IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 6237 of 2020

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PARESH NATHALAL CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:
MR NIRUPAM NANAVATI SENIOR COUNSEL WITH MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1
DS AFF.NOT FILED (R)(71) for the Respondent(s) No. 2
MR MITESH AMIN PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE G.R.UDHWANI**

Date : 05/05/2020

ORAL ORDER

1. This application is filed seeking bail under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') in respect of the offence punishable under Section132(1)(b)(c) of the Central Goods and Services Tax Act, 2017 for which complaint being File No. CCST/DCST/ENF-CO/AC-1/Paresh Chauhan Case/ 2019-20 / B-42 came to be registered with office of Chief Commissioner of State Tax, Gujarat State, Ahmedabad.

2. The petitioner has been arrested for the offence punishable under section 132 of the Central Goods and Services Tax Act, 2017. The principal allegation against the petitioner is of his having obtained the tax credit to an extent of about Rs. 60 Crores through fictitious firms allegedly established by him in connivance with other persons who of course at the moment are not arraigned as accused. The maximum punishment for the offence is five years imprisonment.

3. The quantum of the sentence, recording of the statements of as many as 35 beneficiaries of the transactions, recovery of Rs. 14 Crores from them, the quantum of the amount involved, non- arrest of the persons allegedly conniving with the petitioner in the commission of offence as also heart ailment of the petitioner i.e. insertion of two

stents in his heart are pressed into service as grounds for admitting the petitioner to bail. It is also submitted that the contention of the learned prosecutor that investigation is in progress shows filing of halfhearted complaint against the petitioner in defiance of Section 167 of Cr.P.C inasmuch as the only purpose of such hasty complaint appears to be depriving the petitioner of benefit of default bail under section 167 of Cr.P.C. According to the learned counsel for the petitioner this is a fraud on the statute. It was also argued that no assessment notice has been issued to the petitioner and thus prosecution has no case to prove against the petitioner. Reliance has been placed upon **Sanjay Chandra vs. Central Bureau of Investigation – (2012) 1 SCC 40**.

4. Per contra, learned Public Prosecutor would oppose this application with the submission that this court may not exercise the discretion in a case where the well-designed offence after the pre-meditation by bringing up as many as 35 fictitious firms for claiming tax credit on the goods not sold has been prima facie committed. It was contended that fake and bogus invoices were raised in the said 35 firms to cheat the public exchequer; that the goods never passed to such firms but turn over @ Rs. 350 Crores was artificially shown. It was contended that such invoices were raised by the Traders to take benefit of tax credit. It was contended that several firms have been benefited out of such fake transaction and Rs. 14 Crores so far have been recovered from some of the firms. It was contended that although the complaint is filed against the petitioner in compliance with Section 167 of Cr.P.C, the case requires more investigation to unearth the racket involving innumerable firms. It was contended that nephew of the petitioner who raised the fake invoices in several firms is still at large. It is contended that evidence also shows the deposit of money in the account of one Harish, in the sum of Rs. 25 to 30 crores wherefrom after deduction of commission remaining amount is transmitted to the bank account wherefrom it was deposited earlier. It was argued that while the quantum of punishment prescribed can be one of the considerations for bail but not the solitary consideration and in cases concerning economic crime of as high magnitude as Rs. 60 Crores, causing loss to the public exchequer and where the case is at large with further investigation wherein summons have been issued to as many as 406 firms, the discretion may not be exercised. It was

contended that individual liberty must give way to the public interest and when public exchequer is at stake, the case would assume seriousness irrespective of the quantum of sentence prescribed. It was contended that incriminating material like laptop, rubber stamp, pre-signed cheque books of several firms and unsigned cheque books of several firms used in the offence have been recovered from the possession of the petitioner. It was also contended that this is not a case of avoidance of tax/assessment of tax but the racket to unlawful tax credit.

5. This court has considered the rival submissions as also taken into consideration the case of **Sanjay Chandra (supra**). From the facts of **Sanjay Chandra(supra),** it has been noticed that the accused was on bail all throughout trial and was released by the judgement of the High Court with no allegation of abusing the trust, etc. The accused was also on bail with no complaints against him of tampering with the evidence. The accused there were facing trial under Sections 420-B, 468, 471 and 109 of Indian Penal Code and Section 13(2) read with 13(i)(d) of Prevention of Corruption Act, 1988.

6. In the instant case, it appears that the case would require thorough investigation with the possibility of addition of more accused to the array; inasmuch as, as many as 406 summonses have been issued and 92 beneficiary firms are under scrutiny. Complaint might have been filed against the petitioner in compliance with Section 167 of Cr.P.C, that would however not preclude the investigating agency to investigate into what could be the huge racket and under such circumstances placing the petitioner out of jail would be potential threat to the investigation; inasmuch as, the manipulation of the evidence at the hands of the petitioner cannot be ruled out. The loss of Rs. 60 Crores to the public exchequer so far cannot be considered as a small amount. It appears that it is only owing to timely detection of the crime that the loss so far is Rs. 60 Crores; it would have been much-much more in absence of detection of the crime. It is not as if the petitioner stopped at Rs. 60 Crores; in all probability he would have continued the racket in absence of its detection. Therefore, what is relevant is not the quantum, but well-designed pre-meditated plan floated by the petitioner to loot the public exchequer.

7. It may be true that as on date the person conniving with the petitioner might not have been arraigned as accused or arrested; but then it would be pre-mature to make any further comment on the said aspect as investigation is under way and it is at crucial stage.

8. Last but not the least; there is nothing to indicate the serious ill-health of the petitioner; needless however to say that in case of necessity, necessary medical help would be provided to the petitioner.

9. For the foregoing reasons, the application fails and is dismissed. Rule is discharged.

(G.R.UDHWANI, J)

KAUSHIK D. CHAUHAN / NIRU