards the case being registered against the said beneficiaries since the provisions is only where the benefit has been wrongfully obtained from more than 5 crore and otherwise the case isailable. The department in the process of conducting further investigation in regard to others. On being asked by this Court with regard to any particular investigation, which is pending as against the accused petitioners, learned counsel frankly states

that there is no such investigation as against the accused petitioners, who are in judicial custody. However, he says that they are likely to cause interference in the further investigation and may effect the material witnesses and therefore, prays that they should not be released on bail.

8. Learned counsel also relies on one another judgment passed by the Coordinate Bench of this Court in relation of the Rajesh Arora Vs. State (S.B. Criminal Bail Application No.3987/2020) decided on 26th May, 2020 where the Court in the similar circumstances had refused to grant indulgence of bail to the petitioner, who was in jail since 3rd August, 2018.

9. I have considered the submissions as noticed above and perused the material available on record as well as the judgments as noticed above.

10. In Sanjay Chandra Vs. Central Bureau of Investigation (supra), the Apex Court has observed as under:

"40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot

lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by learned counsel for the parties.

48. In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of `5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions :-

a. The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts to the Court or to any other authority.

b. They shall remain present before the Court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

c. They will not dispute their identity as the accused in the case.

d. They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the Ld. Special Judge, CBI, that fact should also be supported by an affidavit.

e. We reserve liberty to the CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court."

11. Coming to the facts of the present case, this Court notices that the complaint has already been filed with complete details before the Chief Metropolitan Magistrate (Economic Offences), Jaipur, who is ceased with the matter and the trial has commenced. The witnesses are in a huge number and the trial is likely to take time. No further documents are required to be produced apart from any other document, which may be required subsequently. The petitioners cannot be said to be required for any further investigation and no recovery is required to be effected against them and their account has also been seized.

12. The recovery, which is required to be made as against the accused petitioners, is under the provisions of GST Act, which are not part of the criminal case.

13. The apprehension of learned counsel to the effect that the petitioners would be in able to effect and threaten the witnesses, is not made out as there is no such statement placed on record where a witness has been taken before the concerned Court of having been threaten.

14. This Court also notices that the offence alleged against the accused petitioners is समाप्ते. However, no process for compounding the offence has been undertaken by either of the party. However, learned counsel submits that as the petitioners are behind bars, no proceeding for compounding the offence could be taken.

15. Keeping in view that the petitioners are already in jail for 450 days and no further investigation or recovery is to be made for the purpose of the case(supra)and keeping in view the law laid down by the Apex Court as well as by this Court as noticed above,

I am inclined to release the petitioners on bail with conditions as laid down by the Apex Court as noted above.

16. Taking into consideration the overall facts and circumstances of the case, but without commenting on merits of the case, I deem it just and proper to enlarge the petitioners subject to submitting a bail bond in the sum of Rs.1,00,000/- along with one surety of the like amount subject to the following conditions.

"a. The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts to the Court or to any other authority.

b. They shall remain present before the Court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

c. They will not dispute their identity as the accused in the case.

d. They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the Ld. Special Judge, CBI, that fact should also be supported by an affidavit.

e. We reserve liberty to the CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court."

(SANJEEV PRAKASH SHARMA),J