

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 3625 of 2019**

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SHRI ABHAY SANATBHAI BHATT

Versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX

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Appearance:

ANANDODAYA S MISHRA(8038) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR PY DIVYESHVAR(2482) for the Respondent(s) No. 1

MR LB DABHI, APP(2) for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 08/03/2019

**ORAL ORDER**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the offence registered as F.No.V/12-11/AE/JAB/2018-19 of Commissioner of Central Goods & Service Tax, Bhavnagar for offence under Section 132(1)(b) of the CGST Act, 2017.
2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
4. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.
5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail. This Court has also considered the aspects that; (i) the applicant is in jail since 18.1.2019; (ii) the allegation against the applicant is that he has committed the offence punishable under Section 132(1)(b) of the CGST Act and he has wrongly availed input tax credit and also passed on to the concerned buyer; (iii) however, for the alleged transaction, it is always open for the respondent-department to take departmental action for recovery of penalty etc. against the applicant. However, when the applicant is in jail since January, 2019 and

assurance is given by the learned advocate for the applicant, under the instructions, that the applicant will cooperate with the respondent department, during the course of further investigation, and it is also pointed out that in similar type of cases, this Court has considered the case of the concerned accused and such orders are produced on record, I am inclined to exercise discretion in favour of the applicant.

6. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**, reported in [2012] 1 SCC 40.
7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the offence registered as F.No.V/12-11/AE/JAB/2018-19 of Commissioner of Central Goods & Service Tax, Bhavnagar on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;
  - [a] not take undue advantage of liberty or misuse liberty;
  - [b] not act in a manner injurious to the interest of the prosecution;

- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the Sessions Judge concerned;
- [e] mark presence before the concerned Police Station between 1<sup>st</sup> to 10<sup>th</sup> day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;
- [f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

8. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

9. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.
10. Rule is made absolute to the aforesaid extent. Direct service is permitted.

SRILATHA

(VIPUL M. PANCHOLI, J)

