

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 14154 of 2022**

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BHARAT GORDHANDAS PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR N D NANAVATY, SR. ADVOCATE WITH MR RUCHIT J VYAS(10687) for
the Applicant(s) No. 1

MR MANAN MEHTA, APP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 08/09/2022****ORAL ORDER**

1. The applicant, presently in custody, has filed regular bail application under Section 439 of the Cr.P.C., in connection with **File No. ACST/U-5/J K Traders/2021-22, registered with office of Assistant Commissioner of State Tax, Ahmedabad**, for the offences punishable under Sections 132(1)(A), 132(1)(B) and 132(1)(C) of the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as 'the GST Act'.) and Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'), ready with Section 21 and 120B of the IPC.
2. The applicant arrested on 23.03.2022 and was produced before the learned Metropolitan Magistrate on the same day, and since then he is in judicial custody. His bail application filed before the City Sessions Court, Ahmedabad came to be rejected vide order dated 15.07.2022. Respondent authority filed complaint before the Court concerned as contemplated

under the Act. Feeling aggrieved by the same, the applicant preferred present application seeking regular bail.

3. This Court has heard Mr. N.D. Nanavaty, learned Senior Advocate assisted by Mr. R.J.Vyas, learned counsel for and on behalf of the applicant and Mr. Manan Mehta, learned APP for the respondents.
4. Brief facts leading to filing of present application are that, search proceedings were conducted at the business place of M/s JK Traders, who is in the scrap business. During the search proceedings, it was revealed that, the administrator of M/s JK Traders Mr. A.A.Shah has wrongly claimed and availed input tax credit by showing fake inward transactions and have created fictitious firms/companies, whereby, had claimed illicit ITC of Rs.36.05 crore and passed on three other firms to the tune of Rs.36.35 crore and have made cash transactions without invoices, which resulted into monetary loss to the Government exchequer to the tune of Rs.37.95 crore.
5. During the search proceedings of M/s JK Traders, it was revealed that, the billing activities was undertaken from one residential premises situated at A-4, Bhaktinagar Coop. Society, Memnagar, Ahmedabad, which is the residence of present applicant. The raiding officer has searched the premises and seized the incriminating documents /materials. The investigation further revealed that, by creating bogus firms, huge amount of ITC was claimed, availed and passed on fraudulently, by issuing fake invoices without actual movement of the goods for which the applicant was charging commission 4 % to 5%.

6. In such circumstances, it is alleged that the applicant in connivance with the co-accused have planned, arranged and executed the whole scam for monetary benefits and caused huge financial loss to the public exchequer.
7. Mr. N.D.Nanavaty, learned Senior Counsel urged that the allegations leveled against the applicant are false and frivolous and he has not at all availed and utilized the ITC as being alleged fraudulently. It is in this context, he submitted that the arrest of the applicant is being made against the guidelines issued by the finance department and considering the scheme and object of the Act, prosecution should normally be launched only after adjudication is completed. On factual aspect, it is urged that the applicant is not the proprietor of M/s JK Traders nor in any way connected with Mr. A.A.Shah, against whom serious allegations of availing ITC have been made. He would further submits that, as per the case of the department, the applicant being accountant was charging commission amount for the alleged transaction. In such circumstances, he urged that, principal accused Mr. A.A.Shah has been granted bail by this court subject to deposition of Rs. 2 crore. Thus, therefore, considering the role attributed to the applicant herein, without prejudice to the rights and contentions, is willing to deposit Rs.10 lacs within six months from his release. It is submitted that, the applicant is in custody since 23.03.2022 and now his further custody is not necessary as complaint has already been filed before the Court concerned.
8. Mr. Manan Mehta, learned APP reiterating the contents of the sworn affidavit, contended that the applicant in connivance with the principal accused Mr. A.A.Shah defrauded the State

Exchequer to the tune of Rs.37.95 crores and there exists potential risk that the applicant may manipulate or attempt to destroy the evidences. He further submitted that the offence committed is grave economic offence, and detrimental to the nation economy as economic offense constitute a class apart and need to be viewed with different approach in the matter of bail and therefore, he prays that the applicant should not be enlarged so as to ensure proper investigation.

9. Having considered the rival contention of respective parties and having regard to the material on record, it appears that, the applicant is working for and on behalf of the principal accused Mr. A.A.Shah and was charging commission amount. In such circumstances, when principal accused Mr. A.A.Shah granted bail by this court, subject to deposition of Rs.2 crore, the present application also deserves consideration. The department failed to point out the facts that the further custody of the applicant is necessary. The entire case is based on documentary evidence and same are in the custody of the department. After filing the complaint before the learned Metropolitan Magistrate Court, there is no chances to conclude the trial in a reasonable time. In such circumstances, considering the bonafide shown by the applicant herein and bearing in mind the observations made by the Apex Court in case of **P. Chidambaram Vs. Directorate of Enforcement, (2020) 13 SCC 791**, i.e. “even allegations of grave economic offence, it is not a rule that bail should be denied in every case and whether bail is granted or not, will have to be on the case to case basis of the facts involved therein and securing the presence of the accused to stand trial.”, I deem it fit to exercise the discretion in favour of the applicant and accordingly, I inclined to release the applicant on bail with a

condition that the applicant shall deposit Rs.10 lacs before the Office of the respondent no. 2 i.e Assistant Commissioner of State Tax, Unit-5, 11th Floor, B-Block, Multi-storied Building, Lal Darwaja, Ahmedabad within a period of 6 months in equal six installments. The department is directed to accept the amount. It is clarified that, if the applicant fails to deposit the amount as aforesaid or missed any installment, the bail granted shall stands automatically cancelled. The applicant is directed to file undertaking to this effect before the court concerned and this court within 15 days from his release.

10. Hence, the applicant is ordered to be released on regular bail in connection with the **File No. ACST/U-5/J K Traders/2021-22, registered with office of Assistant Commissioner of State Tax, Ahmedabad**, 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;
(f)	The applicant shall deposit Rs.10 lacs before the Office of the respondent no. 2 within a period of 6 months in equal six installments and the department shall accept the amount. If the applicant fails to deposit the amount as aforesaid or missed any installment, the bail granted shall stand automatically cancelled. The applicant is directed to file undertaking to aforesaid effect before the court concerned and this court within 15 days from his release.

11. 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.

(ILESH J. VORA,J)

SUCHIT