

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 4255 of 2022**

VIMAL YASHWANTGIRI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1

MR.RONAK RAVAL, APP for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2,3

**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA****Date : 28/04/2022****ORAL ORDER**

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in connection with File No.AC-1/UNIT-75/BVN/201920 registered with the Office of the Assistant Commissioner of State Tax-1, Unit-75, 1<sup>st</sup> Floor, Bahumali Bhawan, Bhavnagar and File No.ACCT-UNIT-9/HEUGO METAL/SUMMONS/2021-22 registered with the Office of Assistant Commissioner of State Tax, Unit-9, Division (1), Anmedabad; for the alleged offence punishable under Section 132(1)(b)(c)(f)(K)(I) of the Gujarat Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 read with Sections 463 and 120(B) of the Indian Penal Code, 1860.

2. Brief facts are that respondent No.2 has filed Criminal Complaint No.6846 of 2019 was registered before the Court of Additional Judicial Magistrate, First Class, Bhavnagar on 16.10.2019; for the alleged offence punishable under Section 132 (1) (b) (c) (f)(k) (I) of the Gujarat Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 read with Sections 463 and 120(B) of the Indian Penal Code, 1860, wherein the applicant has been arraigned as accused

No.4. It is alleged in the complaint that M/s.Heugo Metal has evaded Input Tax Credit of Rs.4,51,05,130/-

3. At the outset, learned advocate Mr.Pandya, has submitted that as per the complaint, assuming that the case of the complainant is true, then also, the total amount of Heugo Metal of which the present applicant is a proprietor, the same would come to an amount of Rs.4,51,05,130/- and hence, the same would be bailable offence as per the provisions of Section 132(1)(i) read with Sections 132(4) and 132(5) of the Gujarat GST Act and the Central GST Act, 2017. He has submitted that the maximum punishment, even otherwise provided under the said Section 132 is of five years. He has submitted that the complainant, in order to see that the offence is not treated as a bailable offence, the liability of tax evasion of Dattatrey Corporation i.e. accused No.1 is also added with the company of the applicant.

3.1 Learned advocate for the applicant has further submitted that the applicant has been enrolled in the aforesaid offence is of the year 2019, when his residential premise was raided on 19.07.2019. It is submitted that initially, when the registration of the firm of the applicant was cancelled, he approached this Court by filing application being Special Criminal Application No.15508 of 2020. By the order dated 10.12.2020, the Division bench of this Court has set aside the decision of the respondent-Department and has quashed the order dated 25.02.2020 by which the registration of his company M/s.Heugo Metal was cancelled. It is submitted that thereafter, the applicant filed Special Civil Application No.5410 of 2020 before this Court against the attachment of bank accounts, etc

and vide order dated 16.01.2022, the writ petition, was disposed of since the validity of the attachment order had expired.

3.2 Learned advocate for the applicant has further submitted that the applicant is ready and willing to cooperate with the investigation and looking to the aforesaid facts and maximum punishment of five years provided in the Act, custodial interrogation of the applicant is not necessary. He has further submitted that the investigation is only premised on the documentary evidence, which is already in custody of with the Investigating Officer. He further submits that the applicant will keep himself available during the course of investigation, as well as trial also and will not flee from justice.

3.3 Learned advocate for the applicant, on instructions, states that the applicant is ready and willing to abide by all the conditions, including imposition of conditions with regard to powers of investigating agency to file an application before the competent Court for his remand. He further submits that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicant may be granted bail.

4. On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent- State has opposed grant of bail looking to the nature and gravity of the offence. Learned Additional Public Prosecutor has further submitted that the charge-sheet is yet to be filed qua the applicant. It is further submitted that the investigation reveals

that the applicant had connived with the other co-accused and there is total tax evasion of more than Rs.5 crores and hence, custodial interrogation of the applicant is necessary.

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, at this stage, I am inclined to grant bail to the applicant.

6. The details of the tax evasion of the respective accused arraigned in the complaint, reveal that the total tax evasion of the applicant's Company Heugo Metal is shown as Rs.4,51,05,130/- which is less than 5 crores. It is further revealed that the tax liability of other company being Dattatrey Corporation, concerning the accused No.3, is also added and the total tax evasion of both the companies, is shown as Rs.7,55,76,378/-, i.e. above 5 crores. Both the companies are a separate and distinct identity having different GST numbers. As recorded hereinabove, the residential premises of the applicant was raided in the year 2019 by now more than three years have been passed. Vide orders passed by the Division Bench of this Court, the action of cancellation of the registration of the firm M/s.Heugo Metal was also allowed. The attachment orders have also lost its validity. Even, if the tax evasion is taken more than 5 crores, the maximum punishment which can be imposed is five years. It is not disputed by the department that if the tax evasion of the applicant is less than Rs.5 crores, then it will be a bailable offence as per the provisions of Section 132(1)(i) read with

Sections 132(4) and 132(5) of the Gujarat GST Act and the Central GST Act, 2017. Considering the aforesaid observations, the applicant has carved out his case for grant of bail under the provision of section 438 of the Cr.P.C.

6. This Court has also taken into consideration the law laid down by the Apex Court in the cases of **Sushila Aggarwal vs. State (Nct of Delhi)**, AIR 2020 SC 831 and **Siddharam Satlingappa Mhetre vs State of Maharashtra**, AIR 2011 SC 312.

8. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with File No.AC-1/ UNIT-75/BVN/201920 registered with the Office of the Assistant Commissioner of State Tax-1, Unit-75, 1<sup>st</sup> Floor, Bahumali Bhawan, Bhavnagar and File No.ACCT-UNIT-9/HEUGO METAL/SUMMONS/2021-22 registered with the Office of Assistant Commissioner of State Tax, Unit-9, Division (1), Anmedabad, on his executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **05.05.2022** between 11.00 a.m. and 2.00 p.m.;
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week.

9. Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he considers it proper and just and the Magistrate would decide if on merits. The applicant shall remain present before the concerned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining the application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the concerned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this bail order.

10. At the trial, the concerned trial court shall not be influenced by the *prima facie* observations made by this Court in the present order.

11. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

12. Registry is directed to send a copy of this order to the concerned authority/court through Fax message, email and/or any other suitable electronic mode. Direct Service is permitted.

MAHESH BHATI/70

(A. S. SUPEHIA, J)

