

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC. APPLICATION NO. 7420 of 2022

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DHARMESH KIRTIKUMAR SHAH
Versus
UNION OF INDIA

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Appearance:

MR MANISH BHATT, SR. ADVOCATE WITH UCHIT N SHETH(7336) for the
Applicant(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2
MR MANAN MEHTA APP for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/07/2022

ORAL ORDER

1. The applicant, presently in custody, has filed present bail application, under Section 439 of the Cr.P.C, in connection with **File No. IV/PI-I/35/DeeCubes/2020-21** for the alleged offence punishable under Sections 132(1)(b) and 132(1)(c) of the Central Goods and Service Tax, 2017 (for short 'Act').
2. The issue in the present case is with respect to availment of fraudulent credit. The Department in multiple cases found that invoices are prepared in order to create of transactions with respect to sale of goods and/or services. The respondent no.1 raided the premises of one Bharat Bhagwandas Soni on the basis of fake GST invoices issued by the Traders of Bullion and Diamond Products without supply of corresponding goods. During the search proceedings, it reveals that the present applicant Dharmesh Shah being a Director of M/s. Dee Cubes Pvt. Ltd and Proprietor of M/s. Gloriana Jewels having place of business at Ahmedabad, has availed

ineligible ITC of Rs.7,80,80,991/- from non-existing fake firms namely Vishnu Gold, Viram Jewelers, Neel Jewelers and Kabir Enterprise. The department noticed that the another firm of the applicant M/s. Gloriana Jewels has also availed ineligible ITC of Rs.1,52,30,495/- from the aforesaid firms. In short, total ITC credit of Rs.9.33 crores on the strength of invoices issued by 4 non-existence firm without receiving the goods have availed illicit input tax credit and thereby, committed an offence under Section 132(1) (c) of the Act. The investigation further reveal that the input test ITC illegally passed by the applicant to other persons by issuing invoices without actual supply of goods, thereby, he had facilitated to such parties for wrongful availment of ITC, which is an offence under Section 132(1)(d) of the Act.

3. In the aforesaid facts, it is the case of respondent no.1 that the applicant has entered into a criminal conspiracy of well organized bogus billing syndicate to create fake purchases for his 2 firms, which resulted into monetary loss to the government exchequer to the tune of Rs.9.33 crores.
4. The applicant herein served a summon, however, he did not complied it. On 17.03.2022, the authority visited the business place of the applicant, made extensive search of the place and seized material documents and recorded statement of the applicant and thereafter, on 18.03.2022, he was arrested for the alleged offence as referred hereinabove. He was produced before the Additional Chief Metropolitan Magistrate, Ahmedabad.

5. The applicant herein moved an applications for regular bail before the Courts below and Courts below have rejected the bail application vide its order dated 22.03.2022 and 05.04.2022 respectively.
6. This Court has heard learned Senior counsel Mr. Manish Bhatt assisted by Mr. U.N. Sheth, learned advocate for and on behalf of applicant, Mr. Nikunt Raval, learned Standing Counsel for the respondent no. 1 and Mr. Manan Mehta, learned APP for the respondent State.
7. Mr. Manish Bhatt, learned Senior Counsel for and on behalf of the applicant has submitted that the applicant has not committed any offence and has been falsely involved without any reasonable ground. He urged that considering the object and scheme of the Act, the arrest would arise only when the investigation is completed and after filing the complaint. In the facts of present case, the officers of the department, came at the business place of the applicant and without any notice, he was arrested. The fact remains that no demand notice was issued, therefore, the arrest was effected in utter disregard to the mandatory provisions of the Act.
8. Mr. Bhatt, learned Senior Counsel further submitted that during the investigation, the company made payment of Rs.50 lakhs through Form GST DRC 03. The applicant had assured the department that if at all, the ITC credit is not admissible, then, company would reverse such ITC and still at this stage also, the applicant adhere to the assurance given vide letter dated 29.12.2021.

9. Mr. Bhatt, learned Senior Counsel further submitted that after the arrest of the applicant, the company made deposit of Rs.2 crores through electronic cash ledger and same has been reflected in Forms DRC-03 and in the interregnum the company further reverse the ITC and made payment to the tune of Rs.40 lakhs.
10. In the aforesaid submissions, learned Senior Counsel urged that there is sufficient evidence to show that the actual purchases including tax invoices were being effected and payment to the vendors through banking channels were made, which can be seen from the GST portal, more particularly, reflected in Form GST-RA-2A. In such circumstances, the learned Senior Counsel submitted that no prim-facie case is made out for the alleged offence and unless and until final adjudication, assessment, is not made out, the arrest of the applicant is arbitrary and illegal.
11. Learned Senior Counsel submitted that Section 107(6) of the Act provides for deemed stay against the coercive recovery of dues on predeposit of 10% of the disputed tax liability. Here in the present case, the company has already deposited more than 10% and therefore, case is made out for exercising discretion, enlarging the applicant on bail.
12. Lastly, it was submitted by learned Senior Counsel that the applicant does not have any past criminal record and he belongs to respectable family and has deep roots in the society and there is no any chances to flee from the justice. In these background facts, he urged that when the offence is compoundable and entire case is based on documentary evidence and when substantial investigation qua the

applicant is over, the further custody of the applicant is not necessary, more particularly when trial will not commenced in near future.

13. In support of aforesaid contentions, Mr. Bhatt, learned Senior Counsel relied upon the judgment of the Supreme Court in case of **Sanjay Chandra Vs. CBI, 2012 (1) SCC 40** to contend that the grant of bail is a rule and denial is exceptional, as in the facts of present case, the prosecution failed to point out that the further detention is necessary.
14. In view of the aforesaid contentions, learned counsel submitted that discretion may kindly be exercised by enlarging the applicant on bail.
15. On the other hand, learned Standing Counsel Mr. Nikunt Raval for respondent no. 1 opposed the contentions raised on behalf of the learned senior counsel for the applicant and reiterating the facts of the affidavit filed by the officer of the Department, contended that the evasion of the duty is Rs.9.33 crores and considering the larger conspiracy hatched by Mr. Bharat Soni and his associates and the applicant being a part of the conspiracy and considering the nature of offence, no case is made out for exercising the discretion granting bail to the applicant.
16. On the issue of deposit of tax made by the applicant, the learned Standing Counsel submitted that the reversal of ITC is not acceptable as this amount fraudulently received from the fake non-existence firm and therefore, even after making such payment, the

court has to consider the severity of the offence and its impact on the society. Thus, therefore, he submitted that the offence alleged committed in a planned manner with an object to gain personal profit, regardless of the consequences of the community.

17. Learned Standing counsel submitted that still matter is under investigation and there are missing link of chain which are yet to be joined and applicant being a main person of the company, his further custody is necessary and there are also chances of him to flee from the justice and he may influence the witnesses.
18. In support of aforesaid contentions, the learned Standing Counsel relied on the case laws i.e. **Y.S. Jagannohan Reddy Vs. CBI, 2013 (7) SCC 439**, to submit that the offence alleged is fall under the category of economic offence and such kind of offences having deep rooted conspiracies, involving huge loss of public funds, needs to be viewed seriously and considered as grave offences.
19. In the aforesaid contentions, learned Standing Counsel submitted that no case is made out for exercising power to release the applicant on bail and therefore, application may be rejected.
20. Heard learned counsel for the respective parties at length and perused the material placed on record.
21. On perusal of the material placed on record, it appears that so far case of present applicant is concerned, his role and modus operandi, unearth, while the authority was investigating the case of Bharat Soni and others. In the present case, the applicant herein being a

Director and Proprietor of both the firms have categorically stated that his company made deposit of Rs. 2 crores to Electronic Cash Ledger and also had made payment totaling Rs.90 lakhs by reversing the alleged ITC. Record indicates that while making request for removal of the seal duly affixed on safe vault, the applicant in writing stated as under :

“we have already paid Rs.50,00,000/- through DRC-03 and further convey the confirm and genuine demand, we will pay immediately. We are checking with our other supplier and if we find some other non-genuine supplier, we will present the concerned supplier or we will pay the ITC disputed and I assured that I will pay the disputed ITC through DRC.....”

22. In view of the aforesaid facts, it is evident that the applicant has paid Rs.2,90,00,000/- through Electronic Cash Ledger as well cash. The amount involved is Rs.9.33 crores. In such circumstances, more than 10% amount has been deposited. It is settled law that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. Here in the present case, after the arrest, the applicant has shown his bonafideness as discussed hereinabove. The applicant does not have any past record. The authority has expressed the apprehension that if bail is granted, the applicant will flee from justice and considering the pending investigation, his custody is necessary. This contention having no any merits, as merely raising the contention is not enough but it should be substantiate by acceptable material. In the present case, nothing on record to show

that the investigation qua applicant is incomplete and he having tendency to flee away from justice. The entire documentary evidence seized by the authority. In such circumstances, when the authority failed to point out that the further custody of the applicant is necessary, and considering the particular facts and circumstances of the present case and keeping in mind the settled law laid down in the case of **Sanjay Chandra Vs. CBI, AIR, 2012 SC 830**, wherein, it was observed that detention of the accused for an indefinite period is in violation of Article 21. Since trial of the case may have take considerable time and therefore, there is no reason to detain the accused in custody after completion of investigation, this court is of considered view that the application deserves consideration and I inclined to release the applicant on regular bail.

23. Hence, the applicant is ordered to be released on regular bail in connection with the **File No. IV/PI-I/35/DeeCubes/2020-21**, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall:

No.	Conditions
(a)	not take undue advantage of liberty or misuse liberty;
(b)	not act in a manner injuries 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)	furnish latest 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 the trial Court;
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24. The authorities shall release the applicant if he is not required in connection with the any other offence. If breach of any above condition is committed, the Sessions Judge concerned shall take appropriate action or issue warrant against the applicant. The bail bond to be executed before the learned trial Court having jurisdiction to try the case. It will be open for the sessions judge concerned to delete, modify and/or relax any of the above conditions, in accordance with law. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case. Rule is made absolute to the aforesaid extent. Direct service permitted.

P.S. JOSHI

(ILESH J. VORA,J)

THE HIGH COURT
OF GUJARAT

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